KERALA HIGH COURT

Kanan Devan Hills Produce Co

Vs.

Industrial Tribunal

O.P. Nos. 2883 and 2884 of 1961

(C.A. Vaidialingam, J.)

22.06.1962

JUDGMENT

C.A. Vaidialingam, J.

1. In both these writ petitions, a common question of law arises as to the jurisdiction of the Industrial Tribunal, Ernakulam, to proceed with the hearing of applications, filed by the respective petitioners, under Section 33(2) (b) Proviso, of the Industrial Disputes Act.

2. In order to appreciate the contentions that have been urged by the learned counsel appearing on all sides, it is desirable to set out the circumstances under which these two writ petitions have been filed.

3. In O. P. No. 2883 of 1961 the order dated 12-7-1961 passed by the Industrial Tribunal, Ernakulam, Ext. P-1, in M. P. No. 77 of 1961 is challenged. There was an industrial dispute pending adjudication between the management therein and the workers, regarding bonus and that industrial dispute was registered as I. D. No. 68 of 1959. When that dispute was pending the management took disciplinary proceedings against the second respondent and by order dated 7-5-1960 dismissed her from service. By their application dated 16-5-1960, the management sought the approval or the Industrial Tribunal for the action taken by them as they were bound to do, under Section 33(2) (b), Proviso. That application is M. P. No. 88 of 1960. The second respondent appears to have filed objections to the said application filed by the management. In the meanwhile, the award in I. D. No. 68 of 1959 was itself passed by the Industrial Tribunal and that was published in the State Gazette on 12-7-1960, and it becomes enforceable after the expiry of 30 days of the said publication, i.e., on 12th August 1960.

4. In the meanwhile, the second respondent appears to have filed a complaint under Section 33-A of the industrial Disputes Act, on 20-10-1960 regarding the action taken by the management as against her. That dispute was registered as I. D. No. 42 of 1960 by the Industrial Tribunal. The management appears to have filed objections to the same. But, ultimately, it is seen that the employee made a request to the Industrial Tribunal to permit her to withdraw the same reserving her objections and that was on 23-5-1961. Accepting this request and without notice to the

management, the Industrial Tribunal passed an order permitting the employee to withdraw her application. That was on 24-5-1961. In view of the fact that this itself is to be an award in an Industrial Dispute, under Section 33-A of the Act, that award was published in the State Gazette on 20-6-1961. That is evidenced by Ext. P2.

5. The management filed an application M. P. No. 77 of 1961 in the previous application for approval, M. P. No. 88 of 1960, on 22-6-1961, raising two grounds, regarding the jurisdiction of the Industrial Tribunal to proceed further with their application filed under Section 33(2) (b) Proviso of the Act. Firstly, the management urged that inasmuch as the main dispute, namely, I. D. 68 of 1959, during the pendency of which disciplinary action was taken by the management has come to close by the passing of the award and by its becoming enforceable thirty days after its publication in the State Gazette on 12-7-1960, the jurisdiction of the Tribunal to adjudicate upon this application also came to an end, and there is also no further need to go into M. P. No. 88 of 1960. Apart from that, the management took up the stand that inasmuch as a regular complaint filed by the employee, questioning or challenging the disciplinary action taken by the management has itself been withdrawn by the employee, in question, and an award has been passed on that basis, the position, in law, according to the management, was that the employee has no grievance regarding the action and therefore on that basis also the application filed by them, M. P. 88 of 1960, does not arise for consideration.

6. Both these objections were overruled by the Industrial Tribunal by its order dated 12-7-1961, Ext. P-1, and after overruling these objections, the Industrial Tribunal has posted the matter for considering the application of the management under Section 33 (2) (b) Proviso on its merits. That is the order, which is under attack in O. P. No. 2883 of 1961.

7. Coming to O. P. No. 2884 of 1961, here again the facts are more or less identical and though the management is the same the contesting respondent, the workman, is different. Here again, it will be seen that there was a dispute pending between the management and the employees, regarding the action taken by the management in respect of discharge of workmen on superannuation. That dispute was pending before the Tribunal as I. D. No. 46 of 1959. During the pendency of that dispute the management took disciplinary proceedings as against respondent No. 2 herein and ultimately passed an order dismissing the said employee. Inasmuch as I. D. No. 46 of 1959 was pending before the Tribunal, the management applied under Section 33(2) (b) Proviso, on 1-9-1959 to the Industrial Tribunal, for approval of their action and that application was M. P. No. 124 of 1959.

8. The main award in I. D. No. 46 of 1959 was rendered in the usual course and ultimately it is seen that it was published in the State Gazette on 23-8-1960 and that award has become enforceable from 23-9-1960.

9. The workman concerned, namely, the second respondent filed on 19-8-1960 a complaint under section 33-A before the Industrial Tribunal challenging the action of the management in having taken disciplinary proceedings as against him and that complaint was again registered as I. D. No. 34 of 1960. So far as this is concerned, slightly different reasons are given by the contesting respondent for withdrawing his complaint. It is seen from a perusal of the order, Ext. P-2, that the reason given by this employee was that as the application by the management, filed under Section 33(2) (b) Proviso has become infractions, there was no further necessity to proceed with

the complaint; and this position seems to have been accepted by the Industrial Tribunal and ultimately liberty was given to him to withdraw the said complaint. Accordingly an award was passed by the Industrial Tribunal on 2-6-1961 and that was published in the State Gazette on 27-6-1960. Here again, it must be stated that when the Tribunal granted permission to the second respondent to withdraw his complaint, subject to these reservations, the Industrial Tribunal did not give notice to the management and the management was nowhere in the picture.

10. In this case also the management filed an application M. P. No. 78 of 1961 on 22-6-1961 before the Industrial Tribunal in the main application that they had already filed, namely, M. P. No. 124 of 1959 raising the very same grounds urged in their application filed, namely, M. P. No. 77 of 1961 to which I have already referred. Here again, the stand taken by the management was that as the award in the main dispute, I. D. No. 46 of 1959 has been rendered by the Tribunal it has become functus officio and the Tribunal has lost jurisdiction to consider the application filed by the management. The second ground again in this case also was that the withdrawal of the complaint under Section 33-A by the second respondent practically amounts to an admission regarding the legality of the proceedings as against him by the management and on that basis also there was no necessity to go into the application filed by the management.

11. Here again, both these grounds raised by the management in M. P. 78 of 1961 were rejected by order dated 12-7-1961 and the Tribunal has directed M. P. No. 124 of 1959 to be posted for further hearing. It is this order that is challenged by this writ petition and that order is evidenced by Ext. P-1.

12. From the narration of facts given above, it will be seen that the management's contentions are that in both these matters, the applications filed by the management under Section 33(2) (b) for approval of action taken against the two workmen concerned could not be considered further by the Industrial Tribunal concerned, because the Industrial Tribunal has ceased to have any jurisdiction in respect of these matters once the awards in the main dispute had been rendered. That is, after the passing of the respective awards during the pendency of which the applications were filed, the Industrial Tribunal has become functus officio. In this case the learned counsel has stated, at any rate from the date of expiry of 30 days from the publication of the respective awards in the State Gazette the position in law is that the Tribunal has become functus officio.

13. No doubt, the second ground that has been taken before the Industrial Tribunal has also been repeated in this Court by the learned counsel, Mr. P. K. Kurian, for the management. That is, apart from his grievance that the management was not heard at all when the Tribunal in each of these matters gave permission to the workman concerned to withdraw their complaints, the learned counsel urged that in law the position is that the withdrawal of these complaints tantamounts to an acceptance of the action of the management. Putting it in another way, when in a regular proceeding initiated by a complaint which is itself treated as industrial dispute larger and wider questions covering the action taken by the management could have been agitated by the workman and when the latter has stultified himself by not pursuing that remedy, and has withdrawn his application, the learned counsel urged, the result is that the action of the management must be considered to be justified and, therefore, there is no further necessity to consider the more limited point which arose for consideration in an application under Section 33 (2) (b) namely, whether the management has been able to satisfy the Tribunal that there was a prima facie case to take the action complained of.

14. As I mentioned earlier, Mr. P. K. Kurian, learned counsel for the petitioner, has urged these two aspects again in these proceedings for acceptance by this Court.

15. On the other hand, the learned Government Pleader appearing for the Tribunal in these matters, and Mr. M. M. Cherian learned counsel for the second respondent in O. P. No. 2883 of 1961 whose arguments have also been adopted by Mr. M. V. Joseph, learned counsel appearing for the second respondent in O. P. No. 2884 of 1961 have urged that the conclusions arrived at by the Tribunal that it has got jurisdiction to proceed with the application filed by the management under Section 33 (2) (b) must be accepted by this Court. The learned Government Pleader and the learned counsel for the contesting respondents also urged that though the disposal of the complaints filed by the respective contesting respondents in the manner in which it was done by the industrial Tribunal may not be quite proper and though they were willing to proceed on the basis that it would have been proper to hear the management, nevertheless they urged that the withdrawal of those complaints will not have that effect in law, as is sought to be made out by the learned counsel for the petitioner.

16. I may at this stage straightway mention that though the Tribunal has ultimately come to the conclusion that it has got jurisdiction to proceed with the applications filed by the management in each of these cases, I am not impressed at any rate, with some of the reasons given by the Industrial Tribunal. In fact, there is considerable error in the approach made by the Tribunal and therefore I am not placing any reliance on the reasons given by the Industrial Tribunal in coming to the conclusions that I am arriving at. But I am only trying to consider whether the ultimate conclusions arrived at in these proceedings regarding the decision of the Tribunal to proceed with the applications filed by the management can be sustained or not.

17. Before I advert to certain decisions that have been placed before me by learned counsel appearing on all sides, it is necessary to refer to certain sections of the statute itself. Section 10, as is well known, deals with the right of the appropriate Government to refer any industrial dispute which exists or is apprehended to one or other of the authorities mentioned therein. Section 17 deals with publication of the reports and awards and apart from various other matters it is provided that the award of the Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. Sub-section (2) of Section 17 makes the publication of an award, subject to Section 17-A final and it also provides that it shall not be called in question by any court in any manner whatsoever. Section 17-A deals with commencement of the award and it is not necessary to refer to the various sub-sections therein excepting section 17-A(1) which is to the effect:

> "(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17".

In both these matters, there is no controversy that when the applications filed by the management under Section 33 (2) (b) came up for further consideration, admittedly the awards in the main disputes, during the pendency of which action was taken, and for which approval was asked for had already become enforceable according to Section 17-A (1) of the Act and those dates have already been mentioned by me in the earlier part of this judgment.

18. Section 20 deals with the commencement and conclusion of proceedings and in particular section 20(3) states

> "Proceedings before an arbitrator under Section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17-A".

There is no controversy in this case regarding the period which is to be calculated in each of these matters as to when the proceedings shall be deemed to have commenced and as to when the proceedings shall be deemed to have concluded. In particular, as I mentioned earlier, according to the learned counsel for the petitioner, in both these matters the proceedings before the Tribunal must be deemed to have been concluded on the dates when the respective awards have become enforceable under Section 17-A of the Act.

19. The other provision that requires to be noted is section 33 of the Act. Section 33 occurring in Chapter VII is as follows:

> "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 Labour Court or Tribunal or National Tribunal in respect of an Industrial Dispute, no employer shall,-
> (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
> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned, in such dispute, save the express permission in writing of the authority before which the proceeding is pending.
> (2) During the pendency of any such proceeding in respect of any industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,-
> (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 or such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; 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 an officer 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 percent, 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, 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, as expeditiously as possible, such order in relation thereto as it deems fit."

20. It is not really necessary for me to consider the provisions of section 33 (1) or section 33 (3) and (4). So far as the controversy in these cases is concerned, it is enough if I advert to the provisions of Section 33(2) and Section 33(5).

21. The only other section to be noted is Section 33-A under which the complaint was filed by the respective contesting respondents before the Industrial Tribunal in each of these matters.

22. That provision may become relevant regarding the attack made by the learned counsel for the petitioner regarding the manner in which the complaint filed by the second respondent in each of these cases was disposed of by the Industrial Tribunal concerned.

23. So far as section 33(2) is concerned, in particular the question as to the stage when the management is to ask for approval when it takes action for misconduct by way of dismissal or otherwise under Section 33 (2) (b) arose before me and I had to consider the provisions of Section 33 as it was in 1947 and the various amendments effected in that section, till the present section was incorporated in the statute. I have exhaustively considered the scheme of the Act with special reference to the amendment effected to Section 33 from time to time from 1947 and I had ultimately held that it is not really necessary that the management should ask for approval before taking action by way of dismissal or otherwise as held by the Industrial Tribunal in that

proceeding. I have also held that action by way of dismissal or otherwise, payment of wages of one month and an application for approval can all be taken simultaneously by the management. That decision of mine is reported in *Peirce Leslie and Co. Ltd. v. Industrial Tribunal, Kozhikode*[1], It is also brought to my notice that there is a later decision of their Lordships of the Supreme Court reported in *Strawboard Manufacturing Co. v. Gobind*[2], wherein the view that has been expressed by me and referred to earlier has found acceptance at the hands of the Supreme Court. I am referring to my previous decision only for this limited purpose, namely, to appreciate the scheme of the various amendments effected to Section 33 of the Act. That may also become relevant because a particular passage in the Supreme Court decision has been referred to by Mr. P. K. Kurian, learned counsel for the petitioner, and as I will show presently, those observations will have to be read in the light of the provisions of section 33 as it stood at the material time.

24. According to Mr. P. K. Kurian, learned counsel, inasmuch as the approval of the action that is sought to be taken is really for the purpose of lifting the ban, as has been held by various decisions of the Supreme Court and the High Courts that object is not certainly furthered by the Tribunal adjudicating upon this matter after its jurisdiction has come to a close or after it has become functus officio when the main dispute, because of which this approval petition was filed, has come to a close by an award being passed. The learned counsel also urged that after the main award has been rendered and after that award has become enforceable the Tribunal really becomes functus officio, and, therefore, the contention of the learned counsel is that the Industrial Tribunal has no jurisdiction whatsoever to consider the application for approval.

25. On the other hand, the learned Government Pleader and Mr. M. M. Cherian, and Mr. Joseph, have urged that the essential point to be noted under Section 33(2) is the right of the Tribunal to give approval to the action taken by the management, when that action has been taken during the pendency of the industrial dispute. The fact that so far as the main award itself is concerned, the Tribunal has become functus officio and it cannot certainly modify that award any longer does not also follow that so far

[1] ILR (1962) 1 Ker 652: AIR 1962 Ker 220

[2] 1962-1 Lab LJ 420: AIR 1962 SC 1500

as these applications filed by the management are concerned, it has no further jurisdiction to consider or adjudicate upon the same. In this connection, the learned Government Pleader and Mr. M. M. Cherian urged that the object of Section 33(2) (b) is while giving a right to the management to take action under the limited circumstances mentioned therein, to place also a restriction on the right of the management by giving a right to the Tribunal concerned to consider the action that has been taken by the management. According to the learned counsel, when any action has been taken by the management and when they have asked for approval under section 33(2) (b) and if that approval has not been granted, the position in law is that the action taken by the management is no action at all. The learned counsel also urged that there is absolutely no provision in the statute to indicate that the jurisdiction of the Tribunal to adjudicate upon such matters ceases to exist or it becomes functus officio in respect of such matters when the award in the main dispute itself has been rendered.

26. In this connecton, the learned Government Pleader and Mr. M. M. Cherian placed considerable reliance upon Section 33(5) of the Act wherein it is specifically provided that where an application is made to the authorities mentioned therein under the proviso to sub-section (2) for approval of the action taken by the management, the authority concerned is to hear and

dispose of the application. That, according to the learned counsel, gives an indication that the legislature wanted this application to be taken up irrespective of the fact that the Tribunal has become functus officio in respect of the main dispute itself.

27. The question is which is the view to be accepted, namely, the view pressed before me by Mr. P. K. Kurian, learned counsel for the management, or the view urged for acceptance by the learned Government Pleader and Mr. M. M. Cherian. In my view, the more reasonable interpretation that is to be placed upon section 33(2) (b) regarding the right of the Industrial Tribunal to adjudicate upon applications for approval is that the jurisdiction of the Tribunal to adjudicate upon these matters is not in any way affected or altered by the fact that it has become functus officio so far as the main disputes are concerned.

28. Mr. P. K. Kurian, learned counsel, for the petitioner, drew my attention to an observation of Mr. Justice Rajagopala Ayyangar of the Madras High Court in the decision reported in *Silk Cloth Producers' Association, Kumbakonam v. State of Madras*[3], The particular observation relied upon by the learned counsel is to be found on page 413 :

> "The next point that is urged is that the Industrial disputes tribunal was functus officio on the publication of the award and that the purported clarification effected by it in its communication to the Commissioner for Labour, dated 17, May, 1950, already referred to is ultra vires and void. In my opinion, this contention is well founded and the workmen cannot base their claim to any particular figure as having been awarded to them by reason of the same having been set. out in the clarification of the tribunal already referred to".

[3]1954-2 Lab LJ 410 (Mad)

29. From these observations, the learned counsel urged that it is the view of the learned Judge that the Tribunal has become functus officio and therefore it has no further jurisdiction to send a communication to the Labour Commissioner clarifying the views already expressed.

30. I am not inclined to accept this contention of the learned counsel based upon those observations. It must be remembered that the learned Judge in that case had to consider the propriety of a clarification given by the industrial Tribunal in respect of an award which had already been passed by it and it is that action that was being considered by the learned Judge, namely, whether there is jurisdiction in the Industrial Tribunal to clarify or modify what has already been adjudicated upon by rendering an award. If I may say so with respect, the learned Judge rightly held that the Tribunal in that case has no jurisdiction to offer any clarification regarding the points mentioned in the award itself. But the question in this case is certainly not what was before the learned Judge. There can be no controversy that when an award has been passed by a Tribunal, it has no further jurisdiction to adjudicate upon it and it becomes functus officio, so far as that is concerned; but here we are concerned with the jurisdiction to entertain proceedings in respect of which a separate power has been conferred on the authority by Section 33(2)(b) which is also emphasised and reiterated by Section 33(5). The learned counsel also relied upon more or less what I may call a narration of statement of facts contained in the judgment of their Lordships of the Supreme Court in the decision reported in *Martin Burn Ltd. v. Bannerji*[4], Here again, the learned Judges, giving a statement of the facts at page 250 (of Lab LJ) : (at p. 81 of AIR), advert to the fact that the appellant in that case filed an application before the

5th Industrial Tribunal of West Bengal under Section 33 for permission to discharge the workmen therein and their Lordships further say that the 5th Industrial Tribunal in that case had become functus officio after 30 days of the publication of the award and, therefore, it resulted in the said application being struck off and could not be disposed of. No doubt, learned counsel urged that from the manner in which the question has been dealt with it can be inferred that the view of their Lordships is that when an application has been filed under Section 33(2)(b) for permission and by the time it is taken up for disposal the Tribunal has become functus officio because of the expiry of 30 days of the publication of its main award and that it has no further jurisdiction to consider this application. I am not inclined to accept this contention based upon these observations. It must be noted that the learned Judges in that case had to consider an application filed by the management under the old Section 33 of the industrial Disputes Act. That application, as will be seen from the earlier statement of facts contained in the Judgment, appears to have been on the basis of a later communication sent by the management on 21st June 1954 approaching the Tribunal for permission to terminate the services of the employee in question. Therefore, it will be seen that the application filed by the management for permission must have been in accordance with the provisions of Section 33 of the Industrial Disputes Act as it was amended in 1950, and as it existed prior to its amendment in 1956. The position that section 33, as it existed after 1950 and prior to 1956, more or less corresponds to Section 33(1) as it now stands. The learned judges held that the Tribunal has become functus officio and therefore, the application cannot be considered. Probably that may be the result if an application for express permission is filed by the management under

[4]1958-1 Lab LJ 247 : AIR 1958 SC 79

Section 33(1) of the Act. But I do not propose to consider in any a great detail as to what will be the position under Section 33(1) of the Act because none of the learned counsel have advanced any argument relating to the position under Section 33(1). But I am only indicating that the view of their Lordships of the Supreme Court in the extract mentioned above can be related to an application that may be filed under Section 33(1). Therefore, the learned Judges in the decision referred to above had no occasion at all to consider the nature of an application that is filed under Section 33(2)(b) proviso, which is the position before me.

31. Mr. M. M. Cherian, learned counsel for the contesting respondent in particular relied upon the observations of their Lordships of the Supreme Court in the recent judgment in 1962-1 Lab LJ 420 at p. 425 : (AIR 1962 SC 1500 at pp. 1504-1505) to the effect:

> "If the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense, the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the tribunal under Section 33(2)."

Learned counsel placed considerable reliance upon these observations of their Lordships of the Supreme Court to support his stand that unless the order of discharge or dismissal which has been passed by an employer during the pendency of an industrial dispute, has been approved by

the Tribunal it does not become final and conclusive. Therefore the learned counsel urged that inasmuch as the approval of an action taken by the management is absolutely essential and necessary, the jurisdiction of the tribunal concerned cannot be considered to have been taken away simply because it has become functus officio so far as the main award is concerned. In my view, these observations do lend considerable support to the contentions of the learned Government Pleader as well as of Mr. M. M. Cheriyan. These observations also clearly show that the action taken by the management by way of discharge or dismissal under Section 33(2) does not take effect though the action itself may have been taken, unless that action is approved by the tribunal under Section 33(2)(b) Proviso. The result also is that if the Tribunal does not approve of the action taken by the employer, the action taken by the management would fail and the workmen concerned should be deemed never to have been dismissed or discharged at all. Certainly the position would be anomalous if the contention of Mr. P. K. Kurian, learned counsel for the petitioner is accepted and it is held that the tribunal has no jurisdiction. That there must be an adjudication by the tribunal concerned is clear from the observations of their Lordships of the Supreme Court quoted above. I may also say that the Statute also emphasizes this aspect when it says that the application filed under sub-section 2 of Section 33 must be heard and disposed of by the Tribunal as early as possible. The emphasis is that they must be heard and disposed of. That means that there must be a consideration and adjudication by the Industrial Tribunal in respect of an application. In the absence of any such approval the position as laid down by their Lordships of the Supreme Court in the observations referred to above will be as if no action has been taken and the workmen will continue to be in the employ. Therefore, to avoid all these anomalies, a reasonable interpretation has to be placed upon section 33(2)(b) read with Section 33(5) and that is that the jurisdiction of the Tribunal is in no manner affected to deal with applications filed for approval under Section 33(2)(b) Proviso by the fact that it has become functus officio in respect of the main dispute. The fact that it has become functus officio so far as the main dispute is concerned has no relevancy or bearing in considering its jurisdiction under Section 33(2)(b) Proviso read with Section 33(5).

32. In the order of the Tribunal there is an observation to the effect that when a misconduct is alleged as against a workman during the pendency of an industrial dispute there is jurisdiction in the tribunal to adjudicate upon the same. That is not a proper approach to be made at all. The jurisdiction of the Tribunal is to consider the action taken by the management during the pendency of a dispute, when the latter asks for approval. Therefore, the emphasis is really more on the action that has been taken by the management and that during the pendency of the industrial dispute.

33. For all these reasons, the conclusions, arrived at by the Industrial Tribunal in both these matters relating to its jurisdiction to proceed further with the applications filed by the management under Section 33(2)(b) appear to be correct, though I have arrived at the same conclusions for different reasons.

34. The second ground of attack that has been raised in these proceedings by Mr. P. K. Kurian is as mentioned above, based upon the awards that have been passed on the complaints filed by these respondents under Section 33-A of the Act.

35. The learned counsel is perfectly well founded in his contention that the authority concerned has acted improperly in granting leave or disposing of those complaints without hearing the

petitioner. The proper thing would have been for the industrial tribunal to have given notice of the request made for withdrawal to the management also and after hearing the management pass an order according to the circumstances of the case. But the question is whether the contention of the learned counsel Mr. P. K. Kurian that because these two complaints have been withdrawn and an award passed on that basis, it can amount in law to accepting the action taken by the management as against these persons, can be accepted. In my view, no such conclusion is possible at all. Admittedly there has been no adjudication in respect of that complaint. Whatever may be the reasons which prompted them to withdraw both the complaints should be considered to have been withdrawn by the respective parties. No doubt, the learned counsel urged that once Section 33-A provides that a complaint filed by the employee must be registered as an industrial dispute and disposed of under the provisions of the Act and an award must be passed, the tribunal has no jurisdiction to dispose of the matter in the manner it has done. But that contention does not appeal to me. On the other hand, it must be borne in mind that this is something slightly different from a regular dispute because under Section 33-A the dispute is allowed to be raised at the instance of a single individual. After all when that person who originally makes a complaint comes and tells the tribunal that he does not propose to pursue the complaint at that stage, it is open to the Tribunal to accept that explanation and allow him to withdraw on conditions. That is exactly what has been done in this case. In all other respects, it has complied with the provisions of the statute.

36. The only thing that could be done will be that when tribunal proceeds to deal further with the applications filed by the management under Section 33(2)(b) Proviso, which jurisdiction as has been laid down by the Supreme Court, is only to find out whether the management has made out a prima facie case as against the persons concerned, the tribunal will certainly give due considerations to this circumstance, namely, that in a dispute where larger question could have been agitated, gone into and adjudicated upon and when the persons concerned also invoked the jurisdiction of the tribunal by filing a regular complaint under Section 33-A the parties concerned have withdrawn those proceedings. This aspect will also be given due consideration when the tribunal has to find out in the applications filed by the management regarding a prima facie case which is of a considerably limited jurisdiction. More than this it is not necessary for me to state in this proceeding.

37. Therefore, the orders of the Industrial Tribunal passed in these matters which are under attack are accepted and these writ petitions are dismissed. There will be no order as to costs.
Petitions dismissed.