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Editorial

IN THE DARK TIMES!

The news item, which is the resultant effect of sudden happening like the earthquake in Turkey or the crash in the Indian Stock Market after certain controversial revelations regarding the financials of Adani Group, cannot escape our attention. Common Bond extends its deep sympathy to the thousands who lost their lives in the aftermath of the earthquake which hit the Turkey-Syrian border. But the happening in the Adani Group and its tremor on Indian Stock Market in general and the banking system, in particular, deserve serious discussion and debate within the banking fraternity. The resultant output may be used in our ongoing battle **#BankBachaoDeshBachao**.

This discussion assumes significance as we ignored over the years how could the wealth of an Indian business group soar from an estimated US\$ 8 billion to an estimated US\$ 140 billion within a short span of time. We will only burden our readers with the statistical data to apprise them that the total erosion in market capitalization of Adani Group during the last three weeks is more than the combined budgetary expenditure of the U.P. and West Bengal. It can be argued by any professional economist that the happenings in the Adani Group will have little or no impact on the livelihood of millions of countrymen, and any discussion is only a storm in a teacup.

We cannot hide our concerns. On a conservative basis, around twelve crore families in the country

are regular savers with banks and public financial institutions. Many have a minimum deposit of Rs. 30 lakh with either a public sector bank or LIC. We are not asking our readers to multiply the assumed deposits amount by the number of families to derive the approximate term deposit amount of the middle-class household in the Indian Banking system. Our experience is that this section of the citizenry normally did not encash the amount and reinvested on maturity. Such reinvestment rolls from one generation to another with only a change of holder's name in the system on completion of certain formalities. In other words, this household savings in the Indian context is long-term. We all know a substantial part of this liability goes to the capitalist class and, in today's context, to cronies as bank credit. Union Finance Minister admitted that nearly 10 lakh crore of bank loan extended to private capitalists was written off during the last few years. It is another story that we do not have such declared figures of loans extended to the marginal section of society. This is a matter of apprehension that such financial fiasco, like writing off of bad loans or potential risks associated with an investment in Adani Group, is wiping out the generations of savings of the Indian middle-class. This also puts into question the role of regulators and the top management of public sector banks in detecting such malignancy in the system at the primary stage.

Such critical issues cannot be kept under the carpet by doling out ₹ 500/- here or ₹ 3,000/- there. The Oxfam Report established that only a fraction of

A JUG FILLS DROP BY DROP

national wealth is now in the hands of the middle class. The crony capitalists and their friendly government are possibly doing everything to rob this money under a sophisticated veil. The Oxfam Report also confirms that the ultra-rich really do not require bank finance to run their business, given their accumulated financial assets. A pertinent question may be raised where the bank will lend?

This takes us back to the original model of bank nationalization that the public sector banks and the banking system in India are for serving millions of the countrymen, be they engaged in the farming sector or MSME. Such change in the credit direction ensures the banking system's stability and protection of depositor money and provides an inclusive growth of the economy at the least. The battle to save the banking system should uphold the demand for change in the direction of the credit delivery system from the cronies to the

sectors where it is needed. The absence of non-workmen Directors on the Bank's Board has created a field day for the government and the bankers to use the Board for making dubious investments, as in Adani Group or questionable credit decisions leading to a loss of over 10 lakh crore being admitted written-off amount. In the coming days struggle against privatization will also embrace the demand for overhauling the credit deployment pattern, immediate inclusion of officer-employee Directors in the Bank's Board, and greater surveillance to fill the gap due to the failure of the regulators like SEBI, RBI, or DFS itself.

Stay Well! Stay Safe! Emerge in Struggle!

March on comrades,
#NationAgainstPrivatisation
#StrikeHard
#PowerofUnity
#BankBachaoDeshBachao

ORGANISATION

Circular No. 2023/10

Date:15.02.2023

Dear Comrades,

AIBOC (WEST BENGAL STATE UNIT) CONDUCTED MASS MEETING ON "BANK BACHAO DESH BACHAO" CAMPAIGN AT RANI RASHMONI ROAD, KOLKATA ON 11TH FEBRUARY, 2023.



It has been a historical event and yet another success story encrypted in the page of our united struggle that has seen an agglomeration of around seven thousand citizens of this country echoing their resonating voice against the Government's ill-conceived idea of Privatisation of the Nationalised Banks. The flagship initiative of the AIBOC christened as "Bank Bachao Desh Bachao" has once again shimmered in the sky of Trade Union movement and our resilient pursuit to see the sunset of the draconian Banking Reform Laws has made another small leap towards a blissful but challenging journey that all of us have embarked upon.

It is due to this persistent and nationwide struggle that has forced the Government take a back step in terms of implementation of the heinous agenda and even tabling of the bill in the house of parliament could be kept in abeyance during the consecutive sessions of the Parliament since its announcement.

However, as the intent of the govt. is to hand over all national assets to

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

the crony corporate houses, the heinous move of privatization may at any time resurface and there is a need for keeping the momentum up. Meanwhile, as the idea of Nationalization had been driven through mass upliftment by exploiting all the national resources and channelizing the Bank dependent all around and a sustainable development of the nation, it is imperative that the struggle for restoring Public Sector fabric of the Bank is assimilated with the sentiment of every stake holders and this effort in that aspect bears a paramount significance giving shape of the exertion a mass struggle rather than the struggle of a countable few bank employees.

02. Under this backdrop, AIBOC, West Bengal State Unit organized a mass assembly embracing the theme, **“Bank Bachao Desh Bachao”**, It had been a real jolt on the sky of the protagonists that took off on 11th of February, 2023 from 10.30am. The atmosphere around the Rani Rashmoni Road, Kolkata had been electrifying amidst skyrocketing slogans by the lady comrades followed by some soulful renditions presented by Comrade Somit Hazra, an activist of SBIOA Bengal Circle.

It was an agglomeration of Citizens from all across the segments comprising SHGs, Farmers, Small Traders, Students, Senior Citizens including pensioners, however, the inspiration was to see the street goers stopping their way and looking back ushering hope for addressing their aspirations as well. The assemblage evoked a massive response from the public and the campaign attracted a wide and exhaustive coverage by the print as well as the electronic media.

03. The meeting was presided over by Comrade Krishnendu Mukherjee, The President of the AIBOC



West Bengal State Unit while Comrade Shubhajyoti Chattopadhyay, the Secretary of the State Unit accorded a warm welcome to the dignitaries, leaderships and all the other agglomerates.



04. The mammoth gathering at the Rani Rashmoni Road, Kolkata, witnessed the Trade union leaders from all across the banking industry deliberating their thoughts on the issues close to their hearts and in



no way are isolated from that of the citizens at large. Some of the prominent leaders who had been eloquent on issues include Comrade Dipak Basu, General Secretary, Federation of SBI Pensioners' Associations, Comrade Suprito Sarkar, General Secretary, All India Bank Pensioners and Retirees Confederation, Comrade Dipankar Mukherjee, former Secretary of AIBOC (WBSU), Comrade Sanjay Das, former Secretary of AIBOC (WBSU), Comrade Pradip Biswas, Vice-President, BEFI, Comrade Amaresh Vikramaditya, Secretary, AIBOC (Bihar State Unit), Comrade Deep Prakash Routh from AIBOA, Comrade Sumit Saha from NCBE.

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

Apart from them, two eminent economists and social activists, Dr. Prasenjit Bose and Sabir Ahmad also graced the occasion and deliberated thoughts while extending their wholehearted support in taking forward the movement against privatisation. This surely had added an extra dimension to the protest programme. The undersigned also briefly addressed the gathering on behalf of the Confederation and expressed his resolute assertion that AIBOC is sure to combat all the identified and emerging challenges to safeguard the economy in general and Public Sector Banks and Regional Rural Banks in particular. The undersigned had also been firm in his affirmation that the AIBOC in coming days shall intensify the **“Bank Bachao Desh Bachao”** campaign and take it across the country with more vigour. All the speakers echoed the same voice against the anti-people policy of the government and upheld their resolute stand against the ill-effects of privatisation towards society and economy at large. They eulogised the contributions of the Public Sector Banks to build the edifice of the economy of the country and how it has been providing financial assistance to the poor farmers, labourers, small

traders to save them from the trap of private money lenders. They further criticized the union government for celebrating “AzadikaAmritMahotsab” when the country was reeling with high inflation, high unemployment and income inequality. All leaders as well as the constituents were unanimous in their urge towards intensifying the mass movement by continuing the **“Bank Bachao Desh Bachao”** campaign until the government withdraws its decision of privatisation of Public Sector Banks.

05. The undersigned places on record his sincere appreciation and conveys revolutionary greetings to the leadership of West Bengal State Unit including all the affiliates and comrades, all stakeholders, media who made this meeting a grand success by their active involvement and participation.

Comrades, March On. Victory shall be ours.

With revolutionary greetings,

Sd/-
(Rupam Roy)
General Secretary

ECONOMY & BANKING

We are sharing an excerpt from a statement by the Hon'ble Union Minister of State of Finance, Dr. Bhagwat Karad, in his written reply placed in the Hon'ble lower house of the Parliament. We are confident that our members will make judicious use of the propaganda material in our ongoing struggle against privatisation and to clinch the unsettled financial demands denied on the ground of the alleged lower profitability of the banks. - Editorial Team, Common Bond.

BANKS WROTE OFF RS. 10.09 LAKH CRORE BAD LOAN FROM FY18 TO FY22

All scheduled commercial banks (SCBs) wrote off ₹ 10.09 lakh crore during the past five financial years, from FY17-18 to FY21-22, while during the same period, the Union government has infused ₹ 2.76 lakh crore to recapitalise public sector banks (PSBs), the Lok Sabha was informed.

In a written reply, Dr Bhagwat Karad, minister of state for finance, says, *“As banks write-off only*

those non-performing assets (NPAs) which have been fully provided for, and continue their efforts to recover the dues, write-off exercise does not amount to misappropriation of funds.”

According to the minister, capital is infused by the Union government in PSBs from time to time to supplement their efforts to meet capital requirements. *“Capital amounting to ₹ 2,76,043*

OVERCOME ANGER BY LOVE, EVIL BY GOOD

crore infused in PSBs since FY17-18 has been funded through recapitalisation bonds issued by the government and subscribed by the recapitalised banks for the full amount of capital infused.”

As per Reserve Bank of India (RBI) guidelines and policy approved by banks’ boards, NPAs, including those in respect of which full provisioning has been made on completion of four years, are removed from the balance sheet of the bank concerned by way of the write-off.

Dr Karad says, “Banks evaluate or consider the impact of write-offs as part of their regular exercise to clean up their balance sheet, avail of tax benefit and optimise capital, in accordance with RBI guidelines and policy approved by their boards. As per inputs received from RBI, SCBs wrote off an amount of ₹ 10,09,511 crore during the last five financial years, from FY17-18 to FY21-22.”

However, he clarified that borrowers of written-off loans continue to be liable for repayment, and the process of recovery of dues from the borrower in written-off loan accounts continues. Banks continue to pursue recovery actions initiated in written-off accounts through various recovery mechanisms available and through the sale of NPAs, he added.

Member of Parliament (MP) Dinesh Chandra Yadav had asked whether the government provides funds to the banks with the money earned through tax-payers. He also asked whether the government conducts or has conducted any investigation concerning the increase in debt and the process of writing off loans by the banks.

According to the minister, all PSBs have a well-established vigilance mechanism headed by a chief vigilance officer (CVO) directly appointed

by the government, who keeps a close watch on various aspects of the bank’s functioning.

“As per instructions on the internal control and inspection and audit system in banks, RBI has advised banks regarding fixing of staff accountability aspect of irregularities, and malpractices at all levels.”

In a separate reply, Dr Karad also informed the Lok Sabha that the total exposure to the top 10 borrowers from SCBs is ₹ 12,71,604 crore as reported in the Central Repository of Information on Large Credits (CRILC) database. A large part of this exposure is from PSBs amounting to ₹ 8,10,941 crore; for private sector banks, it is ₹ 3,70,973 crore.

Total exposure to top 10 borrowers summarised in bank-group-wise as on September-2022 as reported in Central Repository of Information on Large Credits (CRILC) database

amount in crore ₹

Bank Group	Total Exposure
Public Sector Banks	8,10,941
Private Sector Banks	3,70,973
Foreign Bank Group	88,998
Small Finance Bank Group-Scheduled	692
Scheduled Commercial Banks	12,71,604

Source: RBI

In December last year, Dr Karad had informed the lower house that, during the past five financial years, PSBs had made an aggregate recovery of ₹ 4,80,111 crore from NPA accounts and the upgradation of NPAs of ₹ 1,45,356 crore. Further, slippages into NPAs have reduced from ₹ 3,38,710 crore for FY16-17 to ₹ 1,44,315 crore for FY21-22, all of which has resulted in decline of NPAs.

“The decline in NPAs can also be due to write-off, which is primarily an exercise undertaken for cleaning of balance-sheet, avail of tax benefit and optimise capital by PSBs, as per RBI guidelines and banks’ board approved policies,” he had said.

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

Common Bond, March -2023

There is intense speculation amongst salaried employees and pensioners alike about choosing between the old and new tax regimes after the presentation of the Union Budget 2023. We are sharing a news item that may help our readers to make an informed decision. The decision to continue with the old tax regime or switch over to the new tax regime is essentially that of the readers.

- Editorial Team, Common Bond.

OLD VS NEW TAX REGIME AFTER BUDGET 2023: WHO SHOULD OPT FOR WHICH INCOME TAX REGIME NOW

Synopsis

Here is an analysis showing the maximum deductions a salaried individual needs to claim in the old tax regime so that the income tax payable remains the same under the revised new income tax slabs announced in Budget 2023.

According to an analysis by EY India, ***“If the maximum exemptions and deductions claimed by salaried individuals is more than ₹ 4.25 lakh for an income above ₹ 15.5 lakh, then he/she may pay less tax in the old tax regime from April 1, 2023.”*** The exemptions and deductions include standard deduction of ₹ 50,000 which is automatically available to a salaried individual. He/she is not required to submit any document to claim standard deduction.

Do note that as the salary levels decrease, the deduction and exemption amount will also decrease, while calculating the break-even.

Here is an analysis showing the maximum deductions a salaried individual needs to claim to remain tax neutral in both the income tax regimes.

Gross income	Maximum deductions (₹) one must claim in old tax regime	Tax payable in old tax regime (₹)	Tax payable in revised new tax regime (₹)
₹ 7.5 lakh	2,50,000	0	0
₹ 10 lakh	3,00,000	54,600	54,600
₹ 12.5 lakh	3,62,500	93,600	93,600
₹ 15 lakh	4,08,332	1,45,600	1,45,600
₹ 20 lakh	4,25,000	2,96,400	2,96,400

Source: EY India

According to the analysis, now the break-even income salary is ₹ 7.5 lakh. In the old tax regime, an individual with a salary income of ₹ 7.5 lakh claiming maximum exemptions and deductions of ₹ 2.5 lakh will be able to bring down the taxable income to ₹ 5 lakh. This makes him eligible for a rebate under Section 87A in the old tax regime and his tax liability becomes zero. If the same individual opts for the revised new tax regime, then he/she can claim a standard deduction of ₹ 50,000 (introduced for the new tax regime), claim a rebate under Section 87A (for income up to ₹ 7 lakh) in the revised new tax regime and will have a zero tax liability.

Similarly, if an individual with a gross income of ₹ 10 lakh opts to claim deductions and exemptions such as Section 80C, 80D, 80TTA, HRA exemption,

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

LTA exemption for a maximum of ₹ 3 lakh, then he/she turns tax neutral in both the tax regimes. If the deductions claimed is less than ₹ 3 lakh, then the new tax regime will be beneficial for such a salaried taxpayer.

Salaried individuals having income of ₹ 12.5 lakh, and is able to claim deductions (Section 80C, 80D, 80E, 80TTA etc.), tax exemptions on HRA, LTA and standard deductions of ₹ 50,000 for maximum totalling upto ₹ 3,62,500, will have a tax payable amount that is same in the old tax regime and

the revised new income tax slabs. If the deduction amount claimed is less than ₹ 3,62,500, then it is better to opt for the revised new income tax regime.

A salaried individual having a gross income of ₹ 15 lakh must claim deductions of more than ₹ 4,08,332 to make the old tax regime beneficial for him/her. If the person has a gross income of ₹ 20 lakh, then the deductions claim must be for more than ₹ 4,25,000 to make the old tax regime beneficial.

CIRCULARS

- 09 dated 04th February, 2023 : Text of UFBU Circular No. 2023/06 dated 3.02.2023 Extending support to the agitation in Bank of Maharashtra, All India Strike on 9th and 10th February, 2023.
- 10 dated 15th February, 2023 : Circular on AIBOC (West Bengal State Unit) Conducting mass meeting on "*Bank Bachao Desh Bachao*" campaign at Rani Rashmoni Road, Kolkata on 11th February, 2023.

JUDICIAL VERDICT

[2022 (175) FLR 18]
(ALLAHABAD HIGH COURT)
SAUMITRA DAYAL SINGH, J.
Writ-C No. 33823 of 2021
July 26, 2022
Between
PUNJAB NATIONAL BANK
and
UNION OF INDIA and others

Industrial Disputes Act 1947-Section 25-F, 33 (1)(b) and 33 (2) (b)-Termination-Award declaring that workman to continue in service till attaining the age of superannuation-Hence, present writ petition-Held Tribunal had set aside the punishment being disproportionate-Objection raised by petitioner

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

regarding proper service of conciliation proceeding-Petitioner wrongly tried to place the burden of proof on the workman to establish that the conditions of section 33 (1) of Act were fulfilled-Only conciliation proceeding had been pending and no industrial dispute had yet been referred for adjudication to the Tribunal-Punitive action was taken just three days prior to the date of retirement which doubted the bona fides of petitioner-Petition being lacking in merit-It is accordingly dismissed. [Paras 17 to 23]

JUDGMENT

SAUMITRA DAYAL SINGH, J.- Heard Mr. Ashok Khare, Senior Advocate assisted by Mr. Sanjai Singh learned Counsel for the petitioner and Mr. Rakesh Pande, Senior Advocate, assisted by Ms. Vishakha Pande, learned Counsel for respondent workman.

2. Present writ petition has been filed by the employer against the award dated 12.07.2021 passed by the CGIT-cum-Labour Court, Kanpur in Industrial Dispute No. 28 of 2017 between the petitioner and its workman Kamlesh Chaturvedi. By order dated 17.05.2017, following reference had been made to the Tribunal:

“Whether the action of the management of Punjab National Bank in dismissing the services of Shri Kamlesh Chaturvedi *vide* order dated 28.07.2016 during the pendency of Conciliation Proceedings and without obtaining express permission of Conciliation Officer in violation of section 33(1) of I.D. Act, 1947 is just, fair and legal? If not, to what relief the workman concerned is entitled to?”

3. The reference has been answered in favour of

the workman. The Tribunal has inferred violation of section 33(l){b) of the Industrial Disputes At, 1947 (hereinafter referred to as the Act). Accordingly, the workman has been declared to have continued in service from 28.07.2016 till attaining the age of superannuation *i.e.* till 31.07.2016.

4. It has been submitted by learned senior Counsel for the petitioner, in the first place, no service had been effected on the petitioner of any notice in conciliation proceedings initiated at the instance of the respondent-workman. In that regard, it has been further pointed out, the respondent-workman was first alleged to have involved himself in a riotous occurrence outside the Bank premises, on 18.03.2016. Occasioned by that, he was suspended, charge-sheet issued and disciplinary proceedings initiated against him. The domestic enquiry was concluded and enquiry report submitted on 19.07.2016. On that, disciplinary authority of the petitioner-Bank claimed to have issued punishment notice giving rise to the order of punishment order dated 28.07.2016. Meanwhile, the respondent-workman had claimed institution of conciliation proceedings on 27.7.2016, by service of notice of strike, on the Conciliation Officer/Assistant Labour Commissioner. To that, learned senior Counsel for the respondent- workman relies on section 20 of the Act that creates a legal fiction causing the effect of conciliation proceedings to have become pending (notionally) as soon as notice of strike was served on the Conciliation Officer. By way of evidence, reference has been made to Annexure SCA1 to the short counter affidavit filed in the present writ petition. Here, it may be noted, learned Counsel for the petitioner has stated, he does not intend to file reply to the short counter affidavit. In that document dated 27.07.2016, it has been recorded as below :

"This is to inform you that Shri Ashish Pandey, President, Indian National Trade Union Congress (INTUC) (U.P.), Kanpur has submitted the above Strike Notice dated 26.07.2016 regarding the above issue. The above Strike Notice has been seized by the undersigned in conciliation and accordingly shall hold conciliation proceedings under section 12 of the Industrial Dispute Act, 1947 in the above mentioned dispute at 11-00 A.M on 29 July, 2016 in this office with a view to bringing about an amicable settlement of the dispute. You are requested to attend the conciliation proceedings in person or through a duly authorized representative with all relevant records and evidence, oral and documentary. Please note that if you fail to attend the proceedings with reasonable cause being shown to me in advance of the aforesaid date, the dispute will be closed proceeded with *ex-parte*.

In this connection your attention is invited to the obligations imposed by section 22(1)(d) (for workmen) and section 22(2) (b)/Section 33 (for employer) of the Industrial Dispute Act, 1947. A copy of Strike Notice dated 26.07.2016 submitted by the union is enclosed for management."

5. Then, upon reference being made, the Tribunal framed the following two issues:

1. Whether the order of dismissal of the services of Shri Kamlesh Chaturvedi dated 28.07.2016 during pendency of conciliation proceedings without obtaining written *permission of the Conciliation Officer is legally valid?*
 2. To what relief the workman is entitled?
6. On its part, the petitioner had filed a written

statement wherein preliminary objection had been raised to the claim of pendency of conciliation proceedings. Relying on Rule 18 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the Rules), it was objected, no notice of conciliation proceedings had been served on the petitioner in the manner prescribed. Then, it was objected, the workman had failed to establish that the management had violated section 33 of the Act:

7. On its part, the workman had placed on record certain letters and communications issued by the Assistant Labour Commissioner to establish pendency of conciliation proceedings by relying on the service of notice on strike on 26.07.2016.

8. Upon consideration of such pleadings and defence and plea set up by the respective parties, the Tribunal had first made observations with respect to the merits of the domestic enquiry proceedings. At the same time, it may be noted here itself, *the* validity or otherwise of the domestic enquiry proceedings was not a subject matter referred to the Tribunal.

9. The only reference made to the Tribunal was to adjudicate if the order of punishment dated 28.07.2016 visited on the respondent workman was violative of section 33(1) of the Act. For adjudication of that issue it was neither relevant nor otherwise required to be examined if the domestic enquiry was vitiated or proper. Thus, the finding of the Tribunal on that issue is plainly extraneous.

10. As to the core issue referred to adjudication, the Tribunal has opined neither provisions of section 33(1)(b) nor provisions of section 33(2)(b) of the Ach were followed. However, in *the* later part of *the* award, the Tribunal had confined its finding to section 33(1)(b) of the Act.

11. It has also found, *the* punishment order was violative of the law, it having been served at the fag end of the career of the respondent workman and it being shockingly disproportionate. Accordingly, it his set aside the dismissal.

12. Having heard learned Counsel for the parties and having perused the record, it is difficult to sustain the challenge set up in the present writ petition. While it may be true that the specific objection raised by learned senior Counsel for the petitioner as to lack of service or summons or conciliation proceedings (raised both by means of preliminary objection and detailed objections) contained in the written statement (filed by the petitioner), has not been squarely answered by the Tribunal, at the same *time*, the objection thus raised runs contrary to the plain statutory scheme. In the first place, in case of any conflict that may be set up *or* claimed to exist between a parent statute (i.e. the Act) and the delegated legislation (i.e. the Rules), the parent statute must always prevail. Then, by way of application of that principle, section 20(1) of the Act reads as below:

“A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock- out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.”

13. Therefore, an inescapable consequence arises on the plain reading of section 20 of the Act. It creates a fiction in law whereby conciliation proceedings must always be deemed to have commenced upon service of notice of strike, on the Conciliation Officer. In face of undisputed evidence brought on record by means of short counter affidavit (which content had been noted above), it is clear, the notice *of* strike was served on the Conciliation Officer on 26.07.2016. There

is also no doubt raised that the Assistant Labour Commissioner (Central), Kanpur, was the Conciliation Officer at the relevant time.

14. Then, section 33(1) and section 33(2) of the Act read as below :

“33. Conditions of service etc. to remain unchanged under certain circumstances during pendency of the proceedings.— During *the pendency* of any Conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (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.”

15. Section 33(1) of the Act uses the phrase “during pendency of any conciliation proceedings’ as a pre-condition for application of that provision of law. As noted above, section 20(1) of the Act applies the fiction of law to infer that the conciliation proceedings became pending in law as soon as notice of strike was served on the Conciliation officer. As a direct *consequence of that* fiction of law, it has to be held that the conciliation proceeding was pending on the date 26.07.2016. Whether the same satisfied the test *of* section 33(1) is another matter to be examined. Therefore, the requirement of Rule 18 of the Rules is of no consequence to decide if conciliation proceeding was pending on 28.07.2016.

16. Section 33(1) of the Act prohibits any unilateral action to be taken against the employee connected to the dispute (that may be pending conciliation), to the prejudice of the workman involved in such dispute, by award of punishment of discharge etc, for misconduct “*connected with the dispute*”.

17. keeping in mind the nature of objections raised by the petitioner before the Tribunal and those, raised in the present writ petition, it cannot be said, the management had raised objection as to non-applicability of section 33(1)(b) of the Act. In the objection was on two counts. First, reliance had been placed on Rule 18 of the Rules. That issue has already been dealt with and answered against the petitioner by means of observations made above.

18. As to the second objection, only this much had been contended that the respondent workman had not led evidence to establish applicability of section 33(1) of the Act. Plainly, the petitioner misconstrued the law and wrongly tried to place the burden of proof on the workman, to establish that the conditions of section 33(1) of the Act were fulfilled. Basically, applicability of section 33 arises upon conciliation proceedings becoming pending.

19. It is a pre-emptive protection granted to the workman in the context of an industrial dispute, to save him from being visited with adverse consequences when he is in a situation of dispute with the employer, or in situation of perceived dispute with his employer. Both in the event of the actual industrial dispute being pending reference as also in the event of the industrial dispute being perceived and conciliation proceedings being pending with respect’ thereto, pre-emptive protection granted by section 33 of the Act would arise. Thus, it appears, the statutory scheme is to place the workman under the protective umbrella of section 33 of the Act, as soon as conciliation proceedings arise.

20. Here, the respondent workman was under the protective umbrella of Section 33 of the Act on

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28.07.2016. Thereafter, the *burden was on* the employer to establish that the workman was not entitled to that protection or that such workman could still be visited with certain adverse consequences or that the consequences being proposed by the employer were not adverse to the workman. Therefore, it was for the employer to seek permission in writing before the Conciliation Officer to save the action proposed or taken by it.

21. It may be emphasized, such application was to be made not before the Industrial Tribunal, but before the Conciliation Officer, since at that stage i.e. on 28.07.2016, only conciliation proceedings had become pending and no industrial dispute had yet been referred for adjudication to the Tribunal That vital step as may have allowed the petitioner to take punitive action against the respondent

workman had never been resorted to. It is also self - apparent that the *petitioner* never sought to avail the benefit of that provision before the Tribunal. The record clearly suggests so. That opportunity was hopelessly lost, by the petitioner.

22. Last, it may be noted, the punitive action was offered at the fag end of the career of the respondent-workman *i.e.* barely three days prior to the date of attaining his superannuation. That was doubtful in bona fides for that reason also.

23. For the reasons and facts noted above, present writ ,petition is found to be lacking in merit. It is accordingly dismissed. No order as to costs.

Petition Dismissed.

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