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

% *Date of Decision : 15th May, 2018*

\+ **W.P.(C) 9216/2015**

SUNIL SYAL (PROPRIETOR) ..... Petitioner
Through: Mr. Gulshan Chawla and Mr. R.K. Sharma, Advs.

versus

KAMLESH KUMAR VERMA & ORS ..... Respondents
Through: Mr. Rajat Sharma, Adv. for R1 to R5.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India assailing the order dated 02.01.2014 and 08.07.2015 passed by the Authority under Minimum Wages Act, 1948 (in short 'MW Act') against him.

2. The relevant facts giving rise to the filing of the writ petition are that the Authority under MW Act, on applications of five workmen/respondents through their union claiming difference in the minimum wages and the wages paid, found that the petitioner has not paid the minimum wages to the respondents as per the rates fixed by the Government of NCT of Delhi for

their categories. Resultantly, by an order dated 02.01.2014, the Authority under MW Act has awarded the respondents the difference of the minimum wages and the wages actually paid for the period from 01.06.2011 to 30.11.2011 as per the following terms:-

Sr. No.	Name & Designation	Period	Minimum wages fixed by the Govt. (p.m.)	Received wages by the applicants (p.m.)	Amount of arrears/less payment (p.m.)	Total due amount
1.	Sh. Kamlesh Kumar Verma Field Man	01.06.2011 to 30.11.2011	Rs.8112/-	Rs.6192/-	Rs.1920	Rs.1920 X 6= 11520/-
2.	Sh. Balram Shah s/o Sh. D.B. Shah, Peon	01.06.2011 to 30.11.2011	Rs.6422/-	Rs.4150/-	Rs.2272/-	Rs.2272 X 6 =13632/-
3.	Sh. Abhay Singh s/o Late Sh. Chandrabhan, Office Clerk	01.06.2011 to 30.11.2011	Rs.8112/-	Rs.4820/-	Rs.3292/-	Rs.3292 X 6= 19752/-
4.	Sh. Swaroop Singh s/o Late Sh. Grimunshi Ram, Store keeper	01.06.2011 to 30.11.2011	Rs.8814/-	Rs.7975/-	Rs.839/-	Rs.839 X6= 5034/-
5.	Sh. Surender Kumar S/o Sh.Ram Awadh, Field Man	01.06.2011 to 30.11.2011	Rs.8112/-	Rs.4320/-	Rs.3792/-	Rs.3792 X 6 = 22752/-
		Total Rs.72,690/- (Seventy Two Thousand Six Hundred Ninety Only)				

3. The Authority under MW Act has directed the petitioner to pay the above said amount along with costs within 30 days.

4. Subsequently, the respondents filed an application on 16.01.2014 claiming that they should be paid six times of the arrears in order to do complete justice to them.

5. The Authority under MW Act after hearing both the parties, however, noticed that in the order dated 02.01.2014, inadvertently, the arrears of the wages have been calculated only for one month instead of six months and thus substituted para No.9 of the Award and increased the amount as under:-

Sr. No.	**Name & Designation of claimants**	**Period**	**Minimum wages fixed by GNCT of Delhi (p.m.)**	**Wages received**	**Less wages per months**	**Total due Payable**
1.	Sh. Kamlesh Kumar Verma Field Man	01.06.2011 to 30.10.2011	Rs.8112/-	Rs.6192/-	Rs.1634 X 5 = 8170	Rs.8170 X 6= 49020/-
		November 2011	Rs.8112/-	Rs.6192/-	Rs.1920 X 1=1920	Rs.1920 X 6 =11520/-
						Total amounting to Rs.60,540/-
2.	Sh. Balram Shah, Peon	01.06.2011 to 30.10.2011	Rs.6422/-	Rs.4150/-	Rs.2272 X 5 =11360/-	Rs.11360 X 6 =68160/-
		November 2011	Rs.6422/-	Rs.4150/-	Rs.2506 X 1 = 2506	Rs.2506 X 6= 15036/-
						Total amounting to Rs.83,196/-
3.	Sh. Abhay Singh, Office Clerk	01.06.2011 to 30.10.2011	Rs.8112/-	Rs.4820/-	Rs.3006 X 5 = 15030/-	Rs.15030 X 6 = 90180/-
		November 2011	Rs.6422/-	Rs.4820/-	Rs.3292 X 1 = 3292	Rs.3292 X 6 =19752/-
						Total amounting to Rs.1,09,932/-

4.	Sh. Swaroop Singh, Store keeper	01.06.2011 to 30.10.2011	Rs.8814/-	Rs.7975/-	Rs.527 X 5 = 2635/-	Rs.2635 X 6 = 15810/-
		November 2011	Rs.6422/-	Rs.7975/-	Rs.839 X 1 = 839	Rs.839 X 6 = 5034
Total amounting to Rs.20,844/-						
5.	Sh. Surender Kumar, Fieldman	01.06.2011 to 30.10.2011	Rs.8112/-	Rs.4320/-	Rs.3506 X 5 = 17530/-	Rs.17530 X 6 = 1,05,180/-
		November 2011	Rs.8112/-	Rs.4320/-	Rs.3792 X 1 = 3792	Rs.3792 X 6 = 22752
Total amounting to Rs.1,27,932/-						

6. At this stage, the learned counsel for the petitioner, on instructions, submits that he restricts the scope of the writ petition only to the extent of challenging the order dated 08.07.2015 and does not press the relief in respect of the order dated 02.01.2014.

7. It is submitted by learned counsel for the petitioner that the Authority under MW Act has no jurisdiction to review its own order and as such the order dated 08.07.2015 of the Authority under MW Act is without any jurisdiction and the same may be set aside.

8. Per contra, learned counsel for the respondents submits that the Authority by order dated 08.07.2015 has only carried out the corrections in the original order dated 02.01.2014 as per the

entitlement of the respondents in accordance with the law and cannot be faulted with.

9. I have heard the learned counsel for the parties.

10. The issue involved is no longer *res integra*. The relevant statute under the MW Act does not confer any power on the prescribed authority to review its own order. The **Hon'ble Supreme Court** has held in **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving** ***(2005) 13 SCC 777*** while reiterating its view in **Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji,** ***(1971) 3 SCC 844*** that the review on merits is 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. The relevant para No.17 to 20 of the judgment read as under:-

> "17. The question still remains whether the Tribunal had jurisdiction to recall its earlier award dated 12-6-1987. 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. The High Court has relied upon the judgments of this Court in *Kuntesh Gupta (Dr.)* v. *Hindu Kanya Mahavidyalaya* and *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* wherein this Court has clearly held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*. In that case the Tribunal made an ex parte award. The 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 9 Rule 13 of the Code of Civil Procedure and accordingly set aside the ex parte award. That order was upheld by the High Court and thereafter in appeal by this Court.

18. It was, therefore, submitted before us, relying upon *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* 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. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* clearly highlighted this distinction when it observed: (SCC p. 425, para 13)

"Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (*1*) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension 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."

19. Applying these principles 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 (*sic* ascertains whether it has committed) 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 as 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 reheard 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 Govt. Industrial Tribunal* 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 reheard and decided again.

> 20. The facts of the instant case are quite different. 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 proceeding 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. Apparently 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."

11. Having considered the facts of the present case in the light of the judgment of the **Hon'ble Supreme Court** in **Kapra Mazdoor Ekta Union** ***(supra)*** it is found that in fact by order dated 02.01.2014 the difference in minimum wages and wages actually paid for a period of six months has been granted by the Authority under MW Act which is reflected in para No.9 of the said order. By subsequent impugned order dated 08.07.2015 actually the Authority under MW Act has on the pretext to show jurisdiction wrongly mentioned that due to inadvertence, the arrears of the wages got calculated in the order dated 02.01.2014 for a period of one month instead of six months. The reasoning given by the Authority is far from truth, as in fact, in the order dated 02.01.2014, the Authority under MW Act has already ordered for making of the payment of the difference of the minimum wages and the wages actually paid to the respondents for a period of six months. In its order dated

02.01.2014, in column No.6 of para No.9, it has assessed the difference in the amount for one month and in column No.7, the Authority after multiplication of the amount of one month by six has awarded the amount for a period of six months. By impugned order dated 08.07.2015, the order has further multiplied the amount by six. Apparently by order dated 08.07.2015 the Authority under MW Act has reviewed its own order dated 02.01.2014 on application dated 16.01.2014 and enhanced the amount.

12. Thus the Authority under MW Act has reviewed its own order on merits. Apart from that the Authority has given a false reasoning that due to inadvertence the arrears of the wages have been calculated only for one month instead of six months. The order dated 02.01.2014 is clear enough to indicate that the arrears of difference in the minimum wages and wages actually paid have been awarded for a period of six months.

13. Therefore, the order dated 08.07.2015 is without jurisdiction and accordingly quashed.

14. Since the learned counsel for the petitioner has restricted the scope of writ petition to the extent of challenging the order dated 08.07.2015 only, the amount of Rs.72,690/- as awarded by the Authority by order dated 02.01.2014 and deposited with the Registry of the Court pursuant to the order dated 30.09.2017, the same be released to the

workmen/respondents/beneficiaries as per order dated 02.01.2014 with accrued interest thereon.

15. In view of the above, the application bearing CM No.21072/2015 (stay) stands disposed of accordingly.

VINOD GOEL, J.

MAY 15, 2018

"sandeep"