IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10116 OF 2015

Dr. Satish Bhide, for and on behalf of Municipal Corporation of Greater Mumbai **...Petitioner**

V/s.

Ravindra M. Pande **...Respondent**

Mr. Suresh Pakale, Senior Advocate with Mr. D. R. Kawale and Mr. Santosh Parad for the Petitioner.

Mr. Prakash Devdas i/b Ms. Vidula S. Patil for the Respondent.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 23 JUNE 2026

PRONOUNCED ON: 07 JULY 2026

JUDGMENT:

1) The issue for consideration in the present Petition is whether the Industrial Tribunal could have rejected approval to dismissal action in respect of a municipal employee (*resulting in his reinstatement with backwages*), who is found guilty of corrupt practices only on account of alleged minor deficit in payment of wages under Proviso to Section

33(2)(b) of the Industrial Disputes Act, 1947? Serious misconduct of diverting octroi refund amount of Rs. 4,10,885/- to a third-party account and receiving amount of Rs. 1,50,000/- therefrom for himself is proved against the Respondent and even Industrial Tribunal has upheld the finding of guilt. However, it has still proceeded to reject approval to dismissal action holding that the Municipal Corporation made deductions while paying him wages under Section 33(2)(b) of the Act.

2) The Petitioner-Municipal Corporation has filed the present Petition challenging the judgment and order dated 7 May 2010 passed by the Presiding Officer, Industrial Tribunal, Mumbai, rejecting Application (IT) No. 21 of 2006 filed by the Petitioner under sub-section (2)(b) of Section 33 of the Industrial Disputes Act, 1947 **(ID Act)** for grant of approval to the proposed action of dismissal. Petitioner's Review Application is also rejected by order dated 5 January 2012, which is also the subject matter of challenge in the present Petition.

3) Petitioner is a local body established under the Mumbai Municipal Corporation Act, 1988. Respondent was employed in the services of the Petitioner on the post of Clerk in the Octroi Department since 24 October 1996. While so working, chargesheet dated 21 March 2003 was issued to him alleging that he colluded with Shri. Mohan V. Mohite (Jr. A & A.A.) working in the office of Deputy Chief Accountant (Octroi), Shri. Suryakant Waghmare, an employee of M/s. Yogeshwar Octroi Agency, Shri. J.P. Kumar, the then employee of M/s. Patron Engineering Construction Company, Shri. Mane (Peon) of the same

Company, and Shri. Arif Fodkar, Account holder of Bank Account No. 1428 at the Maratha Mandir Co-operative Bank with an intention to defraud the Municipal Corporation. In the chargesheet, it was alleged that the Respondent had issued cheque in the name of M/s. Dilip Engineering Construction Company for Rs.4,10,885/- towards refund of octroi though the refund claim was lodged by an altogether different entity. The cheque was collected from the counter of Deputy Chief Accountant (Octroi) on 26 February 2002 and the same was deposited on the same day in Account No. 1428 at Maratha Mandir Co-op. Bank, which was in the name of M/s. Dilip Engineering Construction Company. On 6 March 2002, an amount of Rs.1,50,000/- was withdrawn from the said Account. The amount so withdrawn was paid over to the Respondent by Shri. Suryakant Waghmare, an employee of M/s. Yogeshwar Octroi Agency. It was alleged that the Respondent misplaced the claim papers from the office of the Dy. Chief Accountant (Octroi) as well as Dy. A. & C. (Octroi) with a view to destroy the evidence. The fraud was discovered when representative of M/s. Modest Marytime Services Pvt. Ltd. approached the office of the Dy. Chief Accountant (Octroi) for refund claim. After investigations, it was established that the Respondent had masterminded the fraud in collusion with the others.

4) Enquiry was conducted into the charges in which the Respondent participated. After conclusion of the enquiry, the Enquiry Officer submitted his findings holding the Respondent guilty of the charges. The Enquiry Officer recommended punishment of removal from municipal services. Accordingly, a show cause notice dated 30 October 2003 was issued supplying copy of Enquiry Officer's Report to the

Respondent. Respondent submitted reply to the show cause notice on 18 December 2003. The Disciplinary Authority passed order dated 30 November 2006 imposing the punishment of removal from municipal service. It appears that the show cause notice was challenged by the Respondent by filing Complaint (ULP) No. 346 of 2004 before the Labour Court and interim relief was refused. Even the Revision preferred by the Respondent was rejected by the Industrial Court.

5) It is the case of the Petitioner that an attempt was made to serve removal order dated 30 November 2006 on the Respondent by offering an amount of Rs.14,468/- towards one month's wages. It is claimed that the Respondent refused to accept the removal order as well as the wages. Petitioner dispatched the removal order through RPAD and remitted the amount of wages through money-order at the residential address of the Respondent. On account of pendency of industrial dispute, Petitioner filed Application under Section 33(2)(b) of the ID Act being Application (IT) No. 21 of 2006 seeking approval of the Labour Court to the removal order. The Application was resisted by the Respondent by filing Written Statement. Parties led evidence in support of their respective claims. The Industrial Tribunal proceeded to reject the Application for grant of approval to the removal action of the Applicant on the ground that Petitioner had made deductions while making payment of wages and had failed to comply with the provisions of Section 33(2)(b) of the ID Act.

6) Petitioner filed Review Application (IT) No. 1 of 2010 to bring on record the fact that the wages were separately offered to the Respondent through money-order, in which no deductions were made. The Labour Court proceeded to reject the Revision Application by order dated 5 January 2012. Aggrieved by orders dated 7 May 2010 dismissing Application (IT) No. 21 of 2006 and order dated 5 January 2012 dismissing Review Application No. 1 of 2010, the Petitioner-Municipal Corporation has filed the present petition.

7) By order dated 5 July 2017, the Petition was admitted and it was directed not to take any coercive steps against the Petitioner till disposal of the Petition. The Petition is called out for final hearing.

8) Mr. Pakale, the learned Senior Advocate appearing for the Petitioner-Municipal Corporation submits that the Industrial Tribunal has grossly erred in not approving the action of removal despite serious charges being proved against the Respondent. That the Municipal Corporation has complied with the provisions of Section 33(2)(b) of the ID Act by paying the Respondent wages for one month. That the Industrial Tribunal has erroneously considered the salary paid for November 2006 as the wages payable under Section 33(2)(b). That the Municipal Corporation had separately offered wages of Rs.14,468/- to the Respondent vide money-order. That this fact was brought to the notice of the Industrial Tribunal by filing Review Application. However, the Industrial Tribunal refused to review its order on the ground that review of decision on merits is impermissible. That the Industrial Tribunal has accepted the error committed by it but has failed to correct the same.

9) Mr. Pakale further submits that deductions towards provident fund and income tax were rightly made by the Petitioner and even if deduction is found to be erroneous, the Industrial Tribunal ought to have granted an opportunity to the Petitioner to deposit the deficit amount in the Tribunal while making an order of approval. He relies upon judgment of the Supreme Court in ***S. Ganapathy and Ors. vs. Air India and Anr.***[1] in support of his contention that some minor deficit amount deducted towards statutory dues cannot be a reason for not approving the action of removal in the light of proof of extremely serious charges of bribery and corruption. He also relies upon the judgment of this Court in ***Balmer Lawrie & Co. Ltd. vs. Waman B. More and Anr.***[2]

10) So far as findings of the Industrial Tribunal about non-release of amount of increment while paying salary for the month of November 2006 is concerned, Mr. Pakale would submit that increment of the Respondent was withheld by the Competent Authority and that the same was not payable at the time when approval application was filed. That the increment amount was subsequently released on 14 August 2007. That in any case, the salary paid for November 2006 was not towards compliance of provisions of Section 33(2)(b) of the ID Act. Mr. Pakale therefore prays for setting aside the impugned orders passed by the Industrial Court.

11) Mr. Devdas, the learned counsel appearing for the Respondent-employee, supports the order passed by the Industrial Tribunal. He submits that the Courts have repeatedly highlighted the

1 (1993) 3 SCC 429
2 1981 (42) FLR 272

need to strictly comply with the provisions of Section 33(2)(b) of the ID Act. That in the present case, full wages of one month are admittedly not paid to the Respondent in view of deductions made towards provident fund, Income Tax, LIC etc. Additionally, an amount of increment due to the Respondent was also not included in the wages paid to him. That non-payment of full amount of one month's wages automatically vitiates the approval application. That since strict adherence to the provisions of Section 33(2)(b) of the ID Act is not made in the present case, the Industrial Tribunal has rightly rejected the approval application. In support of his contention, Mr. Devdas relies on judgment of the Apex Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Versus. Ram Gopal Sharma & Ors.***[3] and ***Management of Karnataka Agro Industries Corporation Versus. Presiding Officer, Industrial Tribunal***[4]. In support of his contention of impermissibility to deduct any amount from wages payable under Section 33(2)(b) of the ID Act, he has relied on following judgments:

1. ***Sindhu Diwakar Dabholkar vs. B.N. Dongre and Ors.***[5]
2. ***Management of Indian Express and Chronicle Press vs. M.C. Kapur***[6]
3. ***Dinesh Khare vs. Industrial Tribunal***[7]
4. ***Indian Telephone Industries Ltd. and Ors. vs. Prabhakar H. Manjare and Ors.***[8]
5. ***Mahalakshmi Fibres and Industrial Ltd. vs. Presiding Officer, Labour Court and Anr.***[9]
6. ***Muzaffarpur Electric Supply Company Limited vs. S K Dutta***[10]
7. ***Management of Eastern Electric & Trading Co. vs. Baldev Lal***[11]

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3 AIR 2002 SC 643
4 1986 (1) LLJ 178
5 MANU/MH/0354/1987
6 MANU/SC/0273/1973
7 1982 (2) LLJ 17
8 SLP (C) 15054-15055 of 1998 decided on 30 October 2002
9 (2003) 98 FLR 962
10 1970 (2) LLJ 547
11 (1975) 4 SCC 684

12) Mr. Devdas further submits that under Rule 45 of BMC Services (Conduct) Rules, 1989, increment is payable to the employee as a matter of course. That Petitioner did not produce any proof of order withholding the increment. That the increment was subsequently paid after 9 months, which contains inbuilt admission of the increment being due at the relevant time. He therefore submits that there is non-compliance of provisions of Section 33(2)(b) of the ID Act and therefore the Petition deserves to be dismissed.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) In the present case, Respondent is found guilty of charges levelled against him and the Petitioner-Municipal Corporation had issued the order of removal from service of the Respondent on 30 November 2006. However, on account of pendency of proceedings envisaged under Section 33(1) of the ID Act, the Petitioner decided to follow the provisions of sub-section (2)(b) of Section 33. Under sub-section (2) of Section 33, during pendency of proceedings, the employer can discharge or punish the workman for any misconduct unconnected with the dispute by paying him wages for one month and by filing an application to the authority before which the proceedings are pending for approval of the action taken by the employer. Section 33 of the ID Act provides thus:

> **33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—**

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 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 (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 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.
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> (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, 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.

15) It appears that the misconduct alleged and proved against the Respondent had no connection with any dispute pending before the Conciliation Officer, Labour Court or Industrial Tribunal and accordingly the Municipal Corporation proceeded to follow the provisions of Section 33(2)(b) of the ID Act. It claims to have paid/offered one month's wages to the Respondent and also filed an application for seeking approval before the Industrial Tribunal.

16) By order dated 30 November 2006, punishment of dismissal from service was imposed on the Respondent. In addition to payment of wages for November 2006, Petitioner claims to have spent amount of Rs.14,468/- towards compliance with proviso to Clause (b) of sub-section

(2) of Section 33 of ID Act. Simultaneously, Petitioner also filed Application seeking approval to its action.

17) While deciding the approval Application filed by the Petitioner, the Industrial Tribunal has recorded an emphatic finding that the enquiry conducted against the Respondent was fair. For holding so, the Industrial Tribunal has considered the findings of the Labour Court recorded in Complaint (ULP) No. 264 of 2004. That Complaint has been filed by the Respondent, challenging the show cause notice by which punishment was proposed against him. It appears that in that Complaint, the Labour Court recorded a finding of enquiry being fair and proper and that the findings drawn by the Enquiry Officer are not perverse. The Industrial Tribunal has utilised those findings while deciding the approval Application by holding as under:

> Admittedly from the documents filed on record it appears that the opponent had filed the complaint vide Complaint(ULP) No. 246/2004 before the LabourCourt, Mumbai. The Labour Court has held that the enquiry is fair and proper and findings are not perverse. Subsequently the complainant has withdrawn the complaint filed before the Labour Court during the pendency of this approval application. The Labour Court has held that the enquiry conducted against the opponent is fair and proper and in accordance with the principle of natural justice and finding drawn by the Enquiry Officer are not perverse. That Order was not challenged by the opponent but had withdrawn the complaint filed before the Labour Court. No doubt, strict rules of Evidence Act are not applicable to the Labour Court. No doubt, strict rules of Evidence Act are not aplicable to the proceedings before the Labour Court. However no the basis of preponderance of probabilities the evidence has to be assessed by the Labour Court. Therefore the enquiry conducted against the opponent cannot be said to be unfair.

18) Thus, the enquiry is held to be fair and proper, and findings of the Enquiry Officer are not held to be perverse. The only reason why the Industrial Tribunal has refused to grant approval to the removal

action is non-payment of full amount of wages to the Respondent under Section 33(2)(b) of the ID Act. The findings recorded by the Industrial Tribunal in this regard are as under:

> Now only question remains whether the applicant has complied with the requirements of Section 33(2) (b) of the Industrial Disputes Act. From the document C-11 which is a payslip of the opponent for the month of November, 2006 it appears that the applicant had paid the wages to the opponent of Rs.12,797/-. The deduction from his salary has been made regarding NPF Rs. 1490/-,LIC Rs. 257/-, MCB Rs. 5158/-, P.T. Rs. 200/-,I. T. Rs 5000/-, RHL Rs. 648/-, GYM Rs. 26/-. In the pay slip nowhere mentioned by the applicant regarding annual increment of the opponent. The opponent in his evidence has categorically stated that he was entitled to increment which was due in October, 2006. The witness of the applicant has not stated that the applicant had paid the increment to the opponent. One Bank statement is filed from which it appears that for the month of October, 2006 he was paid Rs. 7075/- and in next month of November, 2006he was paid Rs. 7141/. SalaryslipExh. C-11 does not show that increment was paid to the applicant in themonth of November, 2006. Moreover from the salary slip it appears that the applicant had deducted the NPF. LIC, MCB, PT, IT, RHL, GYM. As held by Hon'ble High Court in above referred cases the deduction in respect of P. F. And I.T. Is not permissible while making payment of one month wages. Even the annual increment amount has to be paid in one month wages by the applicant as required while making the approval application in respect of removal action taken against the employee. Any short of payment in respect of removal action taken against the employee. Any short of payment in respect of payment of one month wages at the time of approval it amounts to non compliance of requirement of Section 33(2) (b) of the Industrial Disputes Act. Admittedly the deduction has been made by the applicant while making the payment of one month wages to the opponent. So it is a clear case of non compliance of mandatory provisions of Section 33(2) (b) of the Industrial Disputes Act, The opponent was entitled to get the increment which was duein the month of October, and accordingly he was entitled to receive the increment amount in his one month wages, which was not paid to him at the time of his removal. So considering all these aspects I find that there is non compliance of requirements of Section 33(2) (b) of the Industrial Disputes Act. On this ground alone the application for approval filed bythe applicant is requires to be rejected as the opponent was not paid one month wages as per condition mentioned in Section 33 (2) (b) of the Industrial Disputes Act.

19) The short issue that arises for consideration is whether the Petitioner-Municipal Corporation has complied with the provisions of sub-section (2)(b) of Section 33 of the ID Act. Under Proviso to Clause (b)

of sub-section (2) of Section 33, twin requirements are to be fulfilled viz. (i) payment of wages for one month and (ii) filing of application by the employer before the authority for approval of action. The second requirement is undoubtedly met since Petitioner filed Application (IT) No. 21 of 2006 seeking approval to its removal action. The debate is only about compliance with the first requirement of payment of wages for one month.

20) The Industrial Tribunal has taken into consideration pay slip for the month of November 2006 in which wages of Rs.12,797/- were paid to the Respondent. However, consideration of pay slip for the month of November 2006 by the Industrial Tribunal is a grave error committed by it. The wages for the month of November 2006 are earned by the Respondent in ordinary course since he was in service till 30 November 2006. Therefore the said wages cannot be treated as the one paid towards compliance with the Proviso to Clause (b) of sub-section (2) of Section 33 of the ID Act.

21) Over and above wages for the month of November 2006, Petitioner was required to pay one month's wages to the Respondent towards compliance with provisions of Section 33(2)(b) of the ID Act. The statutory scheme of Section 33 is such that when a dispute is pending and employee is sought to be discharged or dismissed in connection with that dispute, express permission of the Authority before which proceedings are pending is mandatory. On the other hand, if the employee is sought to be discharged or dismissed for any misconduct

unconnected with the pending dispute, such discharge or dismissal can be effected by paying wages of one month and by filing application for approval of action. Therefore, the wages contemplated in the Proviso to Section 33(2)(b) is not the normal salary payable in respect of the month in which dismissal/discharge is effected. Proviso to Section 33(2)(b) contemplates payment of additional wages of one month. The Industrial Tribunal has thus completely misdirected itself in examining compliance with the provisions of Section 33(2)(b) of ID Act.

22) Since consideration of wages paid for the month of November 2006 itself is erroneous, it is not really necessary to go into the issue of deductions made or increment not paid while paying salary for the month of November 2006. The real issue for consideration is whether Petitioner paid or offered to pay additional wages for one month to the Respondent under proviso to Section 33(2)(b) of the ID Act. Petitioner pleaded in Application (IT) No. 21 of 2006 as under:

> The Applicants therefore decided to remove the Opponent Workman from service and accordingly removed the Opponent Workman vide Order No. ChOE/DE/JYD/1071 dated 30.11.2006. The Applicants attempted to service the Opponent Workman with the said removal order at his work place and also offered/paid him amount of Rs.14468/- (Rupees Fourteen Thousand Four Hundred Sixty Eight Only) being the amount of his one monthly wages. The Opponent Workman however didnt turn up and refused to accept the removal order and also the amount of his month's wages. The Applicants, therefore on the very day sent to the Opponent Workman removal order at his residential address at Mumbai by R.P.A.D are annexed herewith and marked at Ex."G" (colly). The Applicants simultaneously remitted by Money Order amount of one month's wages i.e. Rs. 14468/- (Rupees Fourteen thousand Four Hundred Sixty Eight Only) to the Opponent Workman at his residential address at Mumbai as required under Section 33(2) (b) of the Industrial Disputes Act, 1947. A Xerox copy of the postal receipts of money order sent to the Opponent Workman are annexed herewith and marked Ex."H" (colly). The Applicants are

> simultaneously on the same day making this application for approval of action of removal taken against the Opponent Workman.

23) Thus, the Petitioner raised a specific plea before the Industrial Tribunal that it offered/paid to the Respondent an amount of Rs.14,468/- being the amount of his one-month wages. It was pleaded that the Respondent did not turn up and refused to accept both, the dismissal order and one month's wages. It was further pleaded that the removal order was dispatched to the Respondent by RPAD and simultaneously a money-order was sent for one month's wages of Rs.14,468/- at the residential address of the Respondent. Petitioner produced before the Industrial Tribunal postal receipt of the money-order.

24) Perusal of Written Statement filed by the Respondent indicates that the factum of offer/payment of amount of Rs.14,468/- through money-order is not denied by him. The Respondent raised a vague plea that whatsoever payment was made was not full wages for one month. The relevant pleadings in this regard in para-21 of the Written Statement are as under:

> 21. Without prejudice to the above contentions whatever payment is made is not full wages for one month because section 33 (2) (b) requires that no deduction of any sort shall be made from the wages for one month under section 33 (2) (b). The opponent further submits that there is a deduction of Professional Tax of Rs. 200/- and also allowances which the opponent is entitled such as Monthly Medical Assistance, Travelling Subsidy Allowance etc. have not been paid to him in the one month's wages.

Thus, there is no denial about transmission of amount of Rs.14,468/- by money order.

25) Again, in the Affidavit of Evidence of Petitioner's witness- Ms. Surekha S. Walinjkar, following statements was made:

> 7. I say that the applicant therefore decided to remove the Opponent Workman from service and accordingly removed the Opponent Workman vide Order No. Choe/DE/JYD 1071 dtd. 30.11.2006, the applicants attempted to serve the Opponent Workman with the said removal order at his work place and also offered / paid him amount of Rs. 14,468/- (Rupees Fourteen Thousand Four Hundred Sixty Eight only) being the amount of his one monthly wages. The opponent workman however he didn't turn up and refused to accept the removal order and also the amount of his one-month's wages. The applicants simultaneously remitted by Money Order amount of one month's wages i.e. Rs. 14,468/- (Rupees Fourteen Thousand Four Hundred Sixty Eight Only) to the Opponent Workman at his residential address at Nollasopar as required under section 33 (2) (b) of the Industrial Disputes Act, 1947. The applicants are simultaneously on the same day making the application for approval of action of removal taken against the Opponent Workman.

26) However, the above pleading, documentary as well as oral evidence is completely ignored by the Industrial Tribunal while passing the impugned order dated 7 May 2010. There is also no cross-examination of the witness on the aspect of remittance of one month's wages vide money order. Thus, receipt of amount of Rs. 14,468/- towards one month's wages is not disputed by the Respondent.

27) Thus, the finding of non-payment of wages for one month under Section 33(2)(b) of the ID Act recorded by the Industrial Tribunal is in ignorance of evidence produced before it of transmitting wage amount of Rs.14,468/- by money-order. The finding is thus perverse.

28) The Industrial Tribunal put up a premium on errors already committed by it in considering the wages paid for November 2006 while examining the compliance with provisions of Section 33(2)(b) of the ID

Act by dismissing Petitioner's Review Application No.1 of 2010. Petitioner brought to the notice of the Industrial Tribunal the error committed by it and urged it to correct the same by taking into consideration the amount of Rs.14,468/- offered/paid to the Respondent by money-order. However, the Review Application is rejected by the Industrial Tribunal holding that it did not have the power of reviewing the order on merits. The relevant findings recorded by the Industrial Tribunal are as under:

> For the sake of argument it is taken that there is some force into the contentions raised on behalf of the applicant but it is not desirable to touch the merits of the matter while considering the question of review. There is no procedural lucena pointed out by the applicant so as to be rectified by way of review. Further remedy by way of appeal or otherwise is available to the opposite party and they can avail the remedy and can seek redressal in respect of their grievances. However, considering the nature of grievances as tried to be put forth into the matter I am of the view that it is touching to the merits of the matter. So this court is not empowered to touch the merits of the matter while considering the review, and therefore, I conclude that the prayer as made by the applicant is not sustainable.

29) Thus, though the Industrial Tribunal has virtually admitted the mistake in not considering the payment of amount of Rs.14,468/- towards one month's wages, it has refused to review the order on the ground of non-availability of power of reviewing the order on merits.

30) In view of the above discussions, the erroneous order passed by the Industrial Tribunal on 7 May 2010 by ignoring payment of wages of Rs.14,468/- towards compliance with the provisions of Section 33(2)(b) of the ID Act deserves to be set aside. There is no finding recorded by the Industrial Tribunal that any deductions were made while paying wages of Rs.14,468/-. It is not even the pleaded case of the Respondent that any deductions were made while offering the wages of Rs.14,468/-.

He vaguely pleaded in the written statement about deduction of professional tax, and non-payment of monthly medical assistance, travelling subsidy allowance, etc. These deductions are referrable to the wages paid for November 2006 and not to the amount of Rs. 14,468/- transmitted vide money order.

31) Since there is perversity in the orders passed by the Industrial Tribunal on account of ignorance of payment of Rs.14,468/- towards wages, it is not really necessary to go into the issue of effect of deductions made in salary for the month of November 2006.

32) Faced with the above situation, Mr. Devdas has attempted to salvage the situation by orally contending that even in the amount of Rs.14,468/-, deductions were made. However, there are no supporting pleadings in the written statement or any evidence for accepting this contention. As observed above, the Industrial Tribunal has totally ignored the wages of Rs.14,468/- while dismissing the approval application. In absence of pleadings, evidence and adjudication by the Tribunal, Respondent cannot ordinarily be permitted to canvass the plea of deductions even in the amount of Rs.14,468/- directly before this Court. Respondent is found guilty of grave misconduct of forgery and corruption. He has attempted to take aid of some technical loophole for the purpose of escaping the consequences of his gross misconduct. If it is Respondent's case that there is any non-compliance with statutory provision, the same must be pleaded and demonstrated through evidence. Non-compliance with the provisions of Section 33(2)(b) of the ID Act cannot be readily presumed. Once the Petitioner pleaded and

proved payment of amount of Rs. 14,468/- towards monthly wages, the burden shifted on the Respondent to prove that the same did not represent full wages of one month. However, there is neither pleading nor evidence on behalf of the Respondent to establish the same.

33) In view of the above discussion, this Court would have been justified in allowing the Petition without considering the oral submission canvassed by Mr. Devdas about deductions in the amount of Rs.14,468/- paid to the Respondent. However, by way of indulgence, I proceed to consider the submission. It is orally sought to be contended that Rs.500 are paid less even in the amount of Rs.14,468/-. The objective behind provisions of Section 33(2)(b) of the ID Act must be borne in mind. In ordinary course, a municipal employee against whom misconduct is proved can be dismissed or removed from service without paying one months' wages. However, for those municipal employees who fit in the definition of the term 'workman' under the ID Act, additional protection is claimed in the form of Section 33(2)(b). Merely because some unconnected dispute was pending at the relevant point of time, a special protection under Section 33(2)(b) of the ID Act is claimed by the Respondent, who is found to have indulged in corrupt activities. The special protection ensures that the dismissed employee is paid one months' wages and that the employer seeks approval to dismissal action. However, this special protection under Proviso to Section 33(2)(b) cannot be overstretched to such an extent that the same results in a ridiculous situation where the corrupt municipal employee walks back in service with a reward of full backwages. The present case does not involve non-payment of any amount towards monthly wages. Respondent is

attempting to seek an escape from removal action despite his misconduct being proved by contending that some deduction was made in the amount payable to him and that therefore there is non-compliance with the provisions of Section 33(2)(b) of the ID Act. In my view, considering the objective behind the provision, even if the Respondent was successful in establishing that there was some deduction made, the same cannot *ipso facto* be the reason for granting any relief to him when he is found guilty of serious misconduct of forgery and corruption.

34) Courts have recognised the principle of directing the employer to deposit the deficit amount in the Tribunal while granting approval. In ***S. Ganapathy*** (supra), the Apex Court has held that Industrial Tribunal can make an order of approval conditional on making good the deficit amount. It is held in Para 12 of the judgment as under:

> 12. In this extreme situation, the employee, in one sense, gets unemployed as he stands deprived of work with effect from the date of the application for approval, on which date his discharge or dismissal is factually effective. He stands paid his month's wage from such date and this is a wage conceptually for the month following, not double the wage for the month previous to the date of the application. This is the dicta of *Bharat Electronics case* [(1990) 2 SCC 314] . In the other sense the order of discharge or dismissal is incomplete and inchoate, unless approved by the Tribunal and till approval is granted there is no effective break of the employer and employee relationship. This is the dictum of *Tata Iron & Steel Co. case* [(1965) 3 SCR 411, 418] . So, if these two features are grasped, appreciated and blended, it would lead us to the understanding that by passing the order of discharge or dismissal de facto relationship of employer and employee is ended, but not de jure, for that could happen when the Tribunal accords its approval. The employee thus gets factually unemployed from the date of the approval application in the sense that he is not called to work and is paid only a month's wage representing the succeeding month of his unemployment. The relationship of employer and employee is legally not terminated till approval of discharge or dismissal is given by the Tribunal. And this state of affairs was required to be ended within

a period of three months from the date of receipt of such application in terms of sub-section (5) of Section 33, though the lapse of such period would not end the proceeding and such time was extendable by the Tribunal for reasons to be recorded in writing. Now in this fluid state of affairs, the legal character of one month's wage would undergo a change depending on the result of the approval application. If the Tribunal were to refuse the approval, the inchoate and incomplete order of discharge or dismissal would end and the legal character of one month's wages would transform to be the same as before, from which statutory tax deduction could legitimately be made by the employer. In the event of approval of the application by the Tribunal, the legal character of one month's wage would on the other hand be a wage without employment. In the given situation, if the Tribunal were to refuse approval solely on the ground that statutory tax deduction stands in its way to the grant of approval, it could legitimately make its order conditional on making good such payment. This is a field in which interest of both the parties has to be kept in view, for the situation would be precarious for the employer if he were not to deduct tax under Section 4 of the Tax Act and exposing him to the dangers of penalties and prosecution. If approval was to be rejected on merit and otherwise to be rejected for not making complete payment of one month wage, it would thus be just and proper to let the employer deduct the statutory tax deduction from that one month wage, since the relationship of employer and an employee has effectively not been terminated, to meet the eventuality, lest the approval application be dismissed on merits. On the other hand it would be just and proper either for the employer on his own or on the asking of the Tribunal to let the sum representing statutory tax deduction be deposited in the Tribunal for payment to the workman in the event of the approval application being allowed. If these two situations can be saved in this manner there would, in no event be a dismissal of the approval application for payment of wage subjected to statutory tax deduction. Taken in this light one is to view the deduction and the subsequent offer of the respondent to pay the tax deducted, and later deposited before the Tribunal, for payment to the workman. This payment was offered and deposited before the decision on the approval application at a time when the relationship of employer and employee had effectively not been terminated. Here distinction would have to be drawn between statutory deductions like tax deductions and other deductions which the employer considers he can make. In either event, he takes the risk when making a deduction. In the case of statutory tax deductions, his justificatory burden is less, for he has the shelter of the tax law. The case of the other deductions would obviously be on different footing for he may not have any thrust of law. Those may purely be contractual. Those deductions may not be compulsive under any law. The employer makes the deduction in such cases at his peril. But here, in the present situation, there definitely arose a genuine claim to make the tax deduction and doing so the employer projected its case before the Tribunal in that angle. Not a paisa otherwise was kept back. Thus in the facts and circumstances it appears to us that the respondent was able to establish that its deliberate deduction representing the tax from one month's wage was

> not to shorten the wage and cause infraction of Section 33(2)(*b*) but a compulsive deduction to fulfil a statutory obligation by the thrust of the Tax Act.

35) Mr. Pakale has also relied upon the judgment of this Court in ***Balmer Lawrie & Co. Ltd.*** (supra). It is held by the Single Judge of this Court that in the cases where the amount paid, tendered or remitted to the workman falls short of the amount which is ultimately found payable to the workman, but the difference arises because of some difficulty or inability to make the necessary calculation at a particular point of time, which difficulty or inability gets removed subsequently, the employer will be entitled to some consideration if in his application for permission he were to bring these facts and contentions to the notice of the Tribunal and make an offer to deposit the disputed amount before the Tribunal whether along with the application or within such time as the Tribunal may order. It is held in Para 5, 7 and 8 of the judgment thus:

> 5. The provisions of S. 33(2)(*b*) have come to be considered by the Supreme Court as well as by the High Courts in a number of decided cases. The requirements contained particularly in the proviso have been observed to be mandatory requirements and it has been further opined that the payment or tender of wages for one month and the application must be part and parcel of any transaction. Some decisions have indicated that an element of flexility is permissible in considering what would constitute one transaction, but it is quite clear that compliance will have to be correlated with the immediate offer to make payment and the statements made in the application. The requirements postulated by the proviso can never be said to be complied with if the shortfall is either to be made good after being pointed out in the written statement. Even as far as the reply to the written statement in the present matter is concerned. I do not accept the reply as indicative of the employer making an unconditional offer to make good the shortfall. The phraseology in Para 11 of the reply is couched in the manner of an argument or a submission. It suggests that the Tribunal should first give its opinion on the four items in respect of which a claim is made by the workman and at that stage the employer can make good the shortfall, if any. There is no decision brought to my notice which will permit the concept of one transaction being stretched to

include the entire proceeding before the Tribunal in the course of such application for permission.

7. However, a fundamental question does arise. In this case it is impossible to accept the contention of the employer that non-payment of house rent allowance was *bona fide* action on proper advice. However, there may be occasions when the amount paid, tendered or remitted to the workman falls short of the amount which may ultimately be found payable the the workman, but the difference arises because of some difficulty of inability to make the necessary calculation at a particular point of time which difficulty or inability gets removed subsequently. The shortfall may also arise in case where two views are possible on the employer's liability to pay certain amounts to the workman. For example, we may have a case where an employer in Bombay is faced with two conflicting decisions of other High Courts which have taken diametrically opposite views.

8. In such cases, I think the employer will be entitled to some consideration if in his application for permission he were to bring these facts and contentions to the notice of the Tribunal and make an offer to deposit the disputed amount before the Tribunal either along with the application or within such time as the Tribunal may order with a further offer that the same may be paid to the employee and when directed by the Tribunal. In case an item cannot be precisely calculated at or before the time; when the application is made, for example payment in the nature of production or incentive bonus, then the offer may be made, but the precise amount would be required to be deposited or offered to be deposited immediately the calculation is feasible. It is possible in such a case to hold that although the actual amount may not have been paid to the workman immediately, the employer has because of a genuine *bona fide* difficulty not complied with the provision but has indicated his willingness to comply with the same and for that purpose has sought specific directions from the Tribunal whose permission he has been seeking. It is in this limited context only that some relief from the procedural requirements of S. 33(2)(*b*) can be envisaged. It can never be envisaged where the non-payment is of an item such as house rent allowance which very clearly falls within the meaning of wages as defined. Any advice given to the employer that such amount was not payable cannot be accepted as *bona fide* advice, nor can the employer's action on such advice be acceptable as *bona fide*. Even as regards the other items, by not mentioning them in the application for permission the employer has put himself beyond the pale or equitable application of S. 33(2)(*b*). In any case, it was not open to the employer to seek to rectify his mistake at the stage of reply to the written statement. A prudent employer knows from the previous emoluments paid to the employee what that employee had been paid in the previous months and what the various constituents of that payment are. In respect of the admitted amounts payment or tender would be made. In respect of the other amounts if there is any genuine or *bona fide* dispute it must be brought to the notice of the Tribunal at the stage of making the application for permission and an unconditional offer should be made to the Tribunal to

> deposit the said amount and even to pay the same subject to any direction for security or otherwise to be made by the Tribunal. Such an employer may perhaps be entitled to obtain permission despite a shortfall in initial payment.

36) On the other hand, Mr. Devdas has relied on judgment of the Apex Court in ***Jaipur Zilla*** (supra), which hold that the provisions of Section 33(2)(b) of the ID cannot be treated as superfluous. There can be no dispute about this proposition. In a case where termination is effected without paying any amount towards wages, the ratio of the judgment would be relevant. However, if any deficit is noticed in the paid amount, the Tribunal can always direct deposit of the deficit amount while granting approval rather than setting aside dismissal/discharge by adopting hyper-technical approach.

37) Mr. Devdas has relied on judgment in ***Sindhu Diwakar Dabholkar*** (supra), wherein the employer had made certain deductions/adjustment towards alleged past dues payable by the workman to the employer while complying with the provisions of Section 33(2)(b) of the ID Act. In the light of this fact, the learned Single Judge of this Court set aside the order of approval granted by the Industrial Tribunal. Also, this Court has recognised the principle of permissibility to deposit the disputed amount before the Tribunal. In the present case, Petitioner has not deducted any amount towards past dues and therefore, the judgment in ***Sindhu Diwakar Dabholkar*** would have no application to the facts of the present case.

38) In ***Management of Indian Express and Chronicle Press*** (supra) relied upon by Mr. Devdas, the order of termination was set aside

on the ground that conduct of the employee with regard to affairs of Employees Co-operative Society did not entitle the employer to initiate disciplinary action against him. The judgment therefore has no application to the facts of the present case. The judgment of Rajasthan High Court in ***Dinesh Khare*** (supra) has been considered by this Court in ***Sindhu Diwakar Dabholkar.*** In that case, apparently no amount towards wages was paid to the workman under Proviso to Section 33(2)(b) of the ID Act. In the present case, amount of Rs.14,468/- has admittedly been paid to the Respondent and therefore, the judgment has no application to the facts of the present case. Similarly, In ***Indian Telephone Industries Ltd.*** (supra), the case involved non-payment of any wages under Section 33(2)(b) of the ID Act and therefore, the judgment has no application to the facts of the present case. In the judgment of Jharkhand High Court in ***Mahalxmi Fibres and Industrial Ltd.*** (supra), the workman was directed to collect full and final settlement after obtaining necessary clearance, which was not considered as sufficient compliance with provisions of Section 33(2)(b) of the ID Act. In ***Muzaffarpur Electric Supply Company Limited*** (supra), the Patna High Court has dealt with a case where the loan amount was deducted from wages. Therefore, the judgment has no application to the facts of the present case. Lastly, in the judgment of the Supreme Court in ***Management of Eastern Electric & Trading Co.*** (supra), the issue of compliance with provisions of Section 33(2)(b) was not involved and therefore, the judgment has no application to the facts of the present case.

39) In my view, it is also not necessary to go into the issue of non-payment of increment in November 2006 to the Respondent. Non-release of increment is a different dispute and cannot be mixed with compliance of provisions of Section 33(2)(b) of the ID Act. It is Petitioner's case that the increment was not payable as the same was withheld. Thus there was dispute among parties about Respondent's right to draw increment at the relevant time. Under provisions of Section 33(2)(b) of the ID Act, the workman ,needs to be paid what he would have ordinarily received and not what is his entitlement in law. If there existed dispute about release of increment at the relevant time, non-payment of amount of increment cannot tantamount to violation of provisions of Section 33(2)(b) of the Act. Mr. Devdas has relied on judgment of Single Judge of Karnataka High Court in ***Management of Karnataka Agro Industries Corporation*** (supra) in support of contention about non-release of increment. In view of the finding that non-payment of amount of increment is not fatal in the light of existence of some dispute at the relevant time, it is not necessary to discuss the ratio of the said judgment. In any case, Respondent did not plead or prove before the Industrial Tribunal that amount of Rs.14,468/- offered/paid to him did not contain the amount of increment.

40) The Industrial Tribunal ought to have been alive to the situation where Respondent is found guilty of serious misconduct relating to corruption and bribery. The Industrial Tribunal has not interfered with the finding of guilt. This means that Respondent has indeed committed misconduct alleged against him in the chargesheet. While working as Clerk in the octroi department of the Municipal

Corporation, he conspired with other employees of octroi department, employee of octroi agency, employees of a company seeking refund and the account holder in the bank for the purpose of defrauding the Municipal Corporation. When the octroi refund of Rs. 4,10,885/- was due and payable to M/s. Modest Marytime Services Pvt. Ltd. in pursuance of a claim lodged by it, the cheque for refund was issued in the name of an altogether different entity, M/s. Dilip Engineering Constructions Company. The said cheque was deposited in the bank account of M/s. Dilip Engineering Constructions Company at Maratha Mandir Co-op. Bank, from which an amount of Rs.1,50,000/- was withdrawn in cash and was handed over to the Respondent. The Industrial Tribunal has completely ignored such grave misconduct committed by the Respondent and adopted a hyper-technical approach by refusing the approval citing the pretext of some deductions made in salary of November 2006 while ignoring the fact that another set of wages of Rs.14,468/- were offered by money-order to the Respondent. Provisions of Section 33(2)(b) of ID Act are aimed at softening the rigours of dismissal/discharge by providing some solace to the employee. The provision is not aimed at creating technical grounds for setting aside removal/dismissal in respect of the employees who are found to have indulged in grave misconduct. The Industrial Tribunal ought to have appreciated that the hyper-technical approach adopted by it has resulted in a situation where Respondent would claim reinstatement in service with full backwages despite committing grave misconduct of corruption.

41) Considering the above position, I am of the view that the order dated 7 May 2010 passed by the Industrial Tribunal is clearly unsustainable and liable to be set aside. The order rejecting the Review Petition is also required to be formally set aside.

42) The Petition accordingly succeeds, and I proceed to pass the following order:

(i) Order dated 7 May 2010 passed in Application (IT) No.21 of 2006 and order dated 5 January 2012 passed in Review Application (IT) No.1 of 2010 are aside.

(ii) Application (IT) No. 21 of 2006 is allowed and made absolute in terms of prayers made therein and accordingly approval is granted to the action of removal taken against the Respondent by the Petitioner vide letter of removal dated 30 November 2006.

43) The Writ Petition is **allowed** in the above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]