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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on:- 12.01.2026***
***Date of Decision:- 19.03.2026***

\+ **LPA 788/2025 & CM APPL. 81562/2025**

THE MANAGEMENT OF MOOLCHAND KHAIRATI RAM HOSPITAL AND AYURVEDIC RESEARCH INSTITUTE
.....Appellant

Through: Mr.Gaurav Bahl, Adv. with Mr.Gokul Sharma, Adv.

versus

MRS THRESIAMMA GEORGE .....Respondent

Through: Mr.N.D. Pancholi, Adv. with Mr.Vishal Pancholi, Adv.

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE TEJAS KARIA**

**J U D G M E N T**

**DEVENDRA KUMAR UPADHYAYA, C.J.**

1. This *intra-court* appeal seeks to challenge the judgment and order dated 28.11.2025 passed by the learned Single Judge, whereby *W.P.(C) 13418/2018* instituted by the appellant against the Award dated 10.04.2018 rendered by Labour Court No. V, Dwarka Courts, Delhi (hereinafter referred to as the **"Labour Court"**), has been dismissed.

At this juncture itself, we may note that the Labour Court, while passing the Award, has held that the dismissal of the services of the sole

respondent without holding a domestic inquiry was illegal and unjustified. The Labour Court has further held in its Award dated 10.04.2018 that the respondent is entitled for reinstatement with full back-wages along with other benefits as applicable with periodical revision of wages from the date her services were terminated.

2. The facts as can be culled out from the pleadings available on record are as under:

i. The respondent was appointed as staff nurse with the appellant on 15.04.1987.

ii. During the period she was serving as a staff nurse with the appellant, an Industrial Dispute bearing no. 86/1998 was raised in respect of the pay scale and service conditions of the employees working with the appellant.

iii. During the pendency of the said industrial dispute, the respondent was dismissed from service on certain allegations, such as ***(a)*** that the respondent supported violent agitation against the appellant organized by its employees, namely, Mr. Vijender Singh, Mr. Banwari Lal, Mr. Jagminder Singh, Mr. A.K. Sethi, Mrs.Bridget V.M., Mr. Rattan Singh, Mr. Jagat Ram and Mr. Satish Kumar, etc., ***(b)*** that she had been blocking the ingress and egress of other employees, who were not supporting the agitation and were willing to discharge their duties in the hospital, ***(c)*** that she along with other employees struck the work of the hospital and gathered in the Cafeteria and made certain demands and further that she along with other employees forcibly entered the office of one of the officials of the appellant and threatened him with dire consequences, ***(d)*** that she along with other employees organized and led demonstration and *dharna* and blocked the entry and exit of the

hospital occupying all the spaces in the office of the Chairman, ***(e)*** that the respondent indulged in making a human chain outside the main office and blocked the same and threatened the other employees with dire consequences, ***(f)*** that she led a mob which indulged in shouting and misbehaved with certain employees, and ***(g)*** that she abused the Doctors and Managers of the hospital run by the appellant during *gheraos* on three dates.

iv. The dismissal order dated 14.09.1998 was passed on these charges by the Manager (Personnel) of the appellant finding that the incidents and circumstances created by the respondent's dereliction in duty and supporting violence and therefore, her presence in the hospital had become detrimental in the interest of the hospital and other employees rendering her liable to disciplinary action, but the situation was not conducive to hold inquiry as violence was anticipated and further that the Management had lost confidence in her.

v. Admittedly, before dismissing the respondent, no inquiry was held, neither any charge sheet was issued to the respondent, nor any explanation in respect of the misconduct was sought from the respondent.

vi. An application was moved before the Presiding Officer, Industrial Tribunal – II, Karkardooma Courts, Delhi (hereinafter referred to as the **"Industrial Tribunal"**), where Industrial Dispute No. 86/1998 was pending, seeking approval of the dismissal of the respondent by the appellant under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the **"I.D. Act"**). The said application was allowed by the Industrial Tribunal, *vide* an order dated 22.12.2004, whereafter the respondent raised an industrial dispute under Section 10 of the I.D. Act on 26.11.2005, challenging her dismissal.

vii. In the said industrial dispute raised by the respondent, a preliminary objection was taken by the appellant stating that the order dated 22.12.2004 passed by the Industrial Tribunal under Section 33(2)(b) of the I.D. Act shall operate as *res judicata* and therefore, the proceedings instituted by the respondent under Section 10 of the I.D. Act were not maintainable.

viii. The appellant in the said industrial dispute also took objection to the effect that the appellant, being a charitable institution, is not an Industry within the meaning of the said term under Section 2(j) of the I.D. Act and further that the respondent, being a staff nurse, was not a workman within the meaning of the said term occurring in Section 2(s) of the I.D. Act.

ix. A preliminary issue was framed in the said proceedings instituted by the respondent under Section 10 of the I.D. Act challenging her order of dismissal, to the effect as to "Whether order dated 22.12.2004 passed in O.P. 55/99 of the Industrial Tribunal No. II operates as *res judicata?*"

x. The said preliminary issue was decided by the Labour Court *vide* its order dated 01.06.2015 in negative, holding that the order dated 22.12.2004 passed on the application under Section 33(2)(b) of the I.D. Act will not operate as *res judicata*. It was also clearly observed by the Labour Court in its order dated 01.06.2015 that since the *appellant had not reserved its right to prove the alleged misconduct of the respondent before the Court in the Written Statement filed on its behalf, the matter be now placed for evidence on the remaining issues*.

xi. The Labour Court, thereafter, proceeded with the adjudication of the industrial dispute raised by the respondent under Section 10 of the I.D. Act against her dismissal from service and rendered its Award on 10.04.2018, whereby it was held that the dismissal of services of the respondent without

holding domestic inquiry, was illegal and unjustified with a further observation that she shall be entitled for reinstatement with full back-wages along with other benefits as applicable with periodical revision of wages from the date of her termination, with consequential benefits.

xii. The said Award dated 10.04.2018 was challenged by the appellant by instituting the proceedings of *W.P.(C) 13418/2018* before the learned Single Judge of this Court, who, by passing the impugned judgment dated 28.11.2025, has dismissed the same, upholding the Award of the Labour Court dated 10.04.2018.

xiii. It is this judgment dated 28.11.2025, passed by the learned Single Judge, which is under challenge in the instant *intra-court* appeal.

3. The main plank of the argument of the learned counsel representing the appellant is that the order dated 22.12.2004, whereby the application moved by the appellant under Section 33(2)(b) of the I.D. Act, according approval to the order of dismissal from service of the respondent, operated as *res judicata* and therefore, the industrial dispute raised thereafter by the respondent was not maintainable and the same ought to have been dismissed; however, the learned Single Judge has not appreciated the said argument, which vitiates the impugned judgment rendered by the learned Single Judge.

4. Further submission on behalf of the appellant is that in proceedings under Section 10 of the I.D. Act, the order according approval to the dismissal of the respondent from the service of the Appellant under Section 33(2)(b) of the I.D. Act could not be revisited, and further that such findings recorded in the proceedings under Section 33(2)(b) of the I.D. Act will be

binding on any subsequent proceedings.

5. In support of his submissions, reliance has been placed on the judgment of Hon'ble Supreme Court dated 30.09.2022 in *Civil Appeal No. 6942/2022* (***Rajasthan State Road Transport Corporation v. Bharat Singh (Dead) Son of Shri Nathu Singh, through Legal Heirs & Anr.***). The appellant has also relied upon judgment of High Court of Karnataka in ***Fouress Engineering Karmika Sangha v. Management of Fouress Engg (I) (P) Ltd., 2025 SCC OnLine Kar 10079***.

6. Opposing the appeal, learned counsel representing the respondent has argued that admittedly in the instant case order of dismissal of the respondent dated 14.09.1998 was passed by the Management of the appellant without framing any charge or issuing any show cause notice or conducting any kind of inquiry and further that the scope of the proceedings under Section 33(2)(b) of the I.D. Act is limited and restricted to an inquiry as to whether the workman concerned has been paid wages for one month and as to whether the employer was able to make out a *prima facie* case. It has further been argued that the principles governing the concept of obtaining approval of dismissal order in terms of the proviso appended to Section 33(2)(b) of the I.D. Act are that the employer is not working *malafide* and is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention of the principles of natural justice.

7. It has further been argued that when any permission in terms of the requirement of Section 33(2)(b) of the I.D. Act is either accorded or refused,

it will not amount to adjudicating an industrial dispute, rather the function of the Tribunal or Labour Court while deciding an application under Section 33(2)(b) of the I.D. Act is to prevent victimisation of a workman for having raised an industrial dispute and therefore, the scope of inquiry being limited under Section 33(2)(b) of the I.D. Act to the aforesaid aspects, it cannot be equated with any adjudication of an industrial dispute on a reference under Section 10 of the I.D. Act.

8. It has also been argued by the learned counsel representing the respondent that the order dated 22.12.2004 passed by the Industrial Tribunal does not give any finding as to whether the alleged misconduct of the respondent was proved or not and in absence of any such finding on such aspects, the order shall not operate as *res judicata* and therefore, the submission raised by learned counsel for the appellant that the proceedings instituted by the respondent under Section 10 of the I.D. Act were barred by the principles of *res judicata*, is absolutely misconceived.

9. On behalf of the respondent, reliance has been placed on ***(i) G. Mckenzie & Co. v. Workmen, AIR 1959 SC 389, (ii) Delhi Transport Corporation v. Ram Kumar and another [1980-I L.L.J 191] [L.P.A. No. 168 of 1980, dated 18th December 1981] and (iii) Surinder Pal v. Management of Delhi Transport Corpn., (2008) 152 DLT 671.***

10. Having heard the learned counsel for the parties and perused the pleadings available on record, the core issue which emerges to be considered and decided by this Court in this *intra-court* appeal is as to whether the order dated 22.12.2004 passed by the Industrial Tribunal according approval

to the order, dismissing the respondent from service, dated 14.09.1998 under Section 33(2)(b) of the I.D. Act would bar the proceedings instituted by the respondent under Section 10 of the I.D. Act on the principle of *res judicata.*

11. To appreciate the respective submissions made by learned counsel for the parties, it is apposite to extract Section 33 of the I.D. Act, which is as under:

> ***"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—*** *(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—*
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> *(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or*
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> *(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,*
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> *save with the express permission in writing of the authority before which the proceeding is pending.*
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> ***(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—***
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> ***(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or***
>
> ***(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:***
>
> ***Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.***

*(3) Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—*

*(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or*

*(b) by discharging or punishing whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.*

*Explanation.—For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being[a member of the executive or other officer-bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.*

*(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.*

*(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit : ]*

*[Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:*

*Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]"*

12. A perusal of afore-quoted Section 33 of the I.D. Act reveals that the said provision has been enacted by the legislature for protection of the rights

of the workmen during the pendency of any conciliation proceedings or any other proceeding pending before an Arbitrator or a Labour Court or a Tribunal or National Tribunal in respect of the industrial dispute. The provision clearly prohibits any employer from altering the conditions of service applicable to workmen to their prejudice during pendency of such proceedings. It also prohibits that during the pendency of such proceedings, the Management or employer shall not discharge or punish by dismissal or otherwise any workman for any misconduct not connected with the dispute except with the express permission in writing of the authority before whom the proceeding is pending.

13. Sub-section (2) of Section 33 of the I.D. Act permits the employer to alter the conditions of service of a workman in respect of any matter which is not connected with the dispute pending before the authorities, as mentioned in sub-section (1) of Section 33 of the I.D. Act. Clause (b) of sub-section (2) of Section 33 of the I.D. Act also permits discharge of or punishment to a workman by dismissal or otherwise for any misconduct not connected with the dispute which is pending as described in Section 33(1) of the I.D. Act, however, such power of the Management is subject to the condition that no workman shall be discharged or dismissed unless an application has been made by the employer to the authorities before whom the proceedings are pending seeking its approval for the action taken by the employer and with a further condition that such workman has been paid wages for one month.

14. Thus, as a matter of fact, Section 33 of the I.D. Act is a kind of protection made available by this legislature to workman from victimisation

and other coercive measures against him in a situation where some proceedings are pending before the Labour Court or Tribunal or an Arbitrator in respect of an industrial dispute. There is a blanket prohibition on the employer in respect of altering the conditions of service to the prejudice of the workman in regard to the matter which are connected with the dispute pending before the authorities as described in Section 33(1) of the I.D. Act and also against discharge or punishment for any misconduct connected with the dispute pending before the authorities, whether by way of dismissal or otherwise. However, in respect of a matter not connected with the dispute pending before the authorities as described in Section 33(1) of the I.D. Act, certain power has been made available to the management, whereby conditions of service may be altered or the concerned workman can be discharged or punished by way of dismissal or otherwise for any misconduct not connected with the dispute pending before the authorities as described in Section 33(1) of the I.D. Act. The proviso appended to Section 33(2)(b) of the I.D. Act, however, states that such discharge or dismissal in relation to a matter not pending before the authorities can be resorted to only with the approval of the authority where the dispute is pending, of the action taken by the employer.

15. The scope and nature of inquiry for obtaining approval under Section 33(2)(b) of the I.D. Act was discussed at length by Hon'ble Supreme Court in ***G. Mckenzie (supra),*** wherein it has evidently been held that Section 33 of the I.D. Act does not confer any jurisdiction on a Tribunal to adjudicate on a dispute; rather, it merely empowers the Tribunal either to grant or withhold permission to the employer during the pendency of an industrial

dispute to discharge or punish a workman. It has further been held that while deciding as to whether permission should or should not be accorded, the Industrial Tribunal is not to act as a Reviewing Tribunal against the decision of the Management, but it is only to see that the employer makes out a *prima facie* case. The Hon'ble Supreme Court has also held that the object of such proceedings under Section 33 of the I.D. Act is to protect the workman in a pending industrial dispute against intimidation or victimisation. The Apex Court further observes in the said judgment that principles governing the concept of obtaining approval in such cases are that the employer is not acting *malafide*, is not resorting to any unfair labour practice or intimidation or victimisation and there is no basic error or contravention of principles of natural justice.

16. In ***G. Mckenzie (supra)***, the Hon'ble Supreme Court has further held that while the Industrial Tribunal gives or refuses permission, it does not adjudicate any industrial dispute; its function, Rather, is to prevent victimisation of a workman for having raised an industrial dispute and further that the nature and scope of proceedings under Section 33 of the I.D. Act shows that removing or refusing to remove the ban on punishment or dismissal of a workman does not bar raising of an industrial dispute when, as a result of permission of the Industrial Tribunal, the employer dismisses or punishes the workman.

17. The Hon'ble Supreme Court has further held in ***G. Mckenzie (supra)*** that since the purpose of the proceedings under Section 33 of the I.D. Act is only to either give or withhold permission and not to adjudicate upon an industrial dispute, therefore, any finding in a proceeding under Section 33 of

the I.D. Act would not operate as *res judicata* and bar the raising of an industrial dispute under Section 10 of the I.D. Act. Paragraphs 16, 17 and 18 of the judgment in ***G. Mckenzie (supra)*** are extracted herein below:

> *"**(16)**. As to the applicability of the principle of res judicata the argument raised by counsel for respondents was that the findings of the State Industrial Tribunal in proceedings under S. 33 of the Act which were confirmed by the Labour Appellate Tribunal barred the right of the management of the appellant company to start a fresh enquiry in respect of the same incident which formed the subject-matter of the previous enquiry. There is no force in this contention, which seems to be based on a misapprehension as to the nature and scope of proceedings under S. 33. That section does not confer any jurisdiction on a Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given, the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen the employer makes out a prima facie case. The object of the section is to protect the workmen in pending industrial disputes against intimidation or victimisation. As said above principles governing the giving of permission in such cases are that the employer is not acting mala fide, is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention of the principles of natural justice. Therefore when the Tribunal gives or refuses permission it is not adjudicating an industrial dispute, its function is to prevent victimisation of a workman for having raised an industrial dispute. The nature and scope of proceedings under S. 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. Atherton West & Co. Ltd. Kanpur, U. P. v. Suti Mill Mazdoor Union, 1953 SCR 780 at p. 788: (AIR 1953 S C 241 at p. 244); (S) AIR 1957 S C 82.*
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> ***(17)**. In the Automobile Products of India Ltd. v. RukmajiBala, 1955-1 SCR 1241: ((S) AIR 1955 SC 258) Das J., (as he then was) said at P. 1256 (of SCR): (at p. 265 of AIR):*
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> > *"The purpose of these two sections (S. 33, Industrial Disputes Act and S. 22, Industrial Disputes (Appellate Tribunal) Act) being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these two*

*sections is to accord or withhold permission."*

> ***(18)**. As the purpose of S. 33 of the Act is to merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under S. 33 would not operate as res judicata and bar the raising of an industrial dispute nor is there anything in the section itself or in the findings arrived at by the Industrial Tribunal in S. 33 proceedings dated 6th June 1954 or of the Labour Appellate Tribunal dated 29th March 1955 which would debar the appellant company from holding the second enquiry or dismissing the workmen provided the principles above set out are complied with."*

18. A Division Bench of this Court in ***Ram Kumar (supra)*** has unambiguously held that the purpose for which Section 33 of the I.D. Act has been enacted is only to impose a ban on the right of the employer, and the only thing that the authority is called upon to do is to grant or withhold the permission i.e., to lift or maintain the ban. It has further been held that the Tribunal before whom an application is made under Section 33(2)(b) of the I.D. Act does not adjudicate upon any industrial dispute arising between the employer and the workman, but it only considers whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment during the pendency of the proceedings, should be lifted. The Court has further held that a *prima facie* case has to be made out by the employer for lifting such a ban, and the only jurisdiction the Tribunal possesses is to either give such permission or to refuse it, provided the employer is not acting with *malafide* or it is not resorting to any unfair practice. The Court has ultimately held that, notwithstanding approval obtained under Section 33(2)(b) of the I.D. Act for dismissal of an employee, such a dispute can form the subject of an industrial dispute and of reference under Section 10 of the I.D. Act for adjudication. The Court has also held that in such a

situation it cannot stand to reason that the Labour Court, no sooner than the matter comes before it for being adjudicated, should just fold up its hands and hold the reference incompetent on the principles of *res judicata.* Paragraphs 5 to 10 of ***Ram Kumar (supra)*** are extracted herein below:

> *"**5.** The main contention urged by Mr. Malhotra, the learned counsel for the applicant, was of res judicata. The argument was that as the appellant had sought approval under S. 33 (2) (b) of the Act and the same had been given by the order of the Tribunal dated 28-1-1974 the present reference under S. 10 of the Act was barred by the principles of res judicata because the effect of approval having been given by the Additional Industrial Tribunal was to hold that not only the enquiry was proper but that the charges were proved, and, therefore, the Labour Court now cannot hold contrary to the finding given by the Industrial Tribunal that the charges were not proved against the respondent. This argument assumes that the jurisdiction under S. 33 (2) (b) and S. 10 of the Act is identically the same and, therefore, any finding given in application under S. 33 (2) (b) for approval for the action of dismissal must act as res judicata if and when such a dismissal is subject-matter of any reference is made under S. 10 of the Act. We find no substance in the contention. This plea has been raised and negatived in series of cases by the Supreme Court. Atherton West and Co. v S. M. Mazdoor Union [1953-II L.L.J. 321], was a case under C. (23) of the Notification of U. P. Government under the U. P. Industrial Disputes Act, which was in pari materia to S. 33 of the Industrial Disputes Act, 1947 as it stood at that time and corresponds to the present S. 33 (i). An argument was raised that the order made by the additional Regional Conciliation Officer giving the management permission to dismiss some of the workmen was final and conclusive in regard to the appellant's right to dismiss them from their employ and, therefore, dismissal by the appellant could not be the foundation of an industrial dispute which could be referred to the conciliation Board and the Board would have no jurisdiction to entertain the same and the award therefore, was void. Negativing this contention the Supreme Court observed at para 16 "that it is clear that C.23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the Board or an appeal before the Industrial Court and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workman during the pendency of those proceedings'. That a right to raise such a dispute would continue to exist notwithstanding the permisson was emphasised by the Supreme Court when it said that 'once the written permission was granted by the officer concerned the ban against the discharge or dismissal of workman would be removed and the employer, his agent or manager could in the exercise of his discretion discharge or*

*dimiss the workman but in that event an industrial dispute within the meaning of its definition contained in S. 2 (k) of the Industrial Disputes Act, 1947 would arise and the work man who had been discharged or dismissed would be entitled to have that industrial dispute referred to the Regional Conciliation Board for enquiry into the same (emphasis supplied). That right of the workman to raise an industrial dispute could not be taken away in the manner suggested by Shri C. K. Daphtary by having resort to the provisions of C.23 and 24(*1) aforesaid. That right was given to the workman by the terms of the Industrial Disputes Act, 28 of 1947 and would remain unaffected by any of the provisions hereinbefore referred to."*

***6.****That the jurisdiction under S. 33 of the Act is only to impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission, i.e., to lift or maintain the ban. See* ***Automobile: Products of India v. Rukmaji Eala, [1955-1 L.L.J. 346].*** *That case also emphasised the limited nature of the jurisdiction under Section 33. With regard to the scope of enquiry S. 33 of Industrial Disputes Act it is now well settled that "The Tribunal before whom an application is made under that section has not to adjudicate upon any Industrial dispute (emphasis supplied) arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or not resorting to any unfair practice of victimization." See* ***Laxmi Devi Sugar Mill v. Pt. Ram Sarup, [1957-IL.L.J. 17]*** *withstanding this clear law an effort was again made before the Supreme Court to urge that a decision given while approving or refusing permission for dismissal would amount to res judicata in subsequent adjudication when a reference is made under S. 10. This plea was however, negatived in* ***G Makenzie and Co Ltd v. Its Workmen [1959-1 L.L.J. 285]*** *wherein it was held that proceeding under Section 33 does not confer any jurisdiction on a Tribunal to adjudicate on a dispute (emphasis supplied) but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute.' The plea of res judicata was unmistakably rejected when the Court further observed as follows:*

> *"As the purpose of S. 33 of the Act is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under S. 33 would not operate as res judicata and bar the*

*raising of an industrial dispute. (Emphasis supplied)."*

***7.*** *Thus the law is well-settled that S. 33 only imposes a ban. An order of dismissal or discharge passed even with the permission or approval of the Tribunal can form the subject of a dispute and as such referred for adjudication. See* ***Workmen of Fire Tyre and Rubber Co. v. Management.*** *(1973-1 L.L.J. 278]****.*** *The mainth rust of the argument of Mr. Malhotra, however, seems to rest on the observations made in* ***Bengal bhatdee Coal Co. v. Ram Prabesh Singh.*** *(1963-1 L. L. J. 291]. In that case while disposing of an appeal against the dismissal of a workman which was referred under S. 10 of the Act challenge was made that no finding had been given by the Tribunal that the enquiry was proper and this vitiated the award and that the dismissal was mere victimization. In rejecting this the Supreme Court observed that the Tribunal had apparently held that the enquiry was proper though it has not said so in so many words in its award, nor did it find that the finding of the enquiry officer were perverse or baseless". It, however, also added "that it could hardly be otherwise as it had already approved of the action taken on an application made under S.33 (2) (b) of the Act and if the enquiry had not been proper the Tribunal would not have approved of the dismissal." Mr. Malhotra says that this observation means that if an approval has been given under under S. 33 (2) (b) the finding about enquiry and charges being proved amounts to res judicata in subsequent proceeding under S. 10. We cannot read this observation to lay down as if by a side wind that reference under S. 10 of the Act in cases where the approval has been obtained under S. 33 (2)(b) is incompetent, because that is the real effect of acceptance of this argument. But this would be against the settled law laid down by various Supreme Court decisions both before and after the decision in the* ***Bengal Bhatddes*** *case that notwithstanding the approval obtained under S. 33 (2) (b) for the dismissal of an employee, this dispute can form the subject of a dispute and of a reference under S. 10 for adjudication.*

***8.*** *If this then be the law that notwithstanding the permission accorded by the Industrial Tribunal an industrial dispute can be raised, it is not understood by what logic it can be suggested that any finding given under S. 33 (2) (b) of the Act would be barred on the principles of res judicata in adjudication under S. 10 of the Act. We say this because if it is open to the workman to raise an industrial dispute under S. 10 of the Act with regard to the termination of his services for which approval had altready been obtained from the Industrial Tribunal under S. 33 it cannot stand to reason that the Labour Court no sooner the matter comes before it for being adjudicated should just fold up its hands and hold the reference incompetent on the plea of res judicata. Even Mr. Malhotra was not willing to contend that the approval obtained under S. 33 could bar the reference of the dispute of termination of service to the Industrial Tribunal*

*for adjudication, under S. 10 of the Act. But once that is conceded we cannot see any purpose in holding the reference to be valid but at the same time stultifying it on the ground of res judicata. This interpretation would make the whole exercise futile, absurd and meaningless and on no sound canon of interpretation can it be accepted. This argument of Mr. Malhotra really assumes that as what is to be done under S. 33 of the Act is the same as under S. 10 of the Act and that as the scope being the same the earlier finding under S. 33 proceeding should be res judicata under S. 10 proceedings. This fallacy of course flows from assuming as if there is an industrial adjudication when approving or refusing the permission under Section 33. It is nothing of the kind as the Supreme Court has stated that all that is done under S. 33 is to give or refuse permission and there is no industrial adjudication. Industrial adjudication comes only when matter is referred under S. 10 to the Labour Court or the Tribunal.*

***9.*** *Whatever little conceivable plausibility (though we have already rejected that there is any merit in this argument at all)may have been, the said argument loses all its force because of the amendment made in the Act by S. 11A which has now changed the whole scope of adjudication. By virtue of powers under S. 11A the Industrial Tribnual has now full power to re-appreciate the evidence and to satisfy itself whether the evidence justifies the finding of misconduct. The Tribunal is now under no limitation that if it finds that the enquiry is proper it cannot act as a Court of appeal and substitute its own judgment for that of the management and that its interference is restricted to the limitation laid down in the* ***Indian Iron and Steel Company*** *case, on the ground only of want of good faith or where there is victimization or unfair labour practise or on the violation of the principles of a natural justice or the finding is completely baseless or perverse. The Tribunal is now even competent to give and impose lesser punishment even if it agrees with the finding of the management as to the guilt of the employee. The scope of enquiry under S. 10 now is much wider than the scope of enquiry for according or refusing approval under S. 33 (2) (b). Section 11A now permits a Tribunal even in cases where enquiry has been held by an employer and a finding of misconduct arrived at to differ from that finding in a proper case, and hold that no misconduct is proved. The Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal and it can even impose lesser punishment instead. The power to even interfere with the punishment is conferred on the Tribunal by S. 11-A. Vide* ***Workman of Firestone Tyre and Rubber Co. v. Management,*** *[1973-I.L.L.J. 278]. Mr. Malhotra, however, sought to urge that Section 11A has made no difference because the same is only procedural and the same powers can be exercised by the Labour Court or the Tribunal while disposing of the matter either under Section 33 (2) (b) or under Section 10 of the Act. The argument is misconceived. To invoke Section 11-A it is necessary that an industrial*

*dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. Vide [1973-IL.L.J. 278]. The Supreme has already laid down that what is done under S. 33 (2) (b) is not adjudication. That S. 11-A has not enhanced the power of a Tribunal while dealing with an application also emphasised in [1973-IL.L.J. 278] wherein it was observed that it is to be noted that an application made by an employer under S. 33(1) for permission or S. 33 (2) for approval has still to be dealt with according to the principles laid down by this Court in its various decisions. No change has been effected in that' section by the Amendment Act.*

***10.*** *Thus the amendment by S. 11-A having not brought any change of law as laid down by the Supreme Court in earlier decisions and the S. 11-A having enhanced the power of tribunal when adjudicating under S. 10, the argument that the findings while dealing with grant of approval or permission to the action of discharge or dismissal will operate as a bar of res judicata in a reference under S. 10 of the Industrial Disputes Act is without substance and is rejected. The further argument of Mr. Malhotra that at least the validity of the enquiry and the bona fides of the employer which have been upheld by the Labour Court under S. 33 should operate as res judicata on a reference under S. 10 are equally of no avail because it is not possible to split up and detect the findings given under S. 33 to attribute the quality of finality to some findings and not to others. The whole arguments against the acceptance of plea of res judicata is that the scope of proceedings under S. 33 or 10 is different and the relief is also different. It is well-settled that the jurisdiction of an authority in application under S. 33 is of a limited character and not of the appellate or a revisionary character. The position under S. 10 is now completely changed by S. 11-A wherein the Tribunal can now itself reappraise the evidence and act almost as a Court of appeal. Thus the scope being so different the plea of res judicata advanced by Mr. Malhotra has no substance."*

19. Yet another Division Bench of this Court in ***Surinder Pal (supra),*** referring to the judgment in ***G. Mckenzie (supra)*** and other judgments of the Hon'ble Supreme Court, has clearly held that it is the settled law that, notwithstanding the permission accorded by the Industrial Tribunal under Section 33(2)(b) of the I.D. Act, it is open for the workman to raise an industrial dispute under Section 10 of the I.D. Act in respect of the termination of his services for which approval had already been obtained

from the Industrial Tribunal under the proviso appended to Section 33(2)(b) of the I.D. Act. It has, thus, been held that the findings recorded in the proceedings under Section 33(2)(b) of the I.D. Act cannot operate as *res judicata*. Paragraphs 10, 11 and 14 of the judgment of Division Bench of this Court in ***Surinder Pal (supra)*** are extracted herein below:

> *"**10.** In The Automobile Products of India Ltd. v. Rukmaji Bala and Ors., 1955 (I) LLJ 346 (SC), the Supreme Court held that jurisdiction under Section 33 of the Industrial Disputes Act is only to impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission i.e. to lift or maintain the ban. With regard to the scope of the inquiry under Section 33 of the Act, the Court held that the Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it, provided the employer is not acting mala fide or is not resorting to any unfair practice of victimisation.*
>
> ***11.** Notwithstanding this clear position of law, an effort was again made before the Supreme Court to urge that a decision given while approving or refusing permission for dismissal would amount to res judicata in subsequent adjudication when a reference is made under Section 10. This plea was expressly negatived in Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup and Others, 1957 (I) LLJ 17 (SC).*
>
> ***12.*** ***
>
> ***13.*** ***
>
> ***14.** It is thus a settled law that notwithstanding the permission accorded by the Industrial Tribunal, it is open for the workman to raise an industrial dispute under Section 10 of the Act with regard to the termination of the services for which approval had already been obtained from the Industrial Tribunal under Section 33(2)(b) of the Act. Therefore, the findings recorded in a proceeding under Section 33(2)(b) of the Act cannot operate as res judicata. The interpretation adopted by the learned Single Judge would make the whole exercise of industrial adjudication under Section 10 of the Act futile and meaningless. The scope of Section*

> *33 of the Act is extremely limited and all that is done under Section 33 of the Act is to give or refuse permission and there is no industrial adjudication by the Tribunal in those proceedings. The Tribunal is called upon to adjudicate the industrial dispute only when the matter is referred under Section 10 of the Act to the Tribunal."*

20. Reference in this regard may also be made to judgment in ***Workmen v. Motipur Sugar Factory (P) Ltd., 1965 SCC OnLine SC 77,*** rendered by a Bench of four Hon'ble Judges of Hon'ble Supreme Court wherein it has been held that where an employer has failed to make inquiry before dismissing or discharging a workman, it is open to the employer to justify the action before the Tribunal by leading all relevant evidence before it and further that the entire matter would be open before the Tribunal which will have jurisdiction, not only to go into the limited question open to a Tribunal where domestic inquiry has been properly held, but also to satisfy itself on facts adduced before it by the employer whether the dismissal or discharge was justified.

21. The Hon'ble Supreme Court has held that in a case where there is a defective enquiry or omission to hold an enquiry the Tribunal would not just have to see whether a *prima* facie case is made out but would also have to decide, based on evidence adduced, whether charges are really made out, and that there is no difference whether the matter comes before the Tribunal for approval under Section 33 or on a reference under Section 10 of the I.D. Act. The Court further observed that in either cases if the inquiry is defective or if no inquiry has been held as required by the Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well, that it order of dismissal or discharge was proper. Paragraph 11 of the judgment in ***Motipur Sugar Factory (supra)***, is

extracted herein below:

> *"**11.** It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been property held (see Indian Iron & Steel Co. v. Workmen [(1958) SCR 667] ) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sana Musa Sugar Works (P) Limited v. Shobrati Khan [1959 Supp (2) SCR 836] , Phulbari Tea Estate v. Workmen [(1960) 1 SCR 32] , and Punjab National Bank Limited v. Workmen [(1960) 1 SCR 806] . These three cases were further considered by this Court in Bharat Sugar Mills Limited v. Jai Singh [(1962) 3 SCR 684] , and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co. [(1954) LAC 697] . It was pointed out that "the important effect of omission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except Phulbari Tea Estate case [(1960) 1 SCR 32] , were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case [(1960) 1 SCR 32] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."*

22. If we peruse the order dated 22.12.2004, what we find is that though the opportunity was available to the appellant, which could have been availed of as well, for leading the evidence to justify the dismissal, in the

said proceedings no such evidence was led by the appellant to justify the dismissal and therefore, it cannot said that the order dated 22.12.2004 decided the legality or otherwise of the dismissal order; it only accorded approval to the dismissal, meaning thereby it only lifted the statutory ban imposed on the employer under Section 33 of the I.D. Act to dismiss the respondent. In the absence of any finding on the legality of the dismissal order in the order of the Tribunal dated 22.12.2004 passed on the application preferred by the appellant under Section 33(2)(b) of the I.D. Act, it cannot be said that the proceedings under Section 10 of the I.D. Act instituted by the respondent after the order dated 22.12.2004 were barred by the principle of *res judicata*.

23. At this juncture itself, we may also note that as a matter of fact while deciding the preliminary issue, the Labour Court, in its order dated 01.06.2015, has observed that the Management (appellant) had not reserved its right to prove the alleged misconduct of the workman (respondent) before the Labour Court in the written statement filed on its behalf and therefore, the Court directed the matter to proceed for evidence on the remaining issues. Such observations and the fact has been recorded by the Labour Court in paragraph 26 of the order dated 01.06.2015, which is extracted herein below:

> *"26. The preliminary issue No.1 is accordingly decided in favour of the workperson and against the management. Since the management has not reserved its right to prove the alleged misconduct of the workperson before the Court, in the written statement filed on its behalf, matter is now directed to be listed for evidence on remaining issues."*

24. So far as the reliance placed by the appellant on the judgment in case of ***Rajasthan State Road Transport Corporation (supra)*** is concerned, it is

noteworthy that in the said case, the workman was subjected to departmental inquiry and the charge against the deceased workman was that he was not issuing the tickets to ten passengers, though he had collected the fare. On conclusion of the departmental inquiry, his services were terminated and the termination was subject to approval by the Industrial Tribunal in an application under Section 33(2)(b) of the I.D. Act. In the said proceedings, the Management was permitted to lead the evidence and prove the charge/misconduct before the Tribunal. The Supreme Court further notices other relevant facts in the said case and states that in the proceedings of the application under Section 33(2)(b), the parties had led the evidence, both oral as well as documentary and thereafter, on appreciation of evidence on record, the Industrial Tribunal approved the order of termination and it is only thereafter that the workman concerned raised the industrial dispute challenging the order of termination. In these facts, Hon'ble Supreme Court in ***Rajasthan State Road Transport Corporation (supra)*** held that once the order of termination was approved by the Industrial Tribunal where the Management was permitted to lead the evidence and prove the misconduct before the Tribunal and thereafter on appreciation of evidence the order of termination was approved, the fresh Industrial Dispute under Section 10 of the I.D. Act challenging the order of termination was not permissible.

25. It is, thus, to be noticed that in the peculiar facts in this case, it was observed by Hon'ble Supreme Court that once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it in the proceedings under Section 33(2)(b), the findings recorded by the Industrial Tribunal were binding between the parties and no contrary view

could have been taken by the Labour Court while adjudicating the Industrial Dispute under Section 10 contrary to the findings recorded by the Industrial Tribunal. Paragraphs 5.1 and 5.2 of ***Rajasthan State Road Transport Corporation (supra)*** are extracted herein below:

> *"**5.1.** At the outset, it is required to be noted that the workman was subjected to departmental enquiry and the charge against the deceased workman was not issuing the tickets to 10 passengers though he collected the fare. On conclusion of the departmental enquiry his services were terminated. The termination was the subject matter of the approval application before the Industrial Tribunal in an application under Section 33(2)(b) of the I.D. Act. In the said proceedings the management was permitted to lead the evidence and prove the charge/misconduct before the Tribunal. In the said application the parties led the evidence, both, oral as well as documentary. Thereafter on appreciation of evidence on record, the Industrial Tribunal by order dated 21.07.2015 approved the order of termination. That thereafter the workman raised the Industrial Dispute challenging the order of termination which as such was proved by the Industrial Tribunal by order dated 21.07.2015. Therefore, once the order of termination was approved by the Industrial Tribunal and the management was permitted to lead the evidence and prove the misconduct before the Court and thereafter on appreciation of evidence the order of termination was approved, thereafter the fresh reference under Section 10 of the I.D. Act challenging the order of termination was not permissible. It is required to be noted that the order dated 21.07.2015 passed by the Industrial Tribunal which as such is a higher forum than the Labour Court had attained the finality. Though the aforesaid fact was pointed out before the High Court, the High Court has not at all considered and/or appreciated the same and has confirmed the judgment and award passed by the Labour Court for setting aside the order of termination which as such was approved by the Industrial Tribunal.*
>
> ***5.2** Now so far as the reliance placed upon the decision of this Court in the case of John D'Souza (supra) by the learned counsel appearing on behalf of the respondent is concerned, on facts the said decision shall not be applicable to the facts of the case on hand. In the present case by specific order the Industrial Tribunal permitted the management to lead the evidence and prove the misconduct before the Court which as such was permissible. That thereafter the Industrial Tribunal approved the order of termination. Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, thereafter the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view could have been taken by the Labour Court*

*contrary to the findings recorded by the Industrial Tribunal."*

26. The facts of the instant case are clearly distinguishable from the facts in ***Rajasthan State Road Transport Corporation (supra).*** It is to be noticed that in the said case, the workman was subjected to departmental inquiry and a charge against him was also framed and a departmental inquiry was conducted which led to termination of his services and further that in the approval application filed under Section 33(2)(b) of the I.D. Act, the Management was permitted to lead the evidence and prove the charge/misconduct before the Tribunal. However, so far as the facts of the instant case are concerned, indisputably no charge sheet was issued against the respondent; neither any show cause notice was given to her, nor any departmental inquiry was held against the respondent. Further, no evidence was led by the Management to justify the dismissal of the respondent in the proceedings under Section 33(2)(b) of the I.D. Act. No attempt was even made by the appellant to lead the evidence to prove the charge/misconduct against the respondent in the proceedings instituted by the appellant under Section 33(2)(b) of the I.D. Act, though, as held in ***Motipur Sugar Factory (supra)***, it was open to the Management to have led the evidence and prove the charge/misconduct even in the proceedings of approval application under Section 33(2)(b) of the I.D. Act. However, no such attempt was made by the appellant to prove the charge in the said proceedings.

27. In the absence of any such finding proving the charge/misconduct against the respondent in the proceedings under Section 33(2)(b) of the I.D. Act, it cannot be said, as has been held in the judgments relied upon by the learned counsel for the respondent as aforementioned, that the proceedings

instituted by the respondent under Section 10 of the I.D. Act, challenging the order of dismissal were barred by the operation of the principle of *res judicata*.

28. We may reiterate that the appellant had not reserved its right to prove the alleged misconduct of the respondent even in the proceedings instituted under Section 10 of the I.D. Act, as is apparent from perusal of paragraph 26 of the order dated 01.06.2015, which has been extracted herein above. Thus, it is a case where dismissal from service of the respondent was resorted to by the appellant without holding any inquiry or issuing a charge sheet or a show cause notice. It is also a case where the Management, despite the fact that it had the opportunity to establish and prove the misconduct in the proceedings, both under Section 33(2)(b) and 10 of the I.D. Act, did not prove the same in either of these proceedings and therefore, the order of dismissal has rightly been held to be vitiated by the Award dated 10.04.2018 passed by the Labour Court as approved by the impugned judgment dated 28.11.2025 rendered by the learned Single Judge.

29. As regards the issue as to whether the respondent was a workman, a clear finding has been recorded by the Labour Court, as also by the learned Single Judge, that since she was not entrusted with any supervisory duties, she is to be treated as a workman within the meaning of the said term under Section 2(s) of the I.D. Act.

30. We also are in agreement with the findings recorded by the Labour Court while passing the Award and by learned Single Judge that the appellant is an Industry.

31. For the reasons aforesaid, we do not find any good ground to interfere with the judgment and order dated 28.11.2025 passed by learned Single Judge dismissing W.P.(C) 13418/2018.

32. Resultantly, the appeal is dismissed.

33. The appellant is directed to comply with the Award of the Labour Court forthwith.

34. We also direct the Registry that the amount of Rs.10,00,000/- deposited by the appellant before this Court pursuant to the order dated 12.12.2018 passed by the learned Single Judge, along with accrued interest, shall be immediately released in favour of the respondent.

35. There will be no order as to costs.

**(DEVENDRA KUMAR UPADHYAYA)**
**CHIEF JUSTICE**

**(TEJAS KARIA)**
**JUDGE**

**MARCH 19, 2026**
***"shailndra"***