BOMBAY HIGH COURT

Haribhau Shinde

Vs.

F.H. Lala Industrial Tribunal

Special Civil Appln. No. 1532 of 1968

(K.K. Desai and Vaidya, JJ.)

24.07.1969

JUDGMENT

K.K. DESAI, J.

1. A somewhat difficult and ticklish question of the effect of the provisions in Sections 9A and 33 (1) of the Industrial Disputes Act, 1947, on the industrial relations between workmen and employers has been raised in this petition under Article 227 of the Constitution, whereby the 2nd petitioner (being a registered trade Union) representing the workmen of the 2nd respondent employers has challenged the validity and correctness of the order of the Industrial Tribunal dated May 27, 1968 (in the matter of Application I. T. No. 177 of 1968), whereby the Tribunal rejected the contention of the 2nd petitioner Union (hereinafter referred to as "the Union") that the above Application No. 177 of 1968 was misconceived and the Tribunal had no jurisdiction to grant the relief claimed in that application.

2. The short facts leading to the institution of the above application may be summarized as follows:
By what is mentioned as Baxi award made in I. T. No. 411 of 1958 on December 31, 1959, the question of dearness allowance (including other allowances) payable by the 2nd respondent Company to its workmen was adjudicated upon and decided. Since then, the Company has been paying dearness allowance in accordance with the scale fixed by that award. By notice dated March 20, 1961, the award was terminated on behalf of the Union and the Company was served with a notice for increase in dearness allowance. The industrial dispute relating to demands made for fixation of wage scales and classification of the workmen was referred to the Industrial Tribunal in July 1963 and is subject matter of reference I. T. No. 235 of 1963. On June 24, 1965, the demand of the workmen for increase in dearness allowance and gratuity was referred to the Industrial Tribunal and is subject matter of Reference I. T. No. 216 of 1965. The Company served the union and its workmen with a notice dated September 8, 1967, under section 9A of

the Industrial Disputes Act and stated that the Company intended to reduce the prevailing dearness allowance payment by 40 per cent and to bring about that change and redaction from October 1, 1967, i.e. on expiry of 21 days from the date of the notice. Immediately by reply dated September 20, 1967, the union informed the Company that the proposed change was not at all acceptable to the union and rejected the same. The union expressed surprise that the change was proposed when the demand of the workmen regarding increase in pay structure was pending before the Industrial Tribunal. The union submitted its demand that the notice of change given by the Company should be unconditionally withdrawn. The implementation of the proposed change of reduction of dearness allowance of 40 per cent has been deferred from time to time by the Company. In the meanwhile, the Company requested the Labor Commissioner to admit the matter of the Company's demand of reduction in dearness allowance into conciliation. By his letter dated October 17, 1967, the Labor Commissioner informed the Company that having regard to the preliminary discussions which had taken place, the position was explained and the case brought by the Company for conciliation was treated as closed. The Company thereupon by its letter dated October 30, 1967, to the State Government referred to the facts of the notice of change served under section 9A and the Labor Commissioner having treated the matter of conciliation as closed. The Company further stated that upon expiry of 21 days from the date of the notice of change the Company had got a right to effect the change desired by the Company but because the reference relating to the demand for increase in dearness allowance was pending, the Company could not enforce the change desired. The Company, therefore, applied to the Government to refer the demand of the Company relating to the reduction of the existing dearness allowance to the Industrial Tribunal under section 10 (1) of the Act. The Under-Secretary to the Government by his letter dated January 29, 1968, informed the Company that it should approach the Tribunal under section 33 (1) for permission to reduce dearness allowance. For that reason, the Government refused to refer the demand of the Company for adjudication under section 10 (1) (a) of the Act. The Company thereupon on February 7, 1968, filed the present Application No. I. T. No. 177 of 1968 before the Tribunal under section 33 (1) for a permission in writing to reduce the amount of dearness allowance payable to its workmen by 40 per cent or by such other percentage as from October 1, 1967, or from such other date as the Tribunal decided. In passing, it may be stated that the application contains (in about 33 typed pages) all the material facts which are relevant for defense in the reference made at the instance of the union for increase in dearness allowance.

3. The main contention made on behalf of the union by its written statement dated April 1, 1968 was that having regard to the reference for increase in dearness allowance, the application was illegal and mala fide and had been made with a view to defeat the substantive reference. Under Section 33, permission that can be granted would be of an interim nature and the matter in respect whereof permission could be asked cannot be substantive matter which was subject matter of reference before the Tribunal. The claim for reduction in dearness allowance was such a substantive matter. It appears that at the hearing of the application the union contended that the application was misconceived and the Tribunal had no jurisdiction to entertain the same. By the

impugned order dated May 27, 1968, the Tribunal held that the application was in law maintainable, but it was (not?) proper and just to hear and dispose it of before the disposal of the main reference. In that connection, the Tribunal observed that Section 33 (1) of the Act provided for prejudicial alteration of the conditions of service applicable to the workmen with the express permission in writing of the Tribunal. The effect of the permission if granted was to remove the ban imposed by Section 33 and the permission would not stop the workmen from challenging the change permitted. The Tribunal, however, held that to reduce the dearness allowance by removing the ban imposed on the rights of the employers would create complications and accordingly adjourned the application and directed that it be heard with the main reference.

4. In this petition, on behalf of the union, the above order of the Tribunal is challenged mainly on the ground that having regard to the facts in this case the application was misconceived and further that the Tribunal had no jurisdiction to entertain and/or try and/or to grant the relief claimed in the application. The Tribunal should have accordingly not adjourned the hearing of the application and should have dismissed the application. The finding of the Tribunal that the application was in law maintainable was contrary to the scheme and effect of the provisions of the Act. The contention was developed by submitting that the true effect of the provisions of section 33 was that it imposed a ban on an employer and prevented him from altering conditions of service of workmen during the pendency of an industrial reference. The section provided for lifting of that ban without empowering the Tribunal in that connection to adjudicate upon and decide any questions of merits regarding the alterations proposed. Under sub-section (a) of section 33 (1), in connection with an application made to it, the Tribunal had no power to decide the very dispute which was pending for adjudication in the reference before it. The submission was that the application of the Company was directly in respect of the dispute regarding increase in dearness allowance which was the subject matter of the reference. The application was not for "any matter connected with" that dispute but in respect of that very dispute itself. In the industrial law it was well established that an employer had no right to reduce clearness allowance unilaterally in any event when the matter of dispute in respect thereof was pending before the Tribunal in a reference. The submission was that in industrial law as settled by judicial pronouncements in respect of conditions of service once settled by adjudication declared by an award it was not possible for any employer to alter terms and conditions of service of workmen in respect of matters adjudicated upon except by adopting the process prescribed by the Act. The submission was that conditions of service once settled by an award can only be altered by agreement and/or settlement or by further reference to the Industrial Tribunal and an award made by the Tribunal. There was nothing in sections 9A and 33 that conferred right on an employer to alter conditions of service once settled by an award unilaterally by giving notices under section 9A and by making applications under section 33 for granting of permissions.

5. In reply, the contention on behalf of the Company was that an employer had a right to ask for a revision of the terms and conditions of service to the prejudice of workmen. That right had been recognised by the Supreme Court in the case of *Crown Aluminium Works v. Their Workmen*[1],

That right was recognised in the provisions of sections 9A, 19 (6) and 33 of the Act. In fact, the provisions in sections 9A and 33 recognise and provide for the right of an employer to change conditions of service of workmen to their prejudice. The submission accordingly was that as the Company had tendered valid legal notice of change under section 9A for reduction of dearness allowance by 40 per cent, the Company had, having regard to the pendency of the Reference I. T. No. 216 of 1965, a right under Section 33 to make an application to the Tribunal for giving permission for implementation of the intended change of reduction in dearness allowance. The Company had made its application in accordance with the provisions in that section and the submissions of the union that the application was misconceived and the Tribunal had no jurisdiction to entertain the same should be negatived.

[1] AIR 1958 SC 30

6. In this connection, it is convenient first to notice the scheme in the Act by noticing sections 9A, 10, 19 (6) and 33. The relevant parts of section 9A run as follows:

> "9A. No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change -
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner x x x or
> (b) within twenty-one days of giving such notices provided that no notice shall be required for effecting any such change -
> (a) where the change is effected in pursuance of any settlement, award or decision x x x or
> (b) x x x x ".

Section 10 empowers the Government to refer industrial disputes to appropriate Tribunals. Section 19 relates to period of operation of settlements and awards recognized under the Act. Sub-section (6) of that section provides:

> "Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award".

The relevant parts of section 33 run as follows:

> "33 (1) During the pendency of any conciliation proceeding x x x 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 -
> (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 x x ; or

(b) xxx, save with 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 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 workmen-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman x x x x or

(b) x x x x .

(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 x x x ; or

(b) x x x x, save with the express permission in writing of the authority before which the proceeding is pending. xxx x."

Under section 33A, workmen are authorized to make a complaint when an employer contravenes the provisions of section 33 and the Tribunal is authorized on such complaint to adjudicate upon the complaint as if it was a dispute referred to the Tribunal for final adjudication.

7. It is necessary to notice that there was no provision corresponding to section 33 in the old Industrial Disputes Act 1929. The Section 33 as it was first enacted in the principal Act of 1947 imposed a total ban on the employers and prevented them pending a reference to the Tribunal from altering to the prejudice of the workmen concerned in the dispute conditions of service applicable to them. The section 33 in the Act of 1947 was substituted by Section 34 of the Industrial Disputes (Appellate Tribunal) Act, 1950, and the section as it now stands was substituted by section 21 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

8. The question of the true effect of the provisions in section 33 arose before the Supreme Court, inter alia, in the case of *Atherton West and Co. V. S. M. Mazdoor Union*[2]*, Automobile Products of India v. Rukmaji Bala*[3]*,* and *Punjab National Bank Ltd. v. A. I. P. N. B. E. Federation*[4]*.* The result of the observations of the Supreme Court in these cases may be stated as follows: The object of the section is to provide for the continuance and termination of the pending proceedings in a peaceful atmosphere and in substance it insists upon the maintenance of the status quo pending the disposal of the industrial dispute between the parties. The ban imposed is mandatory. The jurisdiction of the court under section 33 is limited. In application under the section it is not open to the Tribunal to consider whether the order proposed to be passed by the employer was proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to conditions which it may consider fair. The permission granted to the

employer does not end the matter and does not validate the action proposed to be taken by the employer. It merely removes the ban. The matter in respect whereof permission is granted under the section will remain to be sub-stantively adjudicated upon in subsequent reference at the instance of either side.

9. Now, on the basis of this observation, Mr. Singhvi for the union has rightly argued that in an application made under Section 33 the tribunal deals with the question of raising of a ban and/or prohibition and that there would be no question of raising of ban and/or prohibition where The employer may be held to have no independent and/or ordinary and/or contractual and/or common law right to alter to the prejudice of the workmen concerned in the dispute the conditions of service applicable to them. The submission was developed by stating that the effect of the various decisions of different Courts including the Supreme Court in respect of the operation of the terms and conditions fixed by awards, having regard to the contents of Section 19 (6), was that there was in law no unilateral right of any kind in an employer unilaterally to alter the conditions of service applicable to his workmen when fixed by awards and/or binding settlements. When conditions of service are fixed and settled by awards and binding settlements, they

[2] AIR 1953 SC 241 [4] AIR 1960 SC 160

[3] AIR 1955 SC 258

continue to be operative as between the employer and the workmen continuously until altered by agreement of parties and/or by adjudication and an award made by a Tribunal in a reference made under the Act. The result of this position, according to him. was that in spite of the provisions in section 33 entitling an employer to apply for permission for alteration of the conditions of servive of his workmen, the question of raising of ban in that connection under Section 33 could never arise in respect of conditions of service settled and decided by an award made under the Act. The employer would be bound by those conditions of service and would accordingly have no ordinary right at all to alter those conditions. He could not acquire such a right because the section 33 contemplates an application for permission to be obtained by an employer.

10. In connection with this submission, he has relied upon the observations of this Court in the case of ***Mangaldas Narandas v. Payment of Wages Authority, (1957) 2 Lab LJ 256 (Bom)***; ***Yamuna Mills v. Majoor Mandal, 59 Bom LR 1046 : (AIR 1958 Bombay 74)***; and of the Supreme Court in ***South Indian Bank v. Chacko (1964) 1 Lab LJ 19 : AIR 1964 Supreme Court 1522***; and general discussion in various authorities. In the case of (1957) 2 Lab LJ 256 (Bom), a Division Bench of this Court noticed that the award previously made had been terminated in accordance with the provisions in section 19 (6).

The question was as to the terms and conditions of service between the employer and the workmen after the period mentioned in that section had expired. The Court observed:

> "The termination of such an award does not, in our judgment, terminate the contract. Even after the award is determined in the matter (sic manner) provided by sub-sec. (6),

> the obligations created by the award can in our judgment be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act and not otherwise. The Industrial Disputes Act has been enacted with the object of securing harmonious relations x x x by providing a machinery for adjudication of disputes x x x x and the object of the legislature would be frustrated if after every few months by unilateral action the employer or the employees may be entitled to reopen the dispute and ignore the obligations declared to be binding by the process of adjudication. We are therefore of the view that the termination of an award by notice has not the effect of terminating the obligations flowing from the award."

11. In the case of 59 Bom LR 1046 : (AIR 1958 Bombay 74), on a similar question having been raised, the Division Bench observed at p. 1051 (of Bom LR) : (at p. 78 of AIR):

> "There appears to be on the scene after the termination of the award only one thing that can govern the relations between the employer and the employees and that undoubtedly can be nothing else than the award itself. The result of the award ceasing to have effect is not that the award ceases to exist; the result of the award ceasing to have effect is x x x that it is open to either party to give a notice of change and to attempt to bring about a change. Further, it is open to the employer in cases in which he can bring about a change without a notice of change such as the matters enumerated in Schedule III to proceed to bring about the change, because the impediment placed in his way by Section 46 (3) is removed. But until a change is brought about by the act either of the employer or the employee after following the relevant provisions in the Bombay Industrial Relations Act, 1946, the award that exists shall continue to regulate the relations between the employer and the employees."

12. In the case of 1964-1 Lab LJ 19 : AIR 1964 Supreme Court 1522, the Supreme Court observed:

> "Even otherwise if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of section 19 (6), it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract x x x, the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties-in respect of both of which special provisions have been made under Sections 23 and 29 respectively-may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract. Hence a benefit as per the terms of the award which has ceased to be operative or in force under Section 19 (6) of the Industrial Disputes Act, 1947, could be claimed on the basis that the provisions of such award would create a

contract between the concerned parties."

13. Having regard to the law as pronounced by these authorities, it is clear that in the case of the present parties, as regards the right to recover dearness allowance and the obligation to pay the same, the terms and conditions of service that were operative and binding were those fixed by the Baxi award dated December 31, 1959, made in I. T. No. 411 of 1958. As has been observed in the case of 59 Bom LR 1046 : (AIR 1958 Bombay 74), upon the award having been terminated under the provisions of section 19 (6), this very award governed the relations between the employer and the employees. The workmen desired to alter the rate of the benefit of dearness allowance that was fixed by that award and raised a demand in respect thereof. That demand was the dispute referred to the Tribunal under Reference No. 216 of 1965. It is apparent that as there was liberty in the workmen to demand alteration there must be corresponding liberty in the Company to demand alteration and revision of the percentage of dearness allowance to the prejudice of the workmen. The question that is raised and requires to be decided is about whether, because such a demand for revision of the rate of dearness allowance could be raised, the employer had liberty unilaterally to bring into force and implement that demand and reduce unilaterally the dearness allowance by 40 per cent as was stated in the notice of change tendered under Section 9A. Now, the scheme of the Industrial Disputes Act, as observed by the Supreme Court in the cases of 1964-1 Lab LJ 19 : AIR 1964 Supreme Court 1522 and AIR 1960 Supreme Court 160 which we have just noticed, was to maintain status quo as regards the terms and conditions of service between the parties until the terms and conditions were by a contract or a settlement or an adjudication award altered. Needless to state that the question of alteration of the terms and conditions by adjudication in an award must depend upon the reference that may be made by the Government under Section 10 of the Act. Apparently, the position is that in cases in which the Government for the reasons which may be germane and relevant refuses to make a reference of a demand for alteration of terms and conditions of service, the employer must be left without any remedy whatsoever. The scheme of the Industrial Disputes Act thus appears to us to have deprived both the employer and the workmen of the liberty to have the terms and conditions of service altered by unilateral action on either side. The employer was not left with liberty to make his own contract regarding the terms of employment, i e. regarding the right to alter the terms and conditions of service fixed by an award to the prejudice of the workmen without securing a reference under Section 10 of the Act. Similarly, the workman, in spite of his right to agitate in that connection was not left with the liberty to insist upon the revision of the terms and conditions of service in his favor unless he secured the revision by a reference made under section 10 and the consequent adjudication of demand for revision by an award.

14. The question is whether the position as ascertained by us above is altered in favor of the employer by granting to him fresh rights under the provisions of sections 9A and 33 of the Act. It must at once be admitted that the language of these sections and particularly section 33 gives scope to an argument that the Legislature has envisaged existence of undisputed right in an employer to alter the conditions of service applicable to the workmen to their prejudice. In this

connection, it is to be noticed that the original section 33 in the 1947 Act imposed a total ban and provided that "no employer shall during the pendency of x x x proceedings before a Tribunal xxx, alter to the prejudice of the workmen concerned in the dispute, conditions of service applicable to the xxx x x." This provision was modified as already noticed above and the present Act clearly contemplates that the Tribunal may grant express permission to an employer to alter the conditions of service applicable to the workmen to their prejudice. Under clause (a) of section 33 (1), the permission may relate to any matter connected with the dispute. Under clause (a) of sub-section (2), the employer may alter the conditions of service in regard to any matter not connected with the dispute without even applying for permission of the Tribunal. Similarly, section 9A contemplates that an employer has a right to serve a notice for change in conditions of service and thus envisages the existence of a right in an employer to alter conditions of service applicable to his workmen. Mr. Vimadalal for the Company, therefore, has with some emphasis insisted that these provisions clearly recognize the common law right of an employer to ask for a revision of conditions of service to the prejudice of his workmen. He insists that in fact section 9A does not only envisage but creates a right in the employer to alter conditions of service of workmen after giving the prescribed notice of change. Now, in this connection, having regard to the law as settled by authorities, he had to admit that the lifting of ban under section 33 does not bring about effectively the alteration in terms of conditions of service as desired by an employer. He admitted that even when permission was granted under clause (a) of section 33 (1), the workmen would be entitled to raise a dispute regarding prejudicial revision of his conditions of service and the matter would have to be ultimately finally decided only by an adjudication by Industrial Tribunal. He admitted that this would be the position even where a valid notice of change as regards conditions of service was tendered by an employer under section 9A. These admissions, we apprehend, are result of the appreciation by Mr. Vimadalal of the effect of the law as pronounced in the cases of 1957-2 Lab LJ 256 (Bom) and 1964-1 Lab LJ 19 : AIR 1964 Supreme Court 1522, which we have noticed above. In connection with his submissions that section 33 and Section 9A created a right in favour of an employer to alter the terms and conditions of service, we are not in a position to disregard the law pronounced by the above authorities that conditions of service as settled by an award would continue to be binding on both the employer and the workmen continuously until they are altered by a contract, a settlement and/or an award made in a reference made under section 10. We have arrived at this conclusion with certain hesitation because of the language in sections 9A and 33 (1) which deal with the manner in which an employer who contemplates alteration of conditions of service may proceed. The provisions in these sections are procedural and, in our view, do not create extra or new rights in favour of an employer. This is clear on the plain language of the sections. This is admitted indirectly on behalf of the Company when it is stated that as soon as an alteration is proposed in the notice under section 9A and a permission is granted under section 33, the workmen would be entitled to raise protest and demand a reference in respect of the alterations proposed by the employer. Above must be the true construction and effect of the provisions in sections 9A and 33, having regard to the law pronounced by various Courts in connection with the operation of the award after it is terminated under section 19 (6) of the Act.

15. Mr. Vimadalal contended that the effect of the law as pronounced above was that the employer was left with no remedy when the State Government refused to make a reference under Section 10 for alteration of terms and conditions of service to the prejudice of the workmen. In his submission, after the Government had rejected the Company's application dated October 30, 1967, for referring the demand of the Company for reduction of the dearness allowance to 40 per cent, the right of the employer to alter the conditions of service remained enforceable by following the procedure prescribed in Section 33. This right should not be denied to the employer. Just as the workmen had their remedy, the employers must be held to have a right to alter the conditions of service of workmen to their prejudice if circumstances so justified. That right had been recognized in Section 33 and the contrary submission made by the union should be negatived. Now, in our view, there is no substance in these contentions. As already stated above, where conditions of service are once settled by an award, they could only be altered by contract, settlement and/or by award made in a reference made under Section 10. The Government would not be justified in capriciously and arbitrarily refusing a reference to any party which required alteration in terms and conditions of service. The Government would not be justified in refusing a reference on the application of such a party unless the Government is of the view that the application is frivolous or vexatious or that it was not expedient to make a reference in accordance with the application for reference. We have no doubt that the Government would exercise its powers under section 10 and make a reference in all cases where the circumstances justified such a reference. The right of the workmen to an upward revision of conditions of service and the right of the employer to a downward revision of conditions of service is now circumscribed by the provisions in the Industrial Disputes Act. There is no freedom to parties in that connection. This right exists but wherever the conditions of service have been previously adjudicated upon and declared by an award can only be enforced through a reference made under Section 10 or by contract or by settlement. We are quite clear that there is nothing in the provisions in Sections 9A and 33 which alters the above position.

16. In this connection, we must state that under sub-section (2) of Section 33, in regard to matters not connected with the dispute, the employer has been given a right to alter the terms and conditions of service applicable to workmen, provided he proceeds in accordance with the standing orders applicable to the workmen, and where there are no such standing orders he proceeds in accordance with the terms of contract between the parties. Similarly, it is quite clear that where adjudication has not previously taken place and terms and conditions of service have not been fixed by awards, the right of an employer to alter the terms and conditions of service may be exercised in accordance with the provisions in Sections 9A and 33(1) (a). In this case, we are not concerned with such a situation. In this case, the terms and conditions of service as regards dearness allowance payable to the workmen are fixed by the Baxi award and these terms and conditions of services must continue to operate and be binding between the parties until they are changed by agreement of parties or settlement or an award made on a reference under Section 10.

17. The submission of Mr. Singhvi that there was no question or raising any ban under Section 33 in the matter of application of the Company requires to be considered in the light of the findings made above. As already held, there was no right in the Company unilaterally to alter the terms and conditions of service in accordance with the notice of change given under Section 9A. The Company itself was conscious of that position and, therefore, made the application dated October 30, 1967, requesting the Government to refer the demand of the Company relating to reduction of the existing dearness allowance to the Tribunal under Section 10(1) of the Act. It is quite clear that the Company found itself in a difficult situation when by the letter dated January 29, 1968, the Under-Secretary to the Government rejected that application and referred the Company to the provisions in Section 33(1). It appears not to have been appreciated that permission granted under that Section to the Company could not be of any avail to the Company. The Company could not become entitled to implement the proposed reduction in the scale of dearness allowance merely because such a permission was granted. The matter of alteration of the scale of dearness allowance would have remained to be ultimately settled by an award or contract. Under those circumstances, the submission made by Mr. Singhvi that there was no ordinary and/or common law right or any right in the Company unilaterally to alter the terms and conditions of service and accordingly no question of raising of ban in that connection under Section 33 is justified and we accept the same. The Tribunal should accordingly have accepted the submission made on behalf of the union that the application No. 177 of 1968 requesting the Tribunal's permission under Section 33(1) was misconceived and untenable. It is true that such an application could only be made to that Tribunal. We are, therefore, not holding that the Tribunal had no jurisdiction to receive and entertain and deal with the application. We, however, are clearly of the view that the application was entirely misconceived and the Tribunal's order adjourning it to the hearing of the main reference was not justified.

18. We do not find it necessary to decide other contentions made by the union.

19. The rule is accordingly made absolute. The above application I. T. No. 177 of 1968 of the Company will stand rejected. The Company will pay costs of the petitioners fixed at Rs. 500.

Rule made absolute.