Volume 14, January 2021 ISSN 2581-5504

"Critical Analysis of Section 33A of the Industrial Disputes Act, 1947"

Rakshita Data
NMIMS, Kirit P. Mehta School of Law,
Mumbai

Abstract

The overarching ideal for every industrial adjudication is social and economic fairness, and the foundation for this ideal rests in the governing ideals of social security, the common interest, and the legally enshrined directive principles of state policy. "The reasoning behind Sec. 33 and Sec. 33A law is to provide an employee with protection and a tribunal has authority to do full justice between the parties with respect to the matter in question and to provide such relief as might be needed by the design of the situation. It seeks, by means of a reference under Sec.10 of the Act, to protect the employees involved in the disputes which constitute the subject-matter of the pending conciliation proceedings or proceedings and to bring about a peaceful settlement of such disputes."[1]

The relationship between an employer and a worker is fundamentally unfair and this feature has been taken into account by the Trade Disputes Act, 1947 (the "Act"). The Act is a substantive statute that aims to shield the employee, who is typically in a disadvantageous position, from the employer's unfair and unlawful acts. A review of some of the provisions of the Act and the case law surrounding them, although the provisions of the Act are explicit, sheds light on how management has historically responded to a conflict situation, that is, when any conciliation hearings or other proceedings before an arbitrator, labor court or tribunal are awaiting adjudication in respect of an industrial dispute.

In general, the purpose of the law on industrial relations is industrial harmony and economic justice. "Any sector's success depends very much on its increasing output. Promoting such production is feasible only if the industry works uninterruptedly. The running of any business without any obstruction largely depends on the policy of the state so framed or legislated for the same reason. The interaction between labor and management is a consideration to be taken into account for the smooth running of industries."[2] Therefore the mere fact that all industrial law so legislated actually seeks to establish conditions congenial to industrial harmony can be confidently assumed. The Industrial Disputes Act, in addition to the Trade Unions Act of 1926, is the most relevant act regulating industrial relations in India.

[1] Dr. PBS Kumar, *An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947 and Related Issues*, 2015, https://www.citehr.com/538560-incisive-analysis-section-33a-i-d-act.html#
[2] *Ibid*

Volume 14, January 2021 ISSN 2581-5504

Introduction

Industries in a nation play a pivotal role in sustaining the national economy, so it is very important that they run smoothly. Specifically, action must be made to ensure healthy relationships between the boss and the staff. Significant strides have been taken in that respect.

"The partnership has also spread to the government, which plays a significant role in employer-employee relationships as well. In that way, any other conflict resulting from the employer-employee arrangement known as the Industrial Dispute Act, 1947, was fully resolved under a new law. The aim of the Industrial Disputes Act is to ensure industrial peace and stability by creating the process and procedure provided for in the law for the investigation and resolution of industrial disputes by conciliation, arbitration and adjudication. The primary and overall aim of this Act is to preserve the tradition of peaceful work in India's business, which is explicitly laid out in the statute's Declaration of Artifacts & Purposes."[3]

So, we see that the Industrial Disputes Act of 1947 plays a crucial role in preserving relations between employers and workers. In a situation where there is a conflict between them then the act is pictured and it takes on its meaning, addressing problems of all sorts of industries.

In the documented case, *Western India Automobile vs. The Industrial Tribunal*[4], it was decided that the preamble to the Act gives it a wider scope as it specifies that it is necessary to allow for after appearance, the investigation and resolution of industrial disputes and for some other purposes therein.

"It does not narrow its focus to companies operated entirely by the central government authorities. The Act's scheme ties in with the meaning we put on the employer's expression, and any other construction of it will cause inconsistency and repugnance between the various parts of the Act. The Act was supposed to be a more detailed trade dispute statute than the Trade Disputes Act, 1929, which was its precursor."[5]

Therefore, it is well-established that it is the primary aim of the Industrial Disputes Act of 1947 to maintain healthy ties between employer and employee and to explore any practicable means of settling a dispute between employees and employers, or employers and employers, or workers and workers.

The researcher would restrict himself in this paper to only a single part of the Industrial Disputes Act, 1947; Section 33A of the aforementioned Act is the aspect. The Act's Section 33A states that:

[3] Shalusharavan Singh, *Industrial Disputes Act, 1947*, Legal Services India, http://www.legalserviceindia.com/legal/article-3401-industrial-dispute-act-1947.html
[4] (1949) 51 BOMLR 894
[5] *Ibid*

Volume 14, January 2021 ISSN 2581-5504

Section 33A: Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.

– *"Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner, –*

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."[6]

"The researcher will try to deal with the legislative past of the Section of this article, which will include the object and the legislative context of the Section in Part I. The researcher will deal with the mode of application of the Section per se in compliance with Part II. Part III will deal with the scope of the section's adjudication and the researcher will aim to bring forth his recommendations in the last part as to whether changes in the legislation can be carried about."[7]

Research Objectives

- To understand and analyze the legislative background of the Section
- To study the mode of application of Sec. 33A of the Act
- To study the procedural part of filing a complaint under Sec. 33A of the Act
- To study the jurisdiction of the courts in such matters

Research Methodology

Research Design:

In view of the objectives of the study listed above, exploratory research design has been adopted. Exploratory research is one, which largely interprets the already available information, and it lays particular emphasis on analysis and interpretation of the existing and available information and it makes use of secondary date.

[6] Industrial Dispute Act, 1947
[7] *Supra Note 3*

Volume 14, January 2021 ISSN 2581-5504

Sources of data:

The study is based on secondary data. The data has been collected from various other reports like magazines, journals, published books and official websites. These are also referred to for the present study. This research paper examined many international and national and research articles, studies, journals, working papers, books, policy documents, local and international newspapers and seminars edited publications relating to "Section 33A of the Industrial Disputes Act". This study investigates and brings out the growth of the same. Major part of the research is precedents and case laws based.

Tools of analysis:

The data collected for the study is analysed logically and meaningfully to arrive at meaningful conclusions.

Chapterisation

Chapter 1: Legislative Background

This chapter talks about the entire history of the formation of the act along with the amendments that had taken places over the years. This chapter gives the overview of the precedents and judgement used to form the present Industrial Disputes Act with special reference to Section 33A. A brief idea of the importance and objectives of the section are also mentioned alongside in the present chapter. This chapter is explanatory in nature.

Chapter 2: Method of Application

Whenever a party or an employee is aggrieved by the acts of the employer, he is supposed to proceed in a certain manner to get a due hearing and compensation for his shortcomings, this very sphere of law is explicitly analysed in the present chapter. The chapter also provides a basic understanding of which tribunal to approach and what actions are to be taken in case of pendency of the matter.

Chapter 3: Complaints

Here the researcher tries to highlight the role of the trade unions and their contribution in getting the complaints of the individual workman fall on the judicial ears. The procedural part of the compalints to be filed under Sec. 33A is been mentioned in the chapter.

Chapter 4: Adjudication and Jurisdiction

The basic objective of Sec. 33 and 33A is to provide a fair hearing and justice to the workmen, which according to the act is firstly heard by the labour tribunal and so on and so forth. Te chapter also deals with subject matter of the pending conciliation proceedings or proceedings by

way of reference under Sec. 10 of the Act and to bring about the resolution of such disputes in a peaceful manner.

Literature Review

Paul Lansing, (1987), Industrial Dispute Resolution in India in Theory and Practice.

This article focuses highly on the international adjudication of matters in cases of industrial disputes arises in India and the parties situated in foreign countries, with situations similar to the "Bhopal Gas Tragedy". It talks about the problems related to workmen that are arising in India after the advent of industrialisation and urbanisation. The article highlights the legal and jurisdictional aspects of industrial disputes arising in India and what are the remedies available to workmen in such cases.

ShaluSharavan Singh, (2006), Analysis of The Industrial Disputes Act, 1947.

This article talks about the importance of industries in the country and need to develop healthy relations between the workers and the employers. The importance of Section 33 is been highlighted in the present scenario wherein it talks about the duties of the employer towards its employee and the need to follow industry standards for healthy and peaceful work culture in Industries in India.

Path Legal, (2016), Complaint Under Section 33A For Violation Of Section 33(2)(B).

This paper was mostly case study based, wherein different incidents relating to workmen disputes are analysed and possible solution along with relevant sections are being mentioned. It further briefly describes the entire procedure of case filing and the subsequent steps therein. It alongside mentions the penalty for different offences under Section 33 of the Industrial Disputes Act, 1947

CHAPTER I: Legislative Background

Legislation

Before the reform of the Act by the Industrial Disputes (Appellate Tribunal) Act 1950, "a referral by the government under Section 10 of the Act was the only redress that an employee could use for a violation of his contractual right against management. The complaint posed by the trade unions was that the remedy of seeking a reference under Sec.10 required a rather lengthy process. Therefore, the reasoning for the insertion of Section 33A was to make a separate arrangement for the adjudication of cases relating to the breach of Section 33."[8]

[8] Vijay Nath v. Bihar Journals Ltd., AIR 1954 Pat 1(DB)

Volume 14, January 2021 ISSN 2581-5504

Section 33A requires "an aggrieved worker to lodge a complaint in writing to the authority concerned in the manner prescribed. Is subsequently amended in 1984, the aggrieved employee is entitled to lodge a written complaint about the employer's violation of Section 33 with the tribunal before which the proceedings are pending, although there was a strong demarcation of the nature of the measures to be taken by the conciliatory and adjudicatory authority. All that clause (a) authorizes a conciliation officer or the board to do when the case is made to a conciliatory body is to take such a complaint 'into account' in bringing about a settlement of the conflict talked about."[9]

However if the case is made before an adjudicatory body i.e. an arbitrator, labor court, jury or national tribunal, "the power to adjudicate on the complaint has been delegated to that authority, as if it were a conflict submitted to or pending before it. All the applicable provisions of the Act governing a relation rendered under Sec.10. shall govern the adjudication. Under Sec.16, the authority will make the award, which will be enforceable under Sec.17A"[10] upon being released under Sec.17. Thus in the event of a violation of Sec. 33, an aggrieved workman was given the opportunity to obtain relief directly from the adjudicatory body without having to rely on a reference under Sec. 10 of the Act.

Objectives of the Present Section 33A

This provision is meant to provide a workman aggrieved by the contravention of Sec.33 with an immediate remedy. "In other terms, if the contractor has contravened the rules of Section 33, the aggrieved worker has been granted the right to lodge a formal complaint with the relevant body with whom a labour dispute is pending and to which the aggrieved worker refers. By way of Amending Act 46 of 1982, it is possible not only for the adjudicatory authority, but also for the conciliatory authorities, to complain of such a contravention. Where a complaint is filed with a conciliatory body, the complaint will be taken into account in mediating or facilitating the resolution of the conflict."[11] However if the case is sent before an adjudicatory body i.e. an arbitrator, labour arbitration, court or national court, the dispute will be adjudicated as if it were a dispute referred to or pending before it.

When the following foregoing requirements are met per se, Section 33A of the Act is drawn. "First that there may have been a violation of the rules of Section 33 of the Act by the management and, second, that the infringement should have happened, as the case may be during the ongoing trial before a labour court, tribunal or national court. Thirdly, the complainant may

[9] Industrial Disputes Act, 1947
[10] *Ibid*
[11] Gautam Mohanty, An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947 and Related Issues, 2015, Lawoctopus, https://www.lawctopus.com/academike/33a-of-the-industrial-disputes-act-1947-and-related-issues/#_edn18

have been aggrieved by the contravention and, ultimately, the appeal should have been rendered to the labour court, tribunal or national tribunal under which the initial proceedings are pending."[12] "This clause requires a worker aggrieved by an unjust order imposed against him in violation of Sec. 33 to transfer the authority listed in it to resolve it."[13]

CHAPTER II: Methods of Application On Contravention Of Section 33

"The fundamental question to be considered by the authority concerned in any complaint submitted to the tribunal pursuant to Sec. 33A is whether there has been a breach of the provisions of Sec. 33 by the employer and, if it is found that there has been a breach of the provisions of Sec. 33, then the opportunity arises for the authority to engage in an exercise of judgment on the provisions of Sec. 33A."[14]

"Therefore before granting any redress under this provision to an aggrieved employee, the authority must first decide if the act of the contractor falls beyond the scope of one of the complete prohibitions of Sec.33. If the conflict awaiting adjudication has nothing to do with the modification complained about in terms of operation and if the alteration is not to the detriment of the staff, the application would be wholly incompetent according to Sec.33A. The basis for the exercise of authority under Sec.33A of the Act is also a contravention of the clause of Sec.33. Under Sec.33A of the Act, nothing more can be achieved until this question is answered against the employee. In other words, without knowledge of a contravention of Sec.33, a submission under Sec.33A will be incompetent."[15]

"Contravention of the rules of Sec.33 for the purposes of Sec.33A occurs when during a labour dispute before a tribunal, the employer changes the working conditions of the employees in his service in violation of Sec. 33(1)(a) or the employer alters the working conditions of the 'safe worker' in breach of Sec. 33(3)(a) or of Sec. 33(1)(a) (a). Furthermore, where the employer dismisses or punishes a worker, by firing or otherwise for wrongdoing related to the pending dispute, without receiving direct express written approval from the authority as provided for in Sec. 33(i)(i), the circumstances which could lead to invoking the provisions of Sec. 33A may be that of the authority as provided for in Sec. 33(i) (b)."[16]

"If the employer accidentally discharged or penalizes a worker for any sort of wrongdoing that is not related to the ongoing conflict without securing the authority concerned prior approval, the

[12] Rajasthan State Road Corp. v. Judge, Industrial Dispute, Jaipur
[13] Punjab Beverage Pvt, Ltd. v, Suresh Chand
[14] Stanley Mendex v. Giovanola Binny Ltd, (1968) 2 LLJ 470 (Ker)
[15] *Supra Note 11*
[16] *Supra note 3*

Volume 14, January 2021 ISSN 2581-5504

worker can also request redress under this clause. Thus all orders of discipline for any wrongdoing unrelated to the conflict, whether fired or otherwise levied on the worker, are protected by Sec.33(2) and include conformity with its requirements."[17]

"If an employer dismisses or disregards a worker without seeking the authority's authorization for the planned action for dismissal or discharge pursuant to Sec. 33(1) or without requesting the consent of the action for dismissal or discharge and without paying a month's compensation to the worker pursuant to the proviso of Sec. 33(2)(b)"[18], the employer contravenes the removal of the application is at the same threshold as not making an application at all until it is heard in the forum or before any relief is decreed. The criminal consequences of Section 31(1) of the Act are derived from such a breach. It also authorizes the aggrieved worker to make a report to the authority under Sec.33A, instead of asking for a reference to the conflict under Sec.10.[19]

"At this juncture, what is to be taken into due account is that if the termination of a worker's service is automatic as a result of the employee's own act, such as resigning from the job, quitting the job or leaving the approved leave, then there will be no contravention of the rules of Section 33 of the Act."[20] Similarly, "if the worker protesting under Sec. 33A is not Nor will a contravention take effect if at the time of the supposed contravention there is no 'pendency' of a proceeding before the appropriate authority."[21]

Pendency of Matters

"The fact that not every breach of Sec.33 comes under the umbrella of Sec.33A is remarkable. In order to rely on this provision, it must be provided that the alleged contravention took place during the ongoing litigation before each of the above-mentioned authorities. In plain words, if there is no continuation of a case at the time of claiming such a contravention of Sec.33, then the rules of Sec. 33A are not drawn."[22]

"Before the adjudicatory authority may begin an adjudication on a case pursuant to this provision, it is imperative for it to acknowledge that an industrial dispute has already been pending before it. In addition, a judgment about whether the ongoing case was an industrial dispute would therefore precede a lawsuit pursuant to Sec. 33A of the Act before any adjudication."[23]

[17] Rohtas Industries Ltd v. Dhurva Narayana Pathak, 1979 Lab IC 18,22 (Pat) (DB)
[18] *Supra Note 6*
[19] *Supra Note 7*
[20] National Engineering Industries Ltd v. Hanuman, (1967) 1 LLJ 883 (SC)
[21] New Indian Sugar Mills Ltd. v. Krishna Bhallabh Jha
[22] Dr. PBS Kumar, *An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947 and Related Issues*, 2015, https://www.citehr.com/538560-incisive-analysis-section-33a-i-d-act.html#
[23] *Ibid*

"The usage of this section of the term 'such' does not mean that the main dispute must be pending before the authority to which the case is preferred at the time when the complaint is preferred by the aggrieved workman; it specifically applies to the dispute alluded to in its adjudication and does not apply to the pendency of the main dispute."[24] In other words, it is appropriate that the key case was pending before the adjudicatory authority at the time of the contravention of Sec. 33 and that it is not necessary that the dispute appear to be pending at the time when the complaint is filed.

CHAPTER III: Complaints

The protocol laid down in Rule 59 of the Trade Disputes (Central Rules) 1957 should be adhered to by a lawsuit under Sec.33A. "In the absence of a lawsuit regarding any breach of the quality of employment that causes any harm to his rights under Section 33 of the Act and the violation of Section 33A, the employee cannot make a complaint of the same under Section 33 of the Act. The following conditions must be met in order to take advantage of the relief so offered under Section 33 of the Act; first the worker should be a worker under the definitiveness of the definitiveness. Secondly, he should be the worker involved with the ongoing case and, ultimately, the contractor should be aggrieved by the supposed violation of Sec. 33."[25]

Workman in the Pending Cases Involved

The word worker encompasses those employees on whose behalf the case has been brought and those on which the reward to be made in the dispute will be binding. "The word does not merely apply to a worker specifically or immediately involved. However if a conflict referred to is not a collective dispute, all workers who are not party to the dispute are not concerned in the dispute. A mixed matter of fact and statute is the question as to whether a single workman was a worker involved in the conflict. The worker should satisfy the tribunal by demonstrating the existence of the conflict pending before it in an allegation so brought before the tribunal and that he was a worker involved in the pending dispute before requiring the tribunal to render a finding on the matter of whether Sec. 33(2) has been violated."[26]

Role of Trade Unions

A licensed trade union of which the aggrieved employee belongs shall have no ability to benefit on behalf of the employee from the relief given pursuant to Sec. 33A[27]; until it has been expressly allowed to do so. The right to sue about the violation of Sec. 33 has been granted on

[24] 1975 Lab IC 697, 701
[25] *Supra Note 15*
[26] AdvocatesPedia, *An Incisive Analysis of Section-33A of the Industrial Disputes Act, 1947 And Related Issues*, 2020, ASSN: 139737, https://advocatespedia.com/An_Incisive_Analysis_of_Section-33A_of_the_Industrial_Disputes_Act,_1947_And_Related_Issues
[27] *Supra Note 6*

Volume 14, January 2021 ISSN 2581-5504

the employee aggrieved by the breach. Therefore, it is only the worker who is willing to use the relief given in the portion. The onus to prove that the aggrieved workman has no jurisdiction from a union should not be put on the contractor. The union must provide documentation to prove that there's been an authority to file an appeal by the aggrieved workman approving it.

CHAPTER IV: Adjudication and Jurisdiction

Jurisdictional Issues

"The reasoning behind Sec. 33 and Sec. 33A law is to provide an employee with protection and a tribunal has authority to do full justice between the parties with respect to the contested subject and also to provide the same relief as might be needed by the design of the situation. The fundamental aim of these two parts, in general terms, is to protect, through reference to Section 10 of the Act, the employees involved in the disputes which form the subject-matter of the pending conciliation proceedings or proceedings and to bring about a peaceful settlement of such disputes."[28]

Sec. 33 on the ordinary right of the employer to change the terms of his employees' service to their detriment or to decide their services under the general law regulating the contract of employment has been placed in respect of the above-mentioned purpose, and Sec. 33A provides for exemption from lawsuits by aggrieved workers who believe them to be aggrieved workers.
"In compliance with the terms of this Act, the connotation of the phrase *'shall adjudicate on the case as if it were a dispute referred to or pending before it"*[29] specifically implies that the authority's jurisdiction under "Sec. 33A is the same as that of those authorities relating to the adjudication of an industrial dispute on a reference made to them under Sec. 10 of the Agreement In other words, an adjudicator working under this provision would proceed with the matter as if the matter had been referred to it under the Act and would thus have a very large discretion and could deal with all factors and attenuate the injunctive relief that could be given under Sec. 11A."[30]

"Sec. 33 and 33A do not force the adjudicating body to order reinstatement in any manner as soon as it considers that a breach of Sec. 33 has occurred. As the precedents show, the scope of the investigation was a very dicey issue giving way to a lot of litigation and it is because of such a controversy that the case of *Car Products of India Ltd v. Rukmaji Bala*[31] presented the supreme court with the ability to consider the matter for the very first time. In the above-mentioned case the supreme court held that the scheme of the section specifically lays down, in illustrative words, the power to which the appeal is to be filed in relation to matters arising out of the

[28] AIR 1958 All 317 (DB)
[29] https://seconddistrictcourt.nmcourts.gov/glossary-of-legal-terms.aspx
[30] (1971) 2 LLJ 340 (SC)
[31] (1955) 1 LLJ 346 (SC)

violation of Section 33 and the merits of the employer's act or order. Simply put, the authority's power is not merely to adjudicate upon the matter and decree the relief, but also to engage in the case's merits."[32]

In the following case the court dismissed the plea that it was only the responsibility of the tribunal to decide whether there had been a violation of Sec. 33 and whether it had concluded that there had been a breach of the declaration relating to the same and that no further issue could be considered in such an investigation. In the case of *Equitable Coal Co Ltd v Algu Singh* [33] in which it adopted the theory laid down in Automobile Goods, the issue was again brought before the court. In the case of *Punjab National Bank Ltd v.Their Workmen*[34], the court was asked to adjudicate on the issue as to whether the investigation so rendered pursuant to Sec. 33A is solely limited to deciding whether the provisions of Sec. 33A have been contravened. The court dismissed the point so raised and observed that:
"Thus there can be no doubt that in an enquiry under Sec.33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Sec.33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. There can be no doubt that if under a complaint filed under Sec.33A a tribunal has to deal not only with the question of contravention but also with the merits of the order of dismissal, the position cannot be any different when a reference is made to the tribunal like the present under Sec.10."[35]

"It is very clear from the above-mentioned dictate that the fact of a contravention of Sec. 33 would not render invalid or inoperative the orders of discharge or dismissal entitling the employee to reinstatement. In adjudicatory hearings, the order of dismissal will only be annulled by the tribunal based on a reference under Sec. 10 or on an appeal under Sec. 33A. Until the order of discharge or dismissal is so annulled, the employee may be deemed to be discharged for all purposes. A judgment made on the merits of the case is compulsory on the part of the tribunal if it comes under the scope of the provision."[36] The tribunal shall treat the case under Sec. 33A as a distinct dispute, individually and without being affected in any manner by its prior ruling against the contractor under Sec. 33.

[32] Gautam Mohanty, An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947 and Related Issues, 2015, Lawoctopus, https://www.lawctopus.com/academike/33a-of-the-industrial-disputes-act-1947-and-related-issues/#_edn18
[33] (1958) 1 LLJ 793, 796 (SC)
[34] (1959) 2 LLJ 666, 680 (SC)
[35] *Ibid*
[36] (1970) 1 LLJ 392 (All) (DB)

Volume 14, January 2021 ISSN 2581-5504

Relief

The Supreme court has categorically indicated in the case of *Kumarhatty Co Ltd v. Ushnath Pakrashi*[37] "that a complaint under Sec. 33A of the Act must be put on an equivalent threshold compared to a complaint made under Sec. 10 and the adjudicatory authority has every right to deal with the complaint under Sec. 33A by pursuing the same process as it would have done if the complaint had been filed."[38] It can also be safely concluded at this juncture that, under the light of "Sec. 11A, the adjudicatory body has the right to decree the relief that might be permissible. In addition, in a case brought by the employee against the employer on grounds of dismissal in breach of Sec. 33, the adjudicatory body has the power to order a reinstatement where it is considered that there has already been a breach of Section 33."[39]

The terms used in Sec. 33A specifically demonstrate "the logic behind the section's insertion, i.e. to provide an employee who was terminated by the employer in contravention of Sec. 33, with a speedy remedy. Sec. 33 prohibits the distressed worker from going through the long process of raising a disagreement and sending it to Sec. 10 (1). Simply stated otherwise if the contractor complies with the rules of Sec. 33, Sec. 33A cannot be invoked, nor will it have any use whatsoever."[40]

Award

"As stated in Sec. 33A, the terms 'and the provisions of this Act shall extend accordingly' suggest that the adjudicating body must refer its award to the appropriate government. The rules of Sec. 11A are immediately pulled into such a situation. Since being issued under Sec. 17A, the awards would have the same influence and force as the awards made under Sec.10. The fact that an award under Sec. 33A would serve as res judicata with a subsequent reference to the same subject matter under Sec. 10 is remarkable."[41]

Conclusion and Recommendations

The procedures set out in Sec. 33A, which emerged over a period of time by the dictum of the supreme court, did not address the very reason for which it was first legislated, but rather gave rise to a state of perplexity and gave way to numerous litigations. "As a single judge of the Karnataka High Court has noted in particular, Sec. 10 should be properly amended to allow a worker to explicitly consult an adjudicatory body in respect of an industrial dispute falling beyond the limits of Sec. 2A of the Act, instead of following the tiresome referral process provided for in Sec. 10, which is an excessive formality. Not only does the single judge also point out that it is of utmost importance that Sections 2A, 11A, 33, 33A and 33C be entirely

[37] (1959) 2 LLJ 556
[38] *Ibid*
[39] *Supra Note 25*
[40] Section 33A, Industrial Disputes Act, 1947
[41] *Supra Note 25*

Volume 14, January 2021 ISSN 2581-5504

withdrawn from the Act and certain simple provisions should be enforced in their place that would allow an aggrieved worker to obtain relief in situations where a modification has occurred in the condition of his service or disciplinary action taken against him."[42]

Moreover the obligation to refer those conflicts to the relevant government for adjudication should also be abolished. In addition, after undertaking a thorough investigation into the facts and circumstances of a case, the adjudicatory authorities should be given the initial authority to adjudicate those disputes. The above-mentioned implementation recommendations would help to create a suitable atmosphere to settle the industrial conflict, while preventing needless litigation that is lengthy and costly.

Bibliography

Case Laws

- Air India Corpn v. VA Rebellow (1972) 1 LLJ 501 (1972).
- Arya Bhawan v. S Seetharaman (1957) 2 LLJ 680 (1957).
- Automobile Products of India Ltd v. Rukmaji Bala (1955) 1 LLJ 346 (SC) (SC, 1955).
- Bengal United Tea Co Ltd v. Ram Labhaya (1962) 2 LLJ 37 (1962).
- CA Rodrick v Karam Chand Thapar & Sons Pvt Ltd. (1963) 1 LLJ 248 (1963).
- Crown Aluminium Works v. Their Workmen AIR 1958 SC 30. (SC, 1958).
- Dimakuchi Tea Estate v. Dimakuchi Tea State 1958 AIR 353 (SC, 1958).
- Equitable Coal Co Ltd v Algu Singh (1958) 1 LLJ 793 (1958).
- Gowrishankar Oil Mills v. Industrial Tribunal (1962) 2 LLJ 527 (1962).
- Hariba v KSRTC (1983) 2 LLJ 76, 84 (1983).
- Hindustan General Electrical Corpn Ltd v. Bishwanath Prasad (1971) 2 LLJ 340 (SC) (SC, 1971).
- Hindustan Motors Ltd v. Mahendra Singh Dhantwal (1965) 1 LLJ 612 (1965).
- Imperial Tobacco Co Ltd v. Ishwar Das AIR 1958 All 317 (DB) (1958).
- Khagesh Sarkar v Tatanagar Foundry (1962) 2 LLJ 379 (SC) (SC, 1962).
- Kumarhatty Co Ltd v. Ushnath Pakrashi (1959) 2 LLJ 556 (1959).
- L.I.C of India v. D J Bahadur (1980) Lab.I.C.1218(SC) (SC, 1980).
- Management, Dainik Naveen Duniya, Jabalpur v. Presiding Officer. 1991 Lab IC 327, 329-30 (MP) (DB) (Labour Court, Jabalpur, 1991).
- McLeod & Co v. Sixth Industrial Tribunal AIR 1958 Cal 273. (Cal, 1958).
- Md Akhtar Hussain v. State of Bihar (1988) 1 LLJ 325 (SC) (SC, 1988).
- National Engineering Industries Ltd v. Hanuman (1967) 1 LLJ 883 (SC) (SC, 1967).

[42] (1983) 2 LLJ 76, 84

- National Power Supply Corpn Ltd v. State of Assam (1963) 2 LLJ 10 (Assam) (DB) (Assam, 1963).
- New Indian Sugar Mills Ltd v. Krishan Ballabh Jha (1967) 2 LLJ 210 (1967).
- Orissa Cement Ltd v. Their Workmen (1960) 2 LLJ 91 (SC) (SC, 1960).
- Prabhakar Shamrao Marathe v. Maharashtra State Electricity Board 1975 Lab IC 697, 701 (1975).
- Punjab Beverages Pvt Ltd v. Suresh Chand (1978) 2 LLJ 1, 7 (SC) (SC, 1978).
- Punjab National Bank Ltd v. Their Workmen (1959) 2 LLJ 666, 680 (SC) (SC, 1959).
- Rajasthan State Road Transport Corpn v. Judge, Industrial Tribunal 1986 Lab IC 291, 296 (Raj) (DB) (1986).
- Rohtas Industries Ltd v. Dhurva Narayana Pathak 1979 Lab IC 18,22 (Pat) (DB) (Pat, 1979).
- S Ayodha v. Addl Industrial Tribunal-cum-Addl Labour Court Lab IC 1302, 1309 (Hyderabad , 1989).
- Sri Ram v. Labour Court (1970) 1 LLJ 392 (All) (DB). (1970).
- Stanley Mendex v. Giovanola Binny Ltd (1968) 2 LLJ 470 (Ker) (Ker, 1968).
- State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610 (SC, 1960).
- State of Mysore v. Workers of Gold Mines AIR 1958 SC 923. (SC, 1958).
- Syndicate Bank Ltd v. K Ramnath V Bhat (1967) 2 LLJ 745 (SC) (SC, 1967).
- Tata Iron & Steel Co Ltd v. DR Singh (1965) 2 LLJ 122 (SC). (SC, 1965).
- Upper Ganges Valley Electric Supply Co Ltd v. GS Srivastava (1963) 1 LLJ 237 (SC) (SC, 1963)

Statues

- Industrial Disputes Act, 1947
- Constitution of India
- Trade Unions Act, 1926
- Workmen Compensation Act, 1923

Articles and Weblinks

- Gautam Mohanty, An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947 and Related Issues, 2015, Lawoctopus
- AdvocatesPedia, An Incisive Analysis of Section-33A of the Industrial Disputes Act, 1947 And Related Issues, 2020, ASSN: 139737
- Dr. PBS Kumar, An Incisive Analysis of Section 33A of The Industrial Disputes Act, 1947, 2015, https://www.citehr.com/538560-incisive-analysis-section-33a-i-d-act.html#

- Shalusharavan Singh, Industrial Disputes Act, 1947, Legal Services India, http://www.legalserviceindia.com/legal/article-3401-industrial-dispute-act-1947.html