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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th November, 2015

+ W.P.(C) 5725/2012 & CM No.11720/2012

SARDARAM BHATTI Petitioner

Through: Ms.Neelam Tiwari, Advocate for
Mr.Rajiv Aggarwal, Advocate

versus

**THE MANAGEMETN OF MOOLCHAND KHARAITI RAM HOSPITAL &
AYURVEDIC RESEARCH CENTRE, LAJPAT NAGAR III NEW DELHI**

..... Respondent

Through: Mr.M.Y.Khan, Advocate

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition under Article 226 of the Constitution of India is to the order dated 22.05.2012 passed by learned Presiding Officer, Industrial Tribunal-I, Karkardooma Courts, Delhi in OP No.16/10 whereby the application moved by the respondent for review of the order dated 03.02.2011 was allowed.

2. The background facts succinctly stated are as follows:

The petitioner was appointed as a Ward boy with effect from 29.06.1985 vide appointment letter dated 08.07.1985. He was issued a chargesheet on 07.04.2004 whereafter a letter dated 21.04.2004 was issued by the respondent-management that domestic enquiry shall be instituted against the petitioner and Mr.Anil Sehgal was appointed as enquiry officer. Thereafter, on 30.08.2005 another letter was issued by the management informing that Mr. N. K. Gupta was appointed as enquiry officer. During the enquiry proceedings, the petitioner requested the management that he should be allowed to bring Sh.Vijender Singh, General Secretary of the Moolchand Karamchari Union as defence assistant but his request was declined. On 21.01.2006 the enquiry officer submitted his report holding petitioner guilty of the charges levelled against him. On 06.09.2006, the respondent-management filed approval application under Section 33(2)(b) of Industrial Disputes Act, 1947 (hereinafter referred as 'ID Act'). On 12.03.2007, the Tribunal framed the following issues:-

- “1. Whether the applicant/management held a proper and valid enquiry?
2. Whether the respondent/workman has committed the alleged misconduct?
3. Whether the applicant/management has complied with the provisions of Section 33(2) of the Industrial Disputes Act?
4. Relief.”

3. Enquiry issue was treated as preliminary issue on which both the parties led their respective evidence. The Tribunal decided the preliminary issue in favour of the petitioner-workman observing that rejection of the demand of the workman to bring Sh Vijender Singh, General Secretary of Moolchand Karamchari Union as his defence assistant had no justification. The interim award dated 03.02.2011 was published on 12.05.2011 and the same was enforceable from 10.06.2011.

4. On 26.05.2011, the management filed an application for review of the order dated 03.02.2011 under Rule 28 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred as ‘Rules’). The application was contested by the petitioner. Vide order dated 22.05.2012, the impugned order was passed whereby the tribunal allowed the review application of the respondent and the interim award dated 03.02.2011 was recalled treating the same as nonest and it was ordered that the preliminary issue will be decided afresh after hearing arguments from the parties.

5. Feeling aggrieved, the present writ petition has been filed by the petitioner primarily on the ground that review application was not maintainable under Rule 28 as the order dated 03.02.2011 does not suffer from any clerical mistake or error much less arising from any accidental slip or omission.

6. Learned counsel for the petitioner submitted that the impugned order is contrary to the law declared by Hon’ble Supreme Court in ***Kapda Mazdoor Ekta Union vs. Management of Birla Cotton Spinning & Weaving Mills*** (2005) 13 SCC 777. Counsel further urged that there was no procedural illegality in the interim order dated 03.02.2011 which could have vitiated the proceedings or could have called upon the Industrial Tribunal to review/recall the interim award/order dated 03.02.2011. Merely because the order dated 03.02.2011 was wrongly termed as interim award and was sent for publication to the appropriate government, it cannot be said that there was any such procedural illegality which could have vitiated the proceedings. Vide order dated 03.02.2011, the Industrial Tribunal had adjudicated the rights of the petitioner as well as the respondent on merits. Review on merits of the case is impermissible. No prejudice has been caused to the respondent by the use of expression

‘interim award’ instead of order. As such, the impugned order is liable to be set aside.

7. On the other hand, learned counsel for the respondent submitted that the petitioner-workman committed severe misconduct for which a chargesheet dated 07.04.2004 was issued to him and he was asked to submit his explanation to the said chargesheet. The petitioner submitted a written explanation dated 12.04.2004 but the same was not found satisfactory. Hence, the respondent-management initiated domestic enquiry wherein he was found guilty of the charges as levelled against him. As abundant caution, the respondent-management filed an approval application under Section 33(2)(b) of the Act. The Tribunal passed an interim award dated 03.02.2011. While deciding the preliminary issue and while doing so, it committed illegality because the interim and final award could only be passed in the reference proceedings pending under Sections 10, 12(5) of the Act and not in the approval application. Not only that, the Tribunal sent the interim award to the appropriate government for its publication. The Tribunal, on being apprised of the mistake committed by it, corrected the same as the matter is still subjudice. The scope of assessing fairness and validity of domestic enquiry under Section 33(2)(b) of ID Act is very limited and only prima facie view has to be taken in assessing the fairness and validity of the domestic enquiry. Therefore, it cannot adjudicate or appreciate the evidence given by the parties before the enquiry officer. The impugned order does not require any interference by this Court and as such, writ petition is liable to be dismissed.

8. The core question for consideration in this writ petition is whether the Tribunal could have reviewed the order dated 03.02.2011 passed by it. The application dated 26.05.2011 was moved by the respondent-management under Rule 28 of ID Act (Central) Rules, 1957 for review of interim award dated 03.02.2011 which reads 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.”

9. The question, therefore, for consideration is whether there was any clerical mistake or error arising from an accidental slip or omission in the award. The submission of learned counsel for the petitioner is that merely because instead of referring the order as an interim order termed it as interim award and therefore sent for publication to appropriate government, it cannot be said that there was any such procedural illegality which warranted review of the order. Further submission of counsel is that by order dated 03.02.2011 the rights of the parties have been adjudicated on merits, therefore, review on merits is impermissible in law. Reliance was placed on ***Kapda Mazdoor Ekta Union*** (supra). In that case dispute arose

between the workman and the management which was referred to the Industrial Tribunal. While the reference was pending before the Industrial Tribunal, a settlement was arrived at between the parties before the conciliation officer. In terms of the settlement reached between the parties, an application was moved before the Industrial Tribunal which was seized of the dispute for passing an award in terms of the conciliation settlement. The application made by the management was opposed by the appellant-union on various grounds. The union filed a writ petition before this Court which was dismissed. The SLP was dismissed directing the Industrial Tribunal to dispose of the question as to the validity and binding nature of the settlement. The Industrial Tribunal heard the parties and passed a detailed award which was published by the appropriate government. Thereafter an application was moved by the union for affording it an opportunity to prove that the settlement was not fair and just. The subsequent Tribunal allowed the application and framed another issue as to whether the settlement was just and fair. The management preferred a writ petition for quashing of this order before the High Court which was allowed. The matter went to Hon'ble Supreme Court. One of the questions for consideration was whether the Industrial Tribunal was competent to recall the order. Hon'ble Apex Court noted that the High Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review, the tribunal could not review its earlier award and for holding this view, reliance was placed on *Dr.(Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P) and Ors.* 1987 (32) ELTB and *Patel Narshi Thakershi and Ors. V. Pradyumansinghji Arjunsingji* AIR 1970 SC 1273 wherein it was held that power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant-union in order to get over this legal hurdle, relied upon the judgment in *Grindlays Bank Ltd.*(supra). In that case the Tribunal made an ex-parte award. Respondents applied for setting aside the ex-parte award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex-parte award on being satisfied that there was sufficient cause within the meaning of Order IX Rule 13 of the Code of Civil Procedure. That order was upheld by the High Court and thereafter in appeal by the Apex Court. Relying upon this judgment, it was urged that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. This submission was rejected as misconceived by observing that this submission does not take note of the difference between a procedural review and a review on merits. It was observed that this Court in *Grindlays Bank Ltd.*(supra) clearly highlighted this distinction when it observed:-

“Furthermore, different considerations arise on review. The expression ‘review’ issued in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court of Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal”.

10. Applying these principles, it was held:

*“It is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In **Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.** (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.”*

11. On facts, it was held that the recall of the award of the Tribunal was sought not on the ground that in passing the award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceedings itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. The recall or review sought was not a procedural review but a review on

merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

12. Similar question came up for decision before a single Judge of this Court in ***Bhagwati Printers Pvt. Ltd. vs. Ram Chander Singh*** 2013 VIII AD (Delhi) 311. In that case, the Labour Court had passed an award whereby the termination of the respondent and 14 other workmen was held to be illegal but in lieu of reinstatement and backwages, lump-sum compensation was awarded. Thereafter an application under Rule 28 of ID Rules was moved for correcting the accidental slip and directing reinstatement of the respondent with lump-sum compensation in lieu of backwages on the ground that the respondent had already joined the duties with the petitioner pursuant to the statement made by the managing director of the company and this fact was inadvertently not brought to the notice of the Trial Court and thus, was not even considered. The Trial Court taking recourse to Rule 28 of the ID Rules held that an accidental slip or omission took place and, therefore, if the award was not corrected, it would cause gross injustice to the respondent and thus an order was passed directing the petitioner to reinstate the respondent and in lieu of backwages lump-sum compensation was awarded. Challenging the order writ petition was filed. One of the issue before the court was whether non consideration of the factum of respondent rejoining the duty amounted to accidental slip or omission by the Court which could have been corrected in an application under Rule 28 of the ID Rules. While dealing with this issue, it was observed as under:-

10. Regarding the next issue whether the Trial Court could have modified the award dated 7th May, 2008 stating it to be an accidental slip or omission, it may be noted that the issue as to what errors can be corrected by a Court under Section 152 CPC came up for consideration before the Hon'ble Supreme Court in Jayalakshmi Coelho vs. Oswald Joseph Coelho (2001) 4 SCC 181. It was held:

13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made:

The basis of the provision under Section 152 CPC is found on the maxim actus curiae neminem gravabit i.e. an act of court shall prejudice no man (Jenk Cent-118) as observed in a case reported in Assam Tea Corpn. Ltd. v. Narayan Singh: AIR 1981 Gau 41]. Hence, an unintentional mistake of the court which may prejudice the cause of any party must be rectified. In another case reported in L. Janakirama Iyer v. P.M. Nilakanta Iyer : AIR

1962 SC 633 it was found that by mistake the words "net profit" were written in the decree in place of "mesne profit". This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In *Bhikhi Lal v. Tribeni*: AIR 1965 SC 1935 it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in *Master Construction Co. (P) Ltd. v. State of Orissa* : AIR 1966 SC 1047 : (1966) 17 STC 360] it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or rearguments on merits are required for such rectification of mistake. In a case reported in *Dwaraka Das v. State of M.P.* (1999) 3 SCC 500 this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 CPC the interest pendente lite was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions under Section 152 CPC by the courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in *Thirugnanavalli Ammal v. P. Venugopala Pillai* : AIR 1940 Mad 29 : (1939) 2 MLJ 751 and relied on *Maharaj Puttu Lal v. Sripal Singh*: AIR 1937 Oudh 191 : ILR 12 Luck 759. Similar view is found to have been taken by this Court in a case reported in *State of Bihar v. Nilmani Sahu*: (1996) 11 SCC 528 where the Court in the guise of arithmetical mistake on reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of *Bai Shakriben v. Special Land Acquisition Officer* : (1996) 4 SCC 533 this Court found omission of award of additional amount under Section 23(1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

14. As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the

ends of justice to enable the court to rectify such mistake. But before exercise of such power the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise, that is to say, while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. There should not be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention.

11. Rule 28 of the ID Rules reads 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.

12. A perusal of the Rule 28 ID Rules shows that the same is para materia to Section 152 CPC. In view of the law laid down by the Supreme Court it is thus apparent that under Section 152 CPC only an arthematic mistake i.e. a mistake of calculation, a clerical mistake i.e. a mistake in writing or typing can be corrected.”

13. Things are substantially the same in the instant case. A perusal of application for review moved by the management goes to show that the review of the order was sought not only on the ground that no interim award could have been passed and only an interim order was required to be passed pertaining to the fairness of domestic enquiry but the review was also sought on merits on the ground that while deciding the approval application, the Court was required to see the procedure followed by the enquiry officer in holding domestic enquiry but the Court was not to re-appreciate the evidence, as recorded by the enquiry officer. The Court was also required to see whether dismissal is not for victimisation and unfair labour practice. The management was not an industrial establishment. As such, the review was sought not only on the procedural defect whereby instead of passing an interim order, an interim award was passed but also on merits of the case which in view of the ratio of the judgment of the Apex Court was impermissible in law.

14. That being so, the impugned order dated 22.05.2012 is set aside to the extent of treating the order dated 03.02.2011 as nonest and for deciding the issue afresh. It is clarified that the order dated 03.02.2011 will be considered to be an interim order instead of an interim award as termed by the learned Industrial Tribunal. With these observations, the petition stands disposed of. Pending applications, if any, also stands disposed of.

(SUNITA GUPTA)
JUDGE

NOVEMBER 30, 2015
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