

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.792 OF 2014**

Shri Remio A. Rodrigues,
Major, residing at socolo waddo
Arambol, Pernem Goa ... Petitioner

Versus

M/s. Goa Glass Fibre Ltd,
Binani Buildings, 38,
Strand Road
Calcutta, Factory at
Colvale, Bardez, Goa ... Respondent

Ms. Namrata Gawde, Advocate for the petitioner.

None for the respondent, though served.

Coram :- M. S. SONAK, J.

Date :- 28th April, 2017

ORAL JUDGMENT :

Heard Ms. Namrata Gawde for the petitioner. None for the respondent, though served.

2. The challenge in this petition is to the order dated 18/08/2014, by which the learned Presiding Officer of the Industrial Tribunal has dismissed the petitioner's application for recall of a witness for the purpose of cross-examination.

3. Ms. Gawde submits that under Section 11(3) of the Industrial Disputes Act, 1947 (the said Act), the Tribunal has power to recall a witness. She relies upon the decision of the Division Bench of Madhya Pradesh High Court in the case of ***Karam Chand Thapar and Brothers (Pvt) Ltd Vs. Workmen of North Chirimiri Colliery***; (1968)2 LLJ 261, in support of her submission that the Tribunal has powers under Section 11(3) of the said Act to recall a witness. She submits that in this case, it was on account of oversight on her part that some questions remained to be posed to the witness, who claimed that he was authorised to depose on behalf of the respondent Company and also claimed that he was authorised to initiate disciplinary proceedings against the petitioner. She submits that she had also filed an affidavit in support of the application for recall. She submits that the Presiding Officer, with respect, has adopted hyper technical approach in the matter. She submits that she has only a few questions to pose as indicated in the application for recall. She submits that in case the witness is not recalled and she is not permitted to pose such questions to witness, it is possible that the case of the petitioner/applicant is prejudiced and it is taken that the applicant has admitted that the witness had the necessary authority to initiate disciplinary proceedings against the applicant. She submits that there is no question of any serious

prejudice to the witness, if the witness is recalled. She submits that this is not a case where an application for recall is in order to fill in the lacunae. She points out that the application for recall was made within a reasonable period. For all these reasons, Ms. Gawde submits that the impugned order is liable to be set aside and the application for recall may be allowed.

4. To the query as to whether the witness Mr. K. V. S. Krishnakumar is available in Goa, Ms. Gawde states that the witness resides in Goa and, therefore, will be available for cross-examination in case, the application for recall is granted. She points out that Mr. Krishnakumar is appearing in another matter as a witness on behalf of the respondent.

5. Upon due consideration of the submissions made by Ms. Gawde and upon perusal of the impugned order and material on record, I am satisfied that the application for recall is required to be allowed in the peculiar facts and circumstances of the present case. The Division Bench of the Madhya Pradesh High Court in the case of ***Karam Chand Thapar and Brothers (Pvt) Ltd*** (supra), has held that subsection (3) of Section 11 of the said Act confers upon the Tribunal same powers as are vested in a Civil Court under the Civil Procedure Code in the matter of enforcing

the attendance of a person and examining him on oath. This power, includes the power to recall a witness.

6. An almost blanket proposition in the impugned order that the mistake of an Advocate can never be a ground for recall of the witness, cannot be accepted. The learned Presiding Officer of the Industrial Tribunal is right that the power of recall must be sparingly exercised and that too for a good reason. However, to say that such power can never be exercised on the ground of mistake of an Advocate is a proposition rather widely stated. Ms. Gawde has referred to the decision in the case of ***Jodhpur Gums & Chemicals Pvt. Ltd Vs. Punjab National Bank and others;*** AIR 1999 Rajasthan 38, where the power of recall of a witness was exercised where there was an oversight of the Advocate of the plaintiff in the matter of full and complete examination of the witness.

7. In the facts of the present case, all that the petitioner, through his Advocate seeks to do, is to cross-examine the witness as regards the authority to take action against the employees. The witness in this case, had submitted that he had necessary authority. Ms. Gawde points out that the factum of making of such statement escaped her and, therefore, no questions were posed as

regards this aspect. Only a general suggestion was put to the witness that he lacks the authority. In a situation of this nature, considering that the petitioner is a workman, who is pitted against the employer Company, I am satisfied that an additional opportunity, as applied for by the petitioner, was required to be granted. The impugned order nowhere states that the cross-examination on this point would be irrelevant or impermissible. The impugned order proceeds on the basis that the Tribunal has no power to recall and in any case, the power to recall cannot be exercised on the ground of the mistake of the Advocate for the petitioner. Both these grounds, appear to be widely stated and, therefore, cannot be accepted as a rule. No doubt, existence of power is one thing and its exercise quite another.

8. Therefore, in the facts and circumstances of the present case, the impugned order dated 18/08/20014 is set aside. The petitioner's application for recall of Mr. K. V. S. Krishnakumar for limited cross-examination, as indicated in the application for recall, dated 28/04/2014, is allowed. Ms. Gawde assures this Court that the cross-examination will be concluded in one session and that no unnecessary adjournments will be applied for. The statement is accepted.

9. Rule is, accordingly, made absolute in terms of prayer clause (a). There shall be no order as to costs. Ad interim relief staying the proceedings before the Tribunal is hereby vacated.

10. Parties to appear before the Tribunal on 15/05/2017 at 10.00 a.m. On which date, the petitioner to produce the authenticated copy of this order before the Tribunal. In case there is no appearance on behalf of the respondent, the Tribunal to issue fresh notice to the respondent. The Tribunal to fix some convenient date and thereafter, proceed to dispose of the matter in accordance with law and on its own merits.

11. All concerned to act on basis of authenticated copy of this order.

SMA

M. S. SONAK, J.