IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment reserved on:17.09.2026***
Judgment pronounced on:27.10.2026
Judgment uploaded on: 27.10.2026

CNR No. DLHC010002292005

\+ **W.P.(C) 3926/2005 & CM APPL. 47086/2026**

MOOL CHAND KHARAITI RAM HOSPITAL.....Petitioner

versus

INDIVER .....Respondent

Advocates who appeared in this case:

For the Petitioner : Dr. M.Y. Khan, Adv.

For the Respondent :Mr. Fidel Sebastian, Adv. (through VC).

CORAM:
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition assails the award dated 03.08.2004 **("impugned award")** passed by the learned Tribunal in Complaint No. 5/1999 under the Industrial Disputes Act, 1947, whereby the learned Tribunal noted that the abolition of the respondent's post was *non-est* and inoperative and consequently directed the reinstatement of the respondent in service.

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2. Succinctly stated, the respondent was initially engaged *vide* engagement letter dated 13.09.1993, on a temporary basis as an *Assistant Housekeeper* w.e.f. 09.09.1993. Thereafter, *vide* appointment letter dated 20.12.1995, the respondent was appointed permanently as an *Assistant Housekeeper*.

3. The petitioner, *vide* notice dated 08.09.1998, informed the respondent that the post of *Assistant Housekeeper* had been abolished. Along with the said communication, the petitioner forwarded an amount of Rs.3,462/-, stated to be equivalent to one month's pay, to the respondent. The said communication and the amount sent by the petitioner were returned undelivered. The petitioner thereafter issued a reminder to the respondent regarding the same, which was also returned undelivered, noting that the respondent's address could not be traced.

4. Upon learning about the abolition of the post and the consequent cessation of his services, on 17.10.1998, the respondent, through the Union, along with another workman, namely Sh. Gyan Chand, filed a complaint under Section 33A of the Industrial Disputes Act, 1947.

5. On 09.12.2002, the learned Tribunal framed the following issues:

> *"1. Whether the management has violated the provision of section 33 of I.D Act? OPC*
> *2. Relief."*

6. By the impugned Award dated 03.08.2004, the learned Tribunal noted that the petitioner had failed to establish that the respondent fell outside the purview of Section 2(s) of the Industrial Disputes Act, 1947. The learned Tribunal further observed that an Industrial Dispute No. 96/98 was pending at the time of abolition of the respondent's post. It

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was noted that the respondent was an active member of the union and was representing workmen in the said Industrial Dispute. In the view thereof, the learned tribunal held that the abolition of the post, without complying with Section 9A of the Industrial Disputes Act, 1947 was in contravention with the statutory protections under Section 33 of Industrial Disputes Act, 1947. Accordingly, the learned Tribunal held the action of the petitioner to be *non est* and inoperative, and directed the petitioner to reinstate the respondent in service.

7. Aggrieved thereby, the petitioner has preferred the present petition.

8. Learned counsel for the petitioner submitted that the learned Tribunal failed to appreciate the material evidence placed on record and erred in holding that the abolition of the post amounted to a violation of Section 33 of the Industrial Disputes Act, 1947.

9. He submitted that, insofar as the monetary consequences of the impugned Award are concerned, the respondent has already received wages under Section 17B of the Industrial Disputes Act, 1947 for the period from the date of the Award till 29.02.2008, pursuant to the order of this Court dated 25.01.2010. He submitted that, in view thereof, the only surviving monetary claim, if any, pertains to the period between the cessation of the respondent's service on 08.09.1998 and the date of the impugned Award, i.e., 03.08.2004.

10. He submitted that there was no violation of Section 33 of the Industrial Disputes Act, 1947 by the petitioner and that the learned Tribunal erred in treating the abolition of the post as a change in service

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conditions requiring compliance with Section 9A of the Industrial Disputes Act, 1947. He further submitted that the posts of Sanitary Superintendent and Assistant Housekeeper were abolished by the petitioner as the services attached to those posts were no longer required, and that the employees holding those posts were consequently terminated on that account.

11. Learned counsel for the respondent opposed the petition. He submitted that, despite the Award of the learned Tribunal, the petitioner again terminated the respondent during the pendency of the present proceedings. He further submitted that the respondent was reinstated only because the petitioner was required to comply with Section 17B of the Industrial Disputes Act, 1947, and that the subsequent termination shows that the reinstatement was actuated by *mala fide* intention.

12. He further submitted that, after the subsequent termination, the petitioner paid only part of the wages payable under Section 17B of the Industrial Disputes Act, 1947. He also submitted that the petitioner could not have terminated the respondent during the pendency of the present writ petition without complying with the procedure prescribed under Section 33 of the Industrial Disputes Act, 1947. He contended that the subsequent termination is itself illegal.

13. This Court considered the submissions made by learned counsel for the parties and the material placed on record.

14. It is imperative to note that when the present petition came up before this Court on 08.04.2005, notice was issued and operation of the

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impugned Award was stayed, subject to the petitioner depositing a sum of Rs.5,000/- towards litigation expenses.

15. During the pendency of the present petition, the petitioner expressed its willingness to reinstate the respondent. Accordingly, *vide* order dated 27.02.2008, the respondent agreed to rejoin service and was directed to report before the Manager (Personnel) on 01.03.2008. The respondent was consequently reinstated w.e.f. *01.03.2008*.

16. Thereafter, the respondent filed an application under Section 17B of the Industrial Disputes Act, 1947. The said application was allowed *vide* order dated 25.01.2010, whereby the petitioner was directed to pay wages under Section 17B of the Industrial Disputes Act, 1947 for the period ***03.08.2004***, i.e., the date of the impugned Award, till ***29.02.2008***, i.e., the date immediately preceding the respondent's reinstatement, at the last drawn wages or the minimum wages, whichever was higher, subject to the undertaking contained in the said order.

17. On 21.04.2010, this Court was informed that the petitioner had complied with the order passed under Section 17B of the Industrial Disputes Act, 1947 and that an amount of Rs.1,55,049/- had been transferred to the respondent's account.

18. Subsequently, the petitioner issued a notice dated 30.06.2023 under Section 9A of the Industrial Disputes Act, 1947, proposing a change in the working hours of certain employees. According to the petitioner, pursuant to a letter dated 06.05.2023, wages payable to the

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employees were revised to bring them in line with the wages payable at Sir Ganga Ram Hospital.

19. The petitioner further states that disciplinary proceedings were initiated against the respondent thereafter. A charge-sheet dated 10.07.2025 alleged that the respondent had worked for only *seven* days out of *sixty days* during the months of *May and June 2025* and had committed serious misconduct. In response to the charge-sheet, the respondent submitted a reply dated 18.07.2025 stating that his father was suffering from fourth-stage cancer and required constant care. The respondent explained that his absence was on account of his father's critical medical condition.

20. A domestic enquiry was thereafter conducted, wherein the charges against the respondent were held to have been proved. Pursuant thereto, the petitioner terminated the respondent's services again on 29.05.2026.

21. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India with an award passed by the learned Tribunal is limited. Interference is warranted only where the findings are perverse, based on no evidence, suffer from patent illegality, or disclose a jurisdictional error. This Court, while exercising writ jurisdiction, cannot re-appreciate the evidence led before the learned Tribunal as though rehearing the matter on facts. The mere possibility of another view being taken on the evidence would not justify interference. Reference in this regard may be made to the judgment in ***International Airport Authority of India v. International***

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***Air Cargo Workers Union:* (2009) 13 SCC 374** where the Hon'ble Apex Court held as under: -

> *"47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot reappreciate evidence. The findings of fact recorded by a fact-finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered with in writ jurisdiction merely on the ground that the material on which the Tribunal had acted was insufficient or not credible.*
> *48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal."*

22. As it is borne out from the impugned Award, the learned Tribunal examined the evidence led by both sides. It was noted that during the cross-examination of *RW-1, Sh. M.K. Kaushik (Manager [personnel])* admitted that at the time of abolishing the post of the respondent, an industrial dispute was pending.

23. The learned Tribunal also considered the evidence of *CW-1, Sh. Gyan Chand*, who was working as Sanitary Superintendent and whose case was sought to be relied upon for drawing parity with the

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respondent. In his deposition, *CW-1* stated that, at the time when his post was abolished, his services had also ended without complying with Section 9A of the Industrial Disputes Act, 1947.

24. It would be apposite to refer to Section 9A of the Industrial Disputes Act, 1947 and Section 33 of the Industrial Disputes Act, 1947; the relevant provisions are reproduced below:

Section 9A of the Industrial Disputes Act, 1947:

> *9A. Notice of change. 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 of the nature of the change proposed to be effected; or*
> *(b) within twenty-one days of giving such notice:*
> *Provided that no notice shall be required for effecting any such change-*
> *(a) where the change is effected in pursuance of any ²[settlement or award]; or*
> *(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.*

Section 33 of the Industrial Disputes Act, 1947:

> *"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. During the pendency of any conciliation*

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proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(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 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 workman], -

(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, or 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, no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any

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action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such 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 [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

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

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

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it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:
Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed]

25. It is discernible from the above that Section 9A of the Industrial Disputes Act, 1947 requires an employer to comply with the prescribed procedure before effecting a change in the conditions of service, while Section 33 of the Industrial Disputes Act, 1947 prohibits an employer from altering the service conditions of a workman to his prejudice during the pendency of an Industrial Dispute, 1947 without following the provisions of the Act.

26. The petitioner informed the respondent *vide* communication dated 08.09.1998 (Ex. CW2/4) that the post of *Assistant Housekeeper* stood abolished and forwarded an amount of Rs.3,462/-, stated to be equivalent to one month's pay. However, the record does not demonstrate compliance with Section 9A of the Industrial Disputes Act, 1947. The learned Tribunal took a note of the fact that an Industrial Dispute No. 96/98 was pending at the relevant time and that the respondent was an active member of the union representing the workmen in the dispute. The said communication merely conveyed a decision that had already been taken and cannot be construed as the statutory notice contemplated under Section 9A of the Industrial Disputes Act, 1947.

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27. Before proceeding further, it is apposite to consider the contention raised on behalf of the respondent that the termination of the respondent on 29.05.2026, having been effected during the pendency of the present petition, is in violation of Section 33 of the Industrial Disputes Act, 1947.

28. The said contention cannot be accepted as Section 33 of the Industrial Disputes Act, 1947 is only attracted during the pendency of a ***conciliation proceeding or a proceeding before an arbitrator, Labour Court, Tribunal or National Tribunal in respect of an industrial dispute***. The obligation imposed upon the employer under the said provision was thus dependent upon the ***pendency of proceedings*** before the authorities contemplated therein.

29. In the present case, Complaint No. 5/1999 had already culminated in the Award dated 03.08.2004. The mere pendency of the present writ petition cannot be equated with the pendency of proceedings before the learned Tribunal within the meaning of Section 33 of the Industrial Disputes Act, 1947. The jurisdiction exercised by this Court under Articles 226 and 227 of the Constitution is supervisory in nature and does not revive or continue the proceedings which had already culminated in an Award.

30. It is also relevant that, vide order dated 08.04.2005, this Court had stayed the operation of the Award. The said order did not set aside the Award or restore Complaint No. 5/1999 to the file of the learned Tribunal. The distinction between a stay of an order and the continuation of proceedings before the authority which passed the order

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is material in the present context. The Hon'ble Supreme Court in ***B.P.L. Ltd. v. R. Sudhakar***, **(2004) 7 SCC 219**, held that the protection under Section 33 of the Industrial Disputes Act, 1947 operates only when ***proceedings relating to an industrial dispute are pending before the Tribunal or other specified statutory authority***. The said decision, though rendered in the context of a stay of the order of reference itself, reiterates the essential requirement of pendency of proceedings for attracting Section 33 of the Industrial Disputes Act, 1947. *The relevant portion of* ***B.P.L. Ltd. v. R. Sudhakar (supra)*** *is reproduced below:*

> *"16. The effect of grant of stay of operation of the order of industrial reference was that the Industrial Tribunal could not take up the reference for adjudication. Consequently, no action based on such reference could be taken by the Tribunal including grant or refusal of approval to the disciplinary action under Section 33(2) of the Act. The employer could not have, therefore, approached the Tribunal for seeking approval for its disciplinary action so long as the order of reference remained stayed by the order of the b High Court. The industrial reference stood revived only when the writ petition against the industrial reference was finally disposed of by the High Court on 12-4-1999. The industrial reference would be said to be pending only from 12-4-1999. The action of dismissal of the services of the workmen was taken on 31-3-1999. On that date, as a result of the order of the stay of the operation of reference by the High Court on 11-3-1999, no reference was pending for adjudication before the Tribunal. The provisions of Section 33 of the Act are attracted only when an industrial dispute is pending for adjudication and not merely when an order of reference is made by the Government. In the present case,* ***proceedings were not pending before the Tribunal because of the stay of the order of reference itself. Both sub-section (1) and sub-section (2) of Section 33***

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> ***employ the language "during the pendency of any proceeding"*** *which clearly conveys that obligation on the part of the employer under the said section of seeking "express permission" for the purpose of sub-section (1) or "approval" for the purpose of sub-section (2) arises only when* ***there are proceedings pending on industrial dispute before the Tribunal or other specified statutory adjudicatory authorities under the Act."***

31. The grievance regarding the 2026 termination is a fresh cause of action that must be raised through the appropriate statutory machinery. It cannot be adjudicated within the scope of the writ petition challenging the 2004 award.

32. Therefore, this Court holds that Section 33 of the Industrial Disputes Act, 1947 is not attracted to the termination of the respondent on 29.05.2026, as no ***proceeding was pending on the said date before any of the authorities specified therein***. At the same time, this Court has not examined the correctness of the domestic enquiry conducted on the charge-sheet dated 10.07.2025, or the merits of the termination, as the same is not the subject matter of the present petition.

33. This Court, therefore, finds no perversity, patent illegality or jurisdictional error so as to warrant interference in exercise of writ jurisdiction. The finding returned by the learned Tribunal, therefore, merits no interference and stands affirmed.

34. It is, however, relevant to note that more than two decades have elapsed since the impugned award was passed. In the interregnum, the respondent was reinstated in service with effect from 01.03.2008 and received the benefit of Section 17B of the Industrial Disputes Act, 1947 for the period from 03.08.2004 till 29.02.2008, an amount of

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Rs.1,55,049/- having been paid to him pursuant to the order dated 25.01.2010. His services were, however, terminated afresh on 29.05.2026, which is a matter distinct from the subject matter of the impugned award, and which constitutes an independent cause of action.

35. It is trite law that a finding of illegality in termination does not, by itself, mandate reinstatement and full back wages in every case. The Hon'ble Apex Court has repeatedly held that reinstatement is not an automatic or mechanical consequence of an order of termination being held illegal and that the relief must be moulded having regard to the nature of employment, length of service and the surrounding circumstances of the case. Reference in this regard can be made to the decision of the Hon'ble Apex Court in ***Allahabad Bank v. Krishan Pal Singh : (2021) 19 SCC 227***. The relevant extract of the same is reproduced hereinbelow:

> *"8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23-8-2019 [Allahabad Bank v. Krishan Pal Singh, 2019 SCC OnLine SC 2061] . During the pendency of these proceedings, the respondent workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law.*

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> *Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs 15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% p.a., till payment."*

36. The respondent is at liberty to challenge the termination dated 29.05.2026 before the appropriate forum, in accordance with law, and all rights and contentions of the parties in that regard are left open. Resultantly, the reliefs sought by the respondent in *CM APPL. 47086/2026* cannot be granted in the present proceedings.

37. In view of the aforesaid subsequent developments, the direction of reinstatement no longer survives for consideration in the present proceedings. The respondent has already received the benefit of Section 17B of the Industrial Disputes Act, 1947 for the period from 03.08.2004 till 29.02.2008. Consequently, the only surviving issue is the respondent's claim for monetary relief, if any, for the period between 08.09.1998 and 03.08.2004.

38. Having regard to the fact that the respondent stood reinstated and received the benefits under Section 17B of the Industrial Disputes Act, 1947 for the interregnum, this Court considers it appropriate, in the peculiar facts of the present case, to award a lump-sum compensation

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of Rs 3,00,000/- in full and final satisfaction of the relief surviving in the present proceedings. The said amount shall be paid within four weeks from the date of this judgment.

39. Accordingly, the award is modified to that extent and the petition along with pending application(s), if any, stands disposed of in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 27, 2026
'KDK'

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