

* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 30th November, 2010
% Judgment Pronounced on: 6th December, 2010

+ **LPA No. 860/2010**

GREAVES COTTON LTD. Appellant
Through: Mr. D.R. Thandani, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Rachna Saxena, Adv. for
Respondent Nos. 1 & 2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

The present intra-Court appeal has been preferred calling in question the legal substantiality and sustainability of the order dated 28th September, 2010 passed by the learned Single Judge in WP(C) No. 4809/2007.

2. The facts lie in a narrow compass. The appellant-petitioner (hereinafter referred to as 'the appellant') invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for

issue of a writ of certiorari for quashment of the order dated 9th May, 2007 passed by the Labour Court whereby the Presiding Officer has allowed an application filed by the workman – the respondent No.3 herein, for setting aside the ex parte award passed on 1st August, 2002. As is evincible from the order impugned, a dispute arose between the workman and the management which resulted in reference of the dispute to the Labour Court for deciding the question whether the service of the workman was legally and justifiably terminated by the management and if so, then what relief he was entitled to and what directions could be necessary in that regard. After the failure of the conciliation, the matter travelled to the Labour Court and before the said Court, the workman remained absent as a consequence of which an ex parte award came to be passed on 1st August, 2002. The workman filed an application for setting aside the ex parte award on 22nd October, 2002. The Labour Court, after adverting to the facts and circumstances of the case, set aside the ex parte award and directed the matter to be dealt with on merits. Be it noted, before the Labour Court, a contention was canvassed by the present appellant that the Labour Court had become *functus officio* after the award was published on 21st February, 2003 and, therefore, could not have entertained the application for setting aside the award after the said date.

3. Being dissatisfied with the order passed by the Labour Court, the appellant preferred the writ petition and reiterated the contention that the Labour Court was under obligation to dismiss the application for setting aside the ex parte award as the same had already been published on 21st February, 2003 and, hence, the Labour Court had lost its jurisdiction to deal with the same. The learned Single Judge adverted to the contention raised by the learned counsel for the parties and came to hold that the jurisdiction of the tribunal has to be seen on the date of the application made before it and, therefore, the contention that the Labour Court had become *functus officio* and had no jurisdiction to entertain the same for recall of the said award was unacceptable. Being of this view, the learned Single Judge concurred with the view expressed by the Labour Court and dismissed the writ petition.

4. Mr. D.R. Thandani, learned counsel appearing for the appellant, submitted that the order passed by the learned Single Judge is sensitively susceptible inasmuch as if the scheme of the Industrial Disputes Act, 1947 (for brevity 'the Act') is appositely understood, it would be graphically vivid that the said Court had become *functus officio* and, therefore, could not have entertained the application for setting aside the ex parte award or recall of the award. It is urged by him that the pendency of the application

before the Labour Court is totally inconsequential for determining the jurisdiction as the acid test is the publication of the award. The learned counsel, to buttress his contentions, has placed reliance on *M/s Lakshmiratan Engineering Works Ltd. v. Asst. Commissioner (Judicial) I, Sales Tax*, AIR 1968 SC 488, *Hindustan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives*, 1971 (3) SCC 124, *Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors.*, 1980 (Supp.) SCC 420, *Sangham Tape Company v. Hans Raj*, (2005) 9 SCC 331, *Jammu Tehsil v. Hakumar Singh & Ors.*, (2007) 1 SCC (L&S) 940 and *Shiv Kumar Sharma v. Santosh Kumari*, (2007) 8 SCC 600.

5. Ms. Rachna Saxena, who has entered appearance on behalf of the respondent Nos. 1 and 2, supported the order passed by the Labour Court.

6. To appreciate the controversy in proper perspective, it is appropriate to refer to certain provisions of the Act. Section 16 deals with the form of report or award. Section 17 of the Act deals with the publication of reports and awards. Section 17A deals with the commencement of the award. At this juncture, we may also refer to Section 20 of the Act which deals with the commencement and conclusion of proceedings. It is also worth noting, sub-section (3) of

Section 20 uses the term 'deemed' pertaining to commencement and conclusion.

7. In this context, we may refer with profit to the decision in *Grindlays Bank Ltd.(supra)*. In the said case, the Central Government Industrial Tribunal passed an ex parte award on December 9, 1976. An application was filed for setting aside the ex parte award on January 19, 1977. The tribunal, by order dated April 12, 1977, set aside the ex parte award. It is worth noting, the award was published by the Central Government in the Gazette of India dated December 25, 1976. While dealing with the power of the Industrial Tribunal to set aside the ex parte award, the Apex Court held as follows:

"5. In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relations between the parties. In other words, the purpose of the Act is to settle disputes between workmen and employers which if not settled, would result in strikes or lock-outs and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the Tribunal constituted under the Act. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both the parties.

6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act

or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

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8. *The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the 'appropriate Government' in this behalf. Part III of the Industrial Disputes (Central) Rules, 1957 makes rules in this behalf. Rules 9 to 30 are the relevant rules regulating procedure. State Governments too have made their own corresponding rules. Except to the extent specified in Sub-section (3) of Section 11 of the Act and the rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in Sub-section (1). The provisions of the Evidence Act, in their strict sense, likewise do not apply to proceedings before the authorities. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.*

After so stating, their Lordships addressed to the concept of *functus officio* in the facts of the case and opined thus:

“14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set

it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17A. Under Section 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

[Emphasis added]

8. If the factual matrix of the said case is appropriately understood, the application was filed before the expiry of 30 days of the publication of the award and, therefore, rightly entertained by the tribunal and, hence, their Lordships expressed the view that the tribunal had jurisdiction to entertain the application and decide the

same on merits. The contention that by the date the tribunal passed the order setting aside the ex parte order it had become *functus officio* did not merit consideration. On the contrary, their Lordships have held that the jurisdiction of the tribunal is to be seen on the date the application is made and not on the date on which it passed the impugned order.

9. In view of the aforesaid decisions and enunciation of law, we have no scintilla of doubt that in the existing factual scenario, as the application was admittedly filed much before the date of passing of the award, the publication thereafter would not make the Labour Court *functus officio*. The decision in *Grindlays Bank Ltd.* (supra) is the authority for the said proposition.

10. We will be failing in our duty if we do not refer to the two decisions, namely, *Sangham Tape Company* (supra) and *Jammu Tehsil* (supra) on which the learned counsel for the appellant has placed immense reliance. In *Sangham Tape Company* (supra), the Apex Court referred to the decision in *Grindlays Bank Ltd.* (supra) and thereafter stated as follows:

“8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award, but having regard to the provision contained in Section 17-A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then the tribunal retains

jurisdiction over the dispute referred to it for adjudication, and only upto that date, it has the power to entertain an application in connection with such dispute.

9. It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award."

11. In view of the aforesaid, it is perceptible that the application in the said case was filed after one month of the publication of the award and, therefore, the Court held the Labour Court had become *functus officio*. In the facts, the said decision is distinguishable.

12. In *Jammu Tehsil* (supra), the ex parte award was passed on 27th February, 1992. The application was filed on 31st March, 1994 to set aside the ex parte award and much before that, the award was already published. Thus, regard being had to the fact situation in the said case, the said decision is of no assistance to the appellant.

13. Consequently, we perceive no merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

December 06, 2010
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