

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

Date of decision: 15th July, 2011

+

W.P.(C) 8129/2008.

EXECUTIVE ENGINEER, CPWD

..... Petitioner

Through: Mr. R. V. Sinha & Mr. A.S. Singh,
Adv.

Versus

GURUCHARAN

..... Respondent

Through: Mr. Varun Prasad, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may 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 |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 2nd May, 2008 of the

Industrial Adjudicator on the following reference:-

“Whether the action of the management of Executive Engineer “S” Division in terminating the services of Sh. Gurucharan, w.e.f. 19.02.1996 and not regularizing his services in the pay scale of ₹ 950-1500 is just, fair and legal? If not, what relief the workman is entitled to.”

and holding the action of the petitioner employer of terminating the services of the respondent workman to be neither just nor fair nor legal and directing the petitioner employer to reinstate the respondent workman with 25% back wages.

2. Notice of the petition was issued and vide order dated 18th November, 2008 which continues to be in force, the operation of the award stayed. Counter affidavit has been filed by the respondent workman. The record of the Industrial Adjudicator has been requisitioned. The counsels for the parties have been heard.

3. The case of the respondent workman was that he was engaged w.e.f. 1st February, 1988 initially for the work of sewerman as a daily rated worker on Work Order basis and worked continuously up to 18th February, 1996 when his services were terminated.

4. The case of the petitioner employer was that the respondent workman was never engaged as a sewerman; that he worked as a contractor and executed the work himself of cleaning and sewer drainage

etc. and thus there was no question of his being in the employment or the employment being terminated.

5. The Industrial Adjudicator vide award dated 17th October, 2006 held that as per the judgment dated 19th October, 2005 of this Court in W.P.(C)7032/2005 titled ***PWD v. Satya Pal***, persons engaged on work order basis and who had worked for 240 days had been treated as daily rated workers; that termination of such daily rated workman requires compliance of Section 25F of the Industrial Disputes Act, 1947. It was thus held that the respondent workman having admittedly worked from 1st February, 1988 to 19th February, 1996, his termination was illegal. It was however held that in view of the judgment of the Apex Court in ***Secretary, State of Karnataka v. Umadevi*** (2006) 4 SCC 1, the respondent workman was not entitled to regularization. It was further observed that since the respondent workman in his pleadings had not insisted upon compliance of Section 25F and further since the respondent workman had averred in his claim statement that he was paid one month's salary at the time of his termination and not pleaded violation of Section 25F, the termination was

in order. Accordingly the respondent workman was held not entitled to any relief.

6. The respondent workman instead of challenging the award dated 17th October, 2006 filed an application before the Industrial Adjudicator for review. Reliance in the said application was placed on Rule 28 of Industrial Disputes (Central) Rules, 1957. It was pleaded that in the statement of claim of the respondent workman filed before the Industrial Adjudicator it was mistakenly typed in para 4 that his services were terminated “with compensation, gratuity, one month’s pay”. It was pleaded in the said application that what was intended to be pleaded in the claim petition before the Industrial Adjudicator was that the services had been terminated without compensation, gratuity, one month’s pay etc. as provided under the Industrial Disputes Act, 1947. Attention was also invited to para 17 of the claim petition where the petitioner employer was pleaded to have violated Section 25F of the Act. It was thus contended that on the basis of such typographical mistake in the claim petition of the respondent workman the Industrial Adjudicator in the award dated 17th

October, 2006 held that there was no grievance of Section 25F having not been complied with. Attention was also invited to the reply of the petitioner employer to the claim petition and to the evidence led before the Industrial Adjudicator from which also it was sought to establish that in fact Section 25F had not been complied with. The respondent workman thus by such an application for review sought correction of the “error arising from an accidental slip and omission in the award” and sought issuance of a corrigendum of the award.

7. The petitioner employer filed a reply to the aforesaid application denying the contents thereof.

8. The Industrial Adjudicator (the Presiding Officer being different from the Presiding Officer who had made the award dated 17th October, 2006) has now in pursuance to the aforesaid application announced the award dated 2nd May, 2008 impugned in this petition holding that since Section 25F had not been complied with while terminating the employment of the respondent workman, the termination was illegal and directing the

petitioner employer to as aforesaid, reinstate the respondent workman with 25% of the back wages.

9. The counsel for the petitioner employer has urged that the Industrial Adjudicator has no power of review and could not have changed the award as has been done.

10. Per contra, the counsel for the respondent workman has besides referring to Rule 28 aforesaid, also referred to *Grindlays Bank Ltd. v. Central Government Industrial Tribunal* 1980(Supp) SCC 420 holding that the Act is a piece of legislation calculated to ensure social justice to both employers and employees and the Industrial Adjudicator has power to pass orders in the interest of justice. It was further held 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; 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.

11. Per contra, the counsel for the petitioner employer has referred to ***Kapra Mazdoor Ekta Union v. Management of M/s Birla Cotton Spinning and Weaving Mills Ltd.*** AIR 2005 SC 1782 laying down that in the absence of provision conferring power of review on the Industrial Adjudicator, either expressly or by necessary implication, the Industrial Adjudicator has no power to re-call or review its earlier award on merits. It was however clarified that the procedural review belongs to a different category.

12. The counsel for the respondent workman has also referred to-

- (i) Judgment of the Division Bench dismissing the appeal against ***Satya Pal*** reported as 2006 VIII AD (Delhi) 810;
- (ii) Order dated 10th November, 2009 of the Apex Court dismissing the SLP against the above;
- (iii) Order dated 20th May 2010 of the Division Bench of this Court in LPA 300/2007 titled ***D.G. (Works) C.P.W.D. v. Baldev Singh***;

(iv) Judgment dated 20th February, 2007 of the Single Judge in ***Baldev Singh*** (supra)

13. It is settled position in law (See ***CTO v. Makkad Plastic Agencies*** (2011) 4 SCC 750 CIT, ***Vadodara v. Steelco Gujarat Ltd.*** (2003) 12 SCC 731) that a Court or a Tribunal in which power of review is not expressly vested, has no such power. There is admittedly no provision in the Industrial Disputes Act vesting power of review in the Industrial Adjudicator. What needs to be thus adjudicated is whether the application moved by the respondent workman before the Industrial Adjudicator in the present case could be said to fall within Rule 28 (supra). The said Rule is as under:-

“28. Correction of errors. The Labour Court, Tribunal, National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.”

14. A bare reading of the application moved by the respondent workman shows that the typographical mistake which was averred, was not in the award but in the statement of claim of the respondent workman filed before Industrial Adjudicator. It was in fact the case of the respondent

workman that the said typographical mistake in para 4 of the claim petition was not fatal in as much as from reading of other parts of the claim petition and the evidence in other material on record it was abundantly established that it was the admitted position that the provisions of Section 25F had not been complied with. It was thus a case of the Industrial Adjudicator having failed to read the pleadings and the evidence as a whole and effectively and a case of mis-appreciation of evidence. The same could not, by any stretch of imagination fall within the definition of a “clerical mistake or error arising from an accidental slip or omission” within the meaning of Rule 28 (supra). I have therefore no doubt whatsoever in my mind that the Industrial Adjudicator in the present case had no right to virtually re-write the award as has been done in the present case or to convert the award from that of ‘no relief’ to the respondent workman to that of “relief of reinstatement with 25% of the back wages” to the respondent workman. Even if the Industrial Adjudicator had in the award dated 17th October, 2006 committed a mistake in holding that the respondent workman had not pleaded violation of Section 25F, the remedy of the respondent workman was before this Court by way of a petition under Article 226 of the

Constitution and not before the Industrial Adjudicator. ***Grindlays Bank Ltd.*** is a case of setting aside of an *ex parte* award. The observations therein are thus of no avail. I may however notice that the Supreme Court in ***M/s Sangham Tape Co. v. Hansraj*** AIR 2004 SC 4776 has deferred from the view in ***Grindlays Bank Ltd.*** and held that an Industrial Adjudicator has no power to set aside *ex parte*, after 30 days of publication of award.

15. The subsequent award dated 2nd May, 2008 is thus to be set aside/quashed.

16. However the aforesaid would not be the end of the matter. The Industrial Adjudicator having entertained the application of the respondent workman and having allowed the same, upon such action of the Industrial Adjudicator being quashed, the respondent workman would now become entitled to impugn the award dated 17th October, 2006 before this Court by filing a writ petition. The same would multiply the litigation. It is the duty of this Court, to in exercise of powers under Article 226, make an attempt to bring the litigation to an end. There is no doubt whatsoever that the action of the petitioner employer of termination of services of the

respondent workman as per the judgment of this Court in *Satya Pal* (supra) was illegal. It is thus felt that rather than relegating the respondent workman to pursue another round of litigation, and having regard to entirety of the facts relief should be granted at this stage.

17. The claim of the respondent workman for regularization has not been upheld; even if the respondent workman is to be reinstated, his services can again be terminated by complying with Section 25F. Considering the long time which has elapsed, it is deemed expedient to grant the relief of compensation in lieu of reinstatement to the respondent workman. In the light of all the aforesaid factors, compensation of Rs.1 lac is deemed to be expedient. However, payment of such compensation is made conditional upon the respondent workman accepting the same in full and final settlement of all his claims whatsoever against the petitioner employer.

18. The petition is thus disposed of with direction to the petitioner employer to within eight weeks of today pay/tender a sum of Rs.1 lac to the respondent workman in terms of above. If the amount is not so paid within eight weeks, the same shall incur interest at 18% per annum; upon

acceptance of such amount by respondent workman, he shall be left with no claims whatsoever against the petitioner.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 15, 2011

pp(corrected and released on 3rd August, 2011).