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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.NO.2553 OF 2018
AND
C.M.P.NO.20565 OF 2018

1. The Superintending Engineer,
   Tamil Nadu Generation and Distribution
      Corporation Ltd.,
   Mettur Electricity Distribution Circle,
   Mettur Dam - 01,
   Salem District - 638 401.

2. The Chief Engineer/Distribution,
   Erode Region,
   Tamil Nadu Generation and Distribution
      Corporation Ltd.,
   Erode - 638 009. .. Appellants/
   Petitioners

Vs

1. The Presiding Officer,
   Labour Court, Salem.

2. P.Duraisamy .. Respondents/
   Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 11.12.2017 made in W.P.No.32026 of 2017.

W.P.No.32026 of 2017:-

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of certiorarified mandamus to call for the records of the 1st Respondent order dated 27.04.2015 in I.A.No.445 of 2014 in I.D.No.129 of 2013 and quash the same and consequently direct the 1st Respondent to hear the main case in I.D.No.129 of 2013 on merits

For Appellants : Mr.Karthikrajan
For Respondents : R1 - Court
No appearance for R2

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JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the appellants. Despite service of notice and the name of the second respondent having been printed in the cause list, there is no representation on behalf of the contesting respondent.

2.The appeal lies in a very narrow compass. The second respondent was an employee of the appellant. The appellants imposed the punishment of stoppage of increment for a period of two years with cumulative effect after conducting enquiry. This was put to challenge before the Labour Court by filing I.D.No.129 of 2013. The appellants were set exparte. They filed an application to set aside the exparte award. That was dismissed on the ground that the award has been published and therefore the Labour Court has become functus officio. Challenging the same, the writ petition was filed. The learned single Judge dismissed the writ petition and hence the appeal.

3.Placing reliance upon the judgment of the Apex Court in Haryana Suraj Malting Limited Vs. Phool Chand ((2018) 16 SCC 567), learned counsel for the appellant submitted that the aforesaid view as expressed by the Labour Court, confirmed by the learned single Judge is contrary to law. Reliance has been made on the following paragraphs:

> 27. In Radhakrishna Mani Tripathi (supra) the argument was that Rule 26 (2) of the Industrial Disputes (Bombay) Rules is ultra vires. The Rule as quoted in the decision, to the extent relevant, reads as follows:
>
> "(2) Where any award, order or decision is made ex parte under sub-rule (1), the aggrieved party, may within thirty days of the receipt of a (2006) 12 SCC 193 copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an arbitrator, as the case may be, to set aside such award, order or decision. If the Board, Court, Labour Court, Tribunal or arbitrator is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it or he may set aside the award, order or decision so made and shall appoint a date for proceeding with the matter:
>
> Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party." It was contended that under Section 17-A of the Act an award becomes enforceable on expiry of 30 days from the date of its publication whereupon

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the Labour Court is rendered functus officio. Reliance was placed on certain observations in Grindlays (supra) and it was further submitted that the provision of Rule 26(2) of the Bombay Rules was in derogation of Section 17-A of the Act. However, the Court held as follows:

"15. Similarly, the Court pointed out in Grindlays Bank, the provision of Rule 24(b) empowered the Industrial Courts to refuse to adjourn the hearing and to proceed ex parte. Hence, in a case in which the Industrial Court makes an ex parte award the provisions of Order 9 Rule 13 CPC would be clearly attracted.

It logically follows that the Tribunal is competent to entertain an application to set aside an ex parte award. (Vide para 12 of the decision.) The Court thus founded the Industrial Court's jurisdiction and power to recall an ex parte award on Rules 22 and 24(b) of the Central Rules. It is thus to be seen that in Grindlays Bank what this Court held to be implicit in Rule 22 of the Central Rules is made explicit and clear in the Bombay Rules in the form of sub-rule (2) of Rule 26."

28. After referring to and quoting paragraph-14 in Grindlays (supra), it was further held that:

"16. ...From the above quotation it would appear that in Grindlays Bank the recall application was filed within thirty days from the date of publication of the award and hence, the objection raised on the basis of Section 17-A did not arise in this case. In Grindlays Bank this Court did not say that the Industrial Courts would have no jurisdiction to entertain an application for setting aside an award made after thirty days of its publication. Nevertheless, on the basis of the passage marked in italics in the above quotation Ms Issar strongly contended that that is the true import of the judgment.

17. We are unable to accept. The position is made clear in the later decision in Anil Sood v. Labour Court. In Anil Sood interestingly the Labour Court had rejected the recall application on the very same ground that after making the award it became functus officio in the matter. The order of the Labour Court was challenged before the High Court but the High Court also took the same view. In appeal this Court noted that the award was made

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on 11-9-1995 and the application for its recall was filed on 6-11-1995. …

18.In light of the decision in Anil Sood we find no substance in the appellant's submission based on Section 17-A of the Act. There being no substance in the first limb of the submission there is no question of any conflict between Rule 26(2) of the Bombay Rules and Section 17-A of the Act." (Emphasis supplied)

29. Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. and Another 7 is a decision by a Bench of 3 Judges which has also referred to Grindlays (supra). It is a case where the award was made on 12.06.1987 and published on 10.08.1987. The recall application was made on 07.09.1987, before the expiry of the 30 days period provided under Section 17A. It is also to be noted that the application for recall of the award was with a prayer for raising an additional issue. To quote from paragraph-20 of the judgment, "...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. (2005) 13 SCC 777 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." Therefore, Kapra (supra) is distinguishable on facts and on the question of law dealt with therein: it was a case of substantive review whereas, setting aside an ex parte award is a matter of procedural review. In the case of procedural review, as held in Kapra (supra), the party "... 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

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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."

30. Therefore, all the decisions hereinabove noted by us referred to Grindlays (supra). On a close reading of paragraph-14 of Grindlays (supra), in the background of the analysis of law under paragraphs-10 to 13, it is difficult for us to comprehend that the power to set aside an ex parte award is not available to a Labour Court/Industrial Tribunal. On the principles of natural justice, and on a purposive interpretation of the scheme of the Act and Rules, we find it difficult also to discern that the ratio of the decision in Grindlays (supra), is what is stated in paragraph-14 to the extent that an application for setting aside an ex parte award has to be filed within 30 days of publication of the award. On the contrary, the ratio in Grindlays (supra) is that the Tribunal can exercise its ancillary and incidental powers, on the broader principles contained under Order IX Rule 13 of the CPC. No doubt, the Limitation Act, 1963 is not applicable to the Labour Court/ Tribunal8.

31. In Union of India and another v. Paras Laminates (P) Ltd9 this Court held that the legislature has intended and has conceded certain powers to the tribunals in their assigned field of jurisdiction for the efficacious and meaningful exercise of their power. Such powers are implied in every tribunal unless expressly barred. "8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the

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legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the M.P. Steel Corporation v. Commissioner of Central Excise (2015) 7 SCC 58; Nityananda, M. Joshi and others v. Life Insurance Corporation of India and others (1969) 2 SCC 199. (1990) 4 SCC 453 powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". [See also ITO v. M.K. Mohammed Kunhi]." In J. K. Synthetics Ltd v. Collector of Central Excise10, while dealing with a case from the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), this Court went a step further to hold that there are certain inherent powers vested in every tribunal in regulating their own procedure. It held at paragraph-6 as follows:

"6. If, in a given case, it is established that the respondent was unable to appear before it for no fault of his own, the ends of justice would clearly require that the ex parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice. Quite apart from the inherent power that every tribunal and court constituted to do justice has in this respect, CEGAT is clothed with express power under Rule 41 to make such order as is necessary to secure the ends of justice. CEGAT has, therefore, the power to set aside an order passed ex parte against the respondent before it if it is found that the respondent had, for sufficient cause, been unable to appear."

32. In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was (1996) 6 SCC 92 set ex parte, the Labour Court/Tribunal, in exercise of

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its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

33. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

34. In this context, it is also necessary to refer to Section 29, the penal sanction which includes imprisonment for breach of award.

"29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach."

35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such

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an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

4.In the light of the aforesaid pronouncement, we are of the view that the order passed by the Labour Court in I.A.No.445 of 2014 as confirmed by the learned single Judge requires to be interfered with. We are also satisfied with the reasons assigned for the condonation of delay. After all, the appellant seeks an adjudication on merit.

5.In such view of the matter, we are inclined to set aside the order passed in I.A.No.445 of 2014 and as confirmed by the learned single Judge in W.P.No.32026 of 2017. Consequently, I.A.No.445 of 2014 stands ordered and the Labour Court is directed to decide the dispute on merit. Taking into consideration the fact that the claim petition in I.D.No.129 of 2013 is pending for quite number of years, the Labour Court is directed to dispose of the same within a period of four months from the date of receipt of a copy of this judgment.

6.With the above observation, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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