

(2023) 08 OHC CK 0005
In the Orissa High Court
Case No : RVWPET? No. 269? Of 2023

M/s. Prajatantra Prachar Samiti, Biharibagh, Cuttack	APPELLANT
Vs	
Laxmi Narayan Das & Ors	RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Industrial Disputes Act, 1947 — Section 10(1), 12(4), 29, 33(1), 33C(2)

Citation : (2023) 08 OHC CK 0005

Hon'ble Judges : Biswanath Rath, J;M.S. Sahoo, J

Bench : Division Bench

Advocate : Manoj Kumar Mishra, Tanmay Mishra, S.Senapati, B.P.Panda

Final Decision : Allowed

Judgement

Biswanath Rath, J

1. The Review Petition involves a prayer by the Management/ Writ Petitioner M/s.Prajatantra Prachar Samiti seeking review of the judgment of this Court dated 05.05.2023 passed in W.P.(C).No.8966 of 2018.

2. Short background involving the case appears to be as a first step Industrial Adjudication vide I.D.Case No.04 of 1993 involved a reference as to "Whether the action of M/s.Prajatantra Prachar Samiti, Cuttack in not regularizing the services of Sri Jugal Kishore Baral and 19 others as permanent workmen is legal and/or justified?, if not what direction in this regard is necessary? It is submitted in disposal of I.D.Case No. 04 of 1993, the Industrial Adjudicator held Management not regularizing the services of Jugal Kishore Baral and others as permanent workmen is not legal and justified and the members of the 2nd Party are entitled to be regularized with immediate effect. This award being challenged by Management/petitioner vide O.J.C.No.13426 of 1999, it got dismissed by a judgment of this Court dated 27.04.2012, a further challenge of the same again by the Management in the Apex Court in SLP CC No.1903/13, which also got

dismissed by Apex Court by its order dated 21.01.2013. A Review Petition being brought by the Management, Apex Court by its order dated 23.07.2013 dismissed the Review Petition No.1502 of 2013 in limini. This lead the workmen bringing a Petition under Section 33-C(2) of the Industrial Disputes Act (for short "the I.D. Act") proceeding for computation of monetary entitlements registered on the file of Presiding Officer, Labour Court, Bhubaneswar as Misc. Case No.90 of 2016. This 33-C (2) proceeding was allowed in favour of Workmen vide its order dated 05.07.2017 and for non-implementation of such direction, there is also initiation of a proceeding under section 33(1) of the I.D.Act.

In the Misc. Case No.90 of 2016, a proceeding under Section 33-C (2) of the I.D. Act by the workmen, the outcome came by way of an ex-parte order against the petitioner-Management challenging the said ex-parte order. The Petitioner/Management brought W.P.(C). No.8966 of 2018. The Writ Petition has been allowed on 05.05.2023 by the setting aside of the final order in the proceeding under Section 33-C (2) of the I.D. Act in Misc. Case No.90 of 2016 and remanding the 33-C (2) proceeding to the Labour Court for fresh adjudication of the proceeding under Section 33-C (2) of the I.D. Act giving opportunity of participation to the Management but, however, subject to condition of depositing of the entire amount already determined through the disposal of the proceeding under Section 33-C (2) of the I.D. Act.

3. Mr.M.K.Mishra, learned Senior Advocate for the review petitioner contended the review petition is brought in a very very narrow compass for modification of conditions attached therein and in the process though taking this Court to the Management's plea in paragraphs-3 to 9 of the Review Petition questioning the maintainability of the proceeding under Section 33(C) (2) of the I.D. Act both on merit and other technical aspects seeks indulgence of this Court to modify the final order in W.P.(C).No.8966 of 2018 but limited to the conditions imposed while remanding the matter.

Mr.Mishra, learned Senior Advocate made oral submissions on the financial position of the Management contends that the Management is incapable of making such deposit and requests this Court for reviewing the final order in W.P. (C).No.8966 of 2018 so far as the conditions imposed in the interest of justice. In the process of hearing, Mr.Mishra, learned Senior Advocate also supports his submissions through the documents as at Annexure-2 series and Annexure-3 series respectively and submits that the petitioner-Management has a justifiable claim through all these documents sufficient enough to take away the proceeding under Section 33-C (2) of the I.D. Act initiated by the opposite party-workmen.

4. To the contrary, learned counsel appearing for the Workmen while strongly disputing the entertainment of the Review Petition takes this Court through the entire development involving an Industrial adjudication initiated in the year 1993 when the Industrial Dispute (I.D.Case No.04 of 1993) was entertained till confirmation of the award by the dismissal of SLP No.1903 of 2013 on 21.01.2013 by the Apex Court and in the dismissal of a Review Petition bearing

RVWPET No.1502 of 2013 again by the Hon'ble Apex Court. It is contended that the award in Industrial Adjudication has attained finality. So far as the Petitioner/ Management's journey to this Court in W.P.(C).No.8966 of 2018 decided on 05.05.2023 is concerned, it is contended that the Workmen are worst sufferers on account of laxity and negligence by the Management and undisputedly by delay in the judgment in W.P.(C).No. 8966 of 2018 dated 05.05.2023 being implemented, it is only the Workmen, who are at the receiving end. It is urged for no fault of them, the Workmen are going to be deprived of financial benefit already adjudicated and accrued to them. It is also submitted on behalf of Workmen that the condition attached in the reopening of the proceeding under section 33-C (2) of the I.D.Act is at least ensuring release of the entitlement of poor workmen for ultimate benefit of either side, but with release of a small part of the quantum already determined in the proceeding under Section 33-C (2) of the I.D.Act. The workmen are facing this legal battle for over 3 (three) decades, it is contended that the Management for its dilatory attitude in challenging each and every order involved herein, there is not only serious loss to the Workmen at the same time the Management has taken it to be its luxury in carrying on litigations and enjoying illegally the lawful entitlements of the poor Workmen by not releasing the same, it is the workmen, who are on street for over thirty years and some of the Workmen in the meantime have unfortunately passed away. It is in the above premises, learned counsel for the Workmen requests this Court for not only to dismiss the Review Petition for being not maintainable in the eye of law but with sufficient cost for unnecessarily burdening the Workmen with legal expenses in bringing such untenable litigation.

5. Considering the contentions of Mr.Mishra, learned Senior Advocate read together with stand taken by the Management hereinabove but argued to the limited extent by the learned Senior Counsel indicated hereinabove, this Court observes the Review Petition is brought involving a challenge to the conditions imposed on the management for availing the opportunity of adjudication afresh before the learned Industrial Tribunal in the proceeding under Section 33-C (2) of the I.D. Act.

6. The case history from within the undisputed materials appears as follows:

(A) There is no dispute in the relationship of Management and Workmen.

(B) On 01.10.1992 appropriate Government under Section

10(1) read with Section 12(4) of the I.D. Act, 1947 made following reference:

"Whether the action of M/s.Prajantra Prachar Samiti, Cuttack in not regularizing the service of Sri Jugal Kishore Baral and 19 others named below as permanent workmen is legal and/or justified? If not, what direction in this regard is necessary"

1. Jugal Kishore Baral, 2) Biswanath Das, 3) Brajendra Das, 4) Laxmi Narayan Das, 5) Narayan Prasad Guru, 6) Premananda Pradhan, 7) Kailash Parida, 8) Ajit

Kumar Rout, 9) Rajendra Lenka, 10) Ashok Ku.Nayak, 11) Bipin Bihari Sahu, 12) Bijay Kumar Das, 13) Ratha Chandra Nath, 14) Debendra Tripathy, 15) Sudarsan Behera, 16) Basant Kumar Behera, 17) Biseswar Singh, 18) Saroj Sahu, 19) Ashok Behera & 29) Bikram Keshari Singh.”

It be stated that the reference had a clear disclosure of the Workmen involved in such reference. The reference was admitted vide I.D. Case No.04 of 1993.

(C) On 31.08.1999 the I.D.Case No.04 of 1993 ended with following final observation:

“10. In the result, I am of the view that the action of the Management in not regularizing the services of Jugal Kishore Baral and others as permanent workmen is not legal and justified.

ISSUE NO.2:-

11. In view of my findings in the foregoing issue, I am of the view that the members of the second party are entitled to be regularized with immediate effect.

The reference is answered accordingly.”

(D) Above award was challenged by the Management in O.J.C. No.13426 of 1999 which matter got dismissed by judgment of this Court dated 27.04.2012 with following observation:

“Keeping this factor in view, the Industrial Tribunal came to the conclusion that the workmen have worked for a considerable number of years as employees of the management and the process they have lost any attendance of any other engagement and therefore, they should be regularized as worker of the said management. As regards the financial viability of the establishment, the Tribunal considered the fact that the management has not proved balance sheet and profit and loss account and any such other financial statement, which would indicate that it is going through any short of financial crunch, so that it is not in a position to regularize services of the workmen. On such findings, the Tribunal has come to the conclusion that the workmen should be regularized in service. While agreeing with the findings recorded by the learned Presiding Officer, Industrial Tribunal, this Court takes note of the ratio decided in State of Haryana and others v. Piara Singh and others, MANU/SC/0417/1992: AIR 1992 SC 2130”1994 (68) FLR 41 (Sum.) wherein the Hon’ble Supreme Court has held that the State must be a model employer. It is for this reason, it is held that equal, pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary and ad hoc status for long. Where a temporary or ad hoc appointee is continued for long, the Court presumes that there is need and warrant for a regular post, and accordingly, directs regularization. In this case, the workmen have been continuing in service for more than one decade. Therefore, this Court comes to the conclusion that there is need for regular post and they should be regularized in their respective post they are holding. The

learned Counsel for the petitioner also does not argue that the order impugned suffers from any jurisdictional error nor there is any allegation that the findings recorded are perverse. The only contention raised by the petitioner is that of financial crunch and lack of requirement of the services of the workmen. In view of the ratio decided by the Hon'ble Supreme Court in Devinder Singh's case (supra), there is no scope for reappreciating the evidence and come to a different conclusion.

Keeping in view the aforesaid discussion, this Court comes to the conclusion that there is no merit in the writ petition and the same is dismissed."

(E) Management/Review Petitioner being dissatisfied with the judgment of this Court in O.J.C.No.13426 of 1999 brought SLP No.(Civil) CC 1903 of 2013 and this SLP was dismissed by Hon'ble Apex Court by order dated 21.01.2013, which reads as follows:

"ITEM NO.38 COURT NO.13 SECTION XV

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition (s) for Special Leave to Appeal (Civil).../2013

CC 1903/2013

(From the judgment and order dated 27.04.2012 in OJC
No.13426/1999 of the High Court of Orissa at Cuttack)

Mgt. of Prajatantra Prachar Samity Petitioner

Versus

Cuttack Press Workers Union & Anr Respondent(s)

(With appln(s) for c/delay in filing SLP and c/delay in refilling SLP

Date: 21/01/2013 This Petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice Chandramauli Kr. Prasad

Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla

For petitioner(s) Mr.Pitambar Acharya, Sr.Adv.

Mr.Shibashish Mishra, Adv.

Mr.Abhinandan Nanda, Adv.

For Respondent (s)

Upon hearing counsel the Court made the following

ORDER

Delay Condoned

The Special Leave Petition is dismissed.

(S.K. Rakheja)

(Indu Satija)

Court Master

Court Master"

(F) In another development and in further attempt to block the award involved, somehow or other, the Management preferred a Review Petition before the Hon'ble Apex Court for reviewing the order passed in SLP indicated hereinabove. This Review Petition was registered on the file of Hon'ble Apex Court as Review Petition (Civil) No.1502 of 2013 in Special Leave Petition (Civil) No.5938 of 2013 which got dismissed by the Hon'ble Apex Court by its order dated 23.07.2013. The order of the Hon'ble Apex Court is quoted hereunder:

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) No. 1502 OF 2013

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 5938 OF 2013 MANAGEMENT OF
PRAJATANTRA PRACHAR SAMITY

... PETITIONER(S)

VERSUS

CUTTACK PRESS WORKERS' UNION, CUTTACK

... RESPONDENT(S)

ORDER

Delay condoned.

We have perused the Review Petition and the connected papers.

We do not find any error in the order impugned, much less an apparent error on the face of the record, so as to call for its review.

The Review Petition is, accordingly, dismissed.

.....J.

(CHANDRAMAULI KR. PRASAD)

.....J.

(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi; the

July 23, 2013

CHAMBER MATTER SECTION XV

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

REVIEW PETITION (C) NO(s). 1502 OF 2013 IN SLP(C) 5938/2013

MANAGEMENT OF PRAJATANTRA PRACHAR SAMITY

Petitioner(s)

VERSUS

CUTTACK PRESS WORKERS' UNION, CUTTACK

Respondent(s)

(With appln(s) for c/delay in filing review petition and office report)

Date: 23/07/2013 This Petition was circulated today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR.

PRASAD

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

By Circulation

UPON perusing papers, the Court made the following

ORDER

Delay condoned.

The review petition is dismissed in terms of the signed order.

| (S.K. Rakheja | |(Indu Bala
Kapur) |

|Court Master | |Court Master|

(Signed order is placed on the file)"

(G) In the meantime, it appears the Management/Review Petitioner preferred another writ petition bearing W.P.(C).No.17588 of 2016 challenging quashing of a proceeding initiated under the provision of Section 29 of the I.D. Act for seeking to penalise the Management for non-implementation of the award registered as 2(C) C.C. No.889 of 2015. Apparently, in this proceeding the Management had

no chance of success for there is already an award being confirmed by Hon'ble Apex Court, choose to withdraw the writ petition. Accordingly, the above writ petition was dismissed as withdrawn vide order of this Court dated 01.03.2017.

(H) There has been a further writ petition vide W.P.(C).No.5288 of 2016. This Writ Petition was disposed of on 11.05.2016 preventing execution of bailable warrant for a week, provided Management implemented the award.

7. It is after all these proceedings got over and after long wait, finding the Management is in no mood to work out the award in the I.D. Case No.04 of 1993, the Workmen were constrained in bringing a proceeding under the provision of section 33-C (2) of the I.D. Act on the file of the Labour Court, Bhubaneswar registered as I.D.Misc.Case No.90 of 2016. This proceeding was taken up for final hearing. Unfortunately, the Management did not respond to the notice and the Presiding Officer was compelled to observe that though notice was issued to the Management through Registered post vide its Office Letter No.243(2) dated 23.02.2017 and one month had elapsed in the meantime, the notice be deemed to be sufficient and the Management was set ex-parte on 09.06.2017 gave its final verdict impugned in W.P.(C).No.8966 of 2018. In the conclusion of the proceeding by its order dated 05.07.2012, the Presiding Officer, Industrial Tribunal was pleased to pass the following order:

“ ORDER

The Misc. Case be and the same is allowed against the O.Ps. The applicant Nos.1, 2, 3,4,5,6,8, 9,12,13,14,16,17 & 18 are entitled Rs.17,47,540/- each, applicant nos.7,11 & 15 are entitled Rs.15,30,090/- each, and applicant no.10 is entitled to Rs.17,37,260/- towards back wages from the management/O.Ps for the period September 1999 to June, 2016. Similarly, the legal heirs of late Bipin Bihari Sahoo are entitled to Rs.15,53,345/- towards back wages from the management/O.Ps for the period September, 1999 to November, 2014 i.e. till his death and the legal heirs of Late Kailash Parida are entitled to Rs.13,82,820/- towards back wages from the management/O.Ps for the period September, 1999 to June, 2013 i.e. till his death. The O.Ps are directed to pay the aforesaid amount to the applicants within eight months hence, failing which the applicants will be entitled to interest @6% per annum till it is paid to them.”

8. It is in the above circumstance, this Court finds the dispute between the Workmen and the Management commenced in the year 1992 and in the meantime, nearly a dozen of litigations have been initiated almost all those appear to have been at the instance of the Management, this Court therefore has no hesitation to observe that the Management is in no mood to work out the award and simply wants continuing with the litigation.

9. As already observed, there is no dispute that there is an award of regularization in favour of the Workmen. Management's attempt challenging such award not only failed in this Court but it's attempt in Supreme Court by way of SLP as well as Review Petition thereafter have failed.

10. From the perspective of the Workmen after as an outcome in the Industrial Adjudication by way of an award, the Industrial Adjudicator in the finality of the proceeding under Section 33-C (2) of the Act has determined the entitlement of Workmen Nos. 1 to 6, 8, 9, 12 to 14 and 16 to 18 at Rs.17,47,540/- each and so far as Workmen Nos. 7, 11 and 15, their entitlement has been found to be Rs.15,30,090. So far as Workmen No.10 is concerned, the entitlement of this Workman has been fixed at Rs.17,37,260/- . Rest of the Workmen since have died in the meantime, there has been also direction for payment of such Workmen's entitlement of Rs.15,53,345/- and Rs.13,82,820/- respectively but in favour of their legal representatives.

11. In view of the above and in particular the Management being seriously engaged in dragging the workmen to series of litigations and in the meantime more than thirty years have passed further the Workmen are yet to get a single pie, while keeping in view there is need of providing opportunity of hearing to the Management in the proceeding under Section 33-C (2) of the I.D. Act, this Court to protect the interest of such Workmen passed an order directing deposit of entire amount. This Court kept the future prospect of both parties subject to ultimate outcome in the proceeding. Release of at least 1/5th of the entitlement of the workmen were directed to be released just to see their minimum sustenance. Looking to the fact of Management involved in series of litigation and Management is not ready and willing to work out the award involved, this Court by passing the order dated 05.05.2023 in the W.P.(C).No.8966 of 2018, has endeavoured to see the minimum survival of the Workmen involved and /or their L.Rs. in some cases. This Court by the order has provided the workmen the minimum financial benefit, which is again subject to ultimate outcome in the proceeding under Section 33-C (2) of the I.D. Act. This Court does not find the Management will volunteer to deposit the amount as directed to certain extent. The attempt of the Management to challenge the proceeding under Section 33-C(2) of the I.D. Act is not permissible in consideration of the review petition.

12. Considering the fact that the proceeding before Industrial Tribunal on remand involves an adjudication under Section 33-C(2) of the I.D. Act, wholly relying on the final observation in the I.D. Case No.04 of 1993, this Court finds there is no room for taking into consideration new documents appended in the Review Application for the first time. It is rather surprising to see the Management instead of attempting for early disposal of the proceeding under Section 33-C (2) of the I.D. Act remains busy in engaging the poor Workmen in protracted litigation and in some cases their L.Rs, which is never expected of a model employer.

This Court here also takes into account certain decisions on scope of review as follows:

(i) AIR 1980 SC 2041 : Col. Avtar Singh Sekhon vs Union of India and others,

6. The selection on which the review petitioner stakes his claim is of 1971,

vintage and the vacancy to be filled was of the year 1979, The respondent, therefore, contested the petitioner's 1971, credentials as obsolete and even obscurantist. We need not re-open that issue except to state that in the final order, passed after hearing both sides, the inviolability of the 1964 policy had been nailed. A closer reading of the 1964 policy statement reveals that under it seniority for an earlier promotee is conferred in the substantive rank provided he has been earlier included in the approved list. Such a situation has not arisen here at all. Be that as it may, the final direction of the Court appeal did permit the Central Government to evolve its policy within one month. This not having been done, the respondent drew the attention of the Court to the non-compliance and for consequential orders. At the hearing of that petition (the so-called contempt petition) the respondent through Shri R. K. Garg and the Central Government through the learned Attorney General were heard. Shri Kapil for the petitioner (review) intervened and was heard. But we must fairly state that his client had not been given formal notice and perhaps he had a grievance of not having been heard adequately. We cannot fault him for filing a review petition but hasten to clarify that we wholly desist from making any observations on the happenings set out in the respondent's papers put into Court. Nor did we permit Shri Garg to refer to those matters since they were, in our view, extraneous to the merits of the review petition and related to another proceeding pending before another bench. We must record that Shri Kapil has with youthful vigour and clarity of advocacy presented his case fairly. The gravamen of his grievance is merely that he should have been heard if a direction to his prejudice was to be made. We are mindful of the force in this plea and cannot dismiss it merely because the sands of time are running out against the respondent whose approaching retirement will make his legal success, if any, a pyrrhic victory and, worse a tragic irony. Of course, that by the way, is the life-style of most litigative triumphs."

(ii) 2022 SCC ONLINE SC 1034 : S. Madhusudhan Reddy Versus V. Narayana Reddy and Others.

18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

19. In Col. Avatar Singh Sekhon v. Union of India and Ors. 1980 Supp. SCC 562, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

12. A review is not a routine procedure. Here we resolve to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard.

But we cannot review out earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante and Anr. V. Sheikh Habib* (1975) 1 SCC 674 this Court observed:

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality"

(iii) *Ram Sahu v. Vinod Kumar Rawat* : (2021) 13 SCC 1 :

7.2. In *Lily Thomas v. Union of India* [*Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056 , it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1CPC must mean "a reason sufficient on

grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram v. Neki* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, AIR 1954 SC 526] .

7.3. In *Inderchand Jain v. Motilal* [*Inderchand Jain v. Motilal*, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] in paras 7 to 11 it is observed and held as under : (SCC pp. 668- 69)

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words

"subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under : (*Kamal Sengupta case* [*State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] , SCC p. 631, para 17)

817. The power of a civil court to review its judgment/decision is traceable in Section 114CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1CPC, which reads as under:

"1. Application for review of judgment.4(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.”

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajender Kumar v. Rambhai* [*Rajender Kumar v. Rambhai*, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584] this Court held : (SCC p. 514, para 6)

6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.’

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In *Lily Thomas v. Union of India* [*Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this Court held : (SCC p. 251, para 56) 856. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.”

iv) This Court from the decision in the case of *Sow Chandra Kante & Anr.*

Vrs. Sheikh Habib : (1975) 1 SCC 674 finds, the view of the Hon'ble apex Court in this circumstances runs as

follows:-

"Mr Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained.

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

2. We dismiss the petition unhesitatingly, but with these observations hopefully."

13. It is in the above background and keeping in view the settled position of law limiting entertaining a Review Petition involving an attempt to overturn the ultimate decision in the Writ Petition, this Court at this stage however accepts the request of learned Senior Advocate for petitioner at least to modify the condition of deposit imposed in the final direction in the disposed of W.P. (C).No.8966 of 2018 to be tenable to certain extent. This Court keeping in view the long drawn battle mostly at the instance of Management/Petitioner even after the award in I.D. Case No.04 of 1993 remains confirmed by the Hon'ble Apex Court and there is disposal of proceeding under Section 33-C (2) of the I.D. Act by the disposal of I.D. Misc. Case No.90 of 2015 thereby bringing in a computation on the entitlement of the Workmen and in the

meanwhile there is loss of 31 years of time involving all these litigations, this Court came to give the following direction in its order dated 05.05.2023 :

"16. This Court finds here the Industrial Dispute was entertained in the year 1993, the litigation reached Hon'ble Apex Court in 2013 and we are now in 2023. There is almost passage of 30 years in the meantime. Some workmen have already died, many have attained age of superannuation but all of them are yet to get a single pie, in spite of their. Condition of each workman involve here must be precarious even after they have an award directing their reinstatement in 1999. To say the least the mighty Management is in enjoyment of the poor workmen's admitted entitlements. Thus keeping in mind the suffering of the workmen who are prosecuting the litigation for nearly three decades and as they have not been able to reap the benefit of the industrial adjudication that ended being confirmed by the Hon'ble Supreme Court, considering that there is sufficient lapse of time, this Court while interfering with the impugned order setting aside the same, remitting the matter to the learned Labour Court for fresh adjudication as per section 33-C(2) of the I.D. Act, observes the order of this Court shall be subject to management depositing the entire amount directed -10- Page 10 of 12 to be paid by the order disposing of I.D.Misc. Case No.90 of 2016 with interest at least 7% from the date of such award being deposited before the learned Labour Court within a period of one month from the date of receipt of copy of this judgment.

Further, for the workmen suffering for three decades, this Court also feels it appropriate to grant cost at least sum of Rs.5000/- (Rupees Five Thousand) to each of the workman/legal heirs herein which shall also be paid to each of workman or their legal heirs also within a period of one month of receipt of copy of order through the account of the surviving workmen in case workman if any died, in the account of the head of the family of legal heirs of the deceased workmen. The details of their bank accounts shall be furnished by respective beneficiary before the learned Labour Court at least within two weeks from the date of receipt of the copy of this judgment.

Considering that the workmen are in enjoyment of award subject to final computation to be arrived at by the learned Labour Court, each workman or their legal heirs be also released at least a sum of Rs.3 lacs by Labour Court from out of such deposit in favour of each workmen and/or legal heirs in case of deceased workman within two months after the deposit is -11- Page 11 of 12 made by the Management. Payment of Rs.3 lacs along with payment of amount on account of 17(B) of I.D. Act shall be adjusted from the amount of final payment that would be made on termination of the proceeding under Section 33-C(2) of I.D. Act.

17. With the above observations, the impugned order (Annexure-10) is set aside. However, since fresh industrial adjudication under Section 33-C(2) of the I.D. Act is necessary, the matter is remitted back to the learned Labour Court, Bhubaneswar for adjudication afresh within a period of four months of production of copy of this judgment. The proceeding will be reopened subject to the management making deposit in terms of the direction and also shall file receipt in proof of payment of the cost to each of the workmen. The parties

(Management & the workmen) are directed to appear before the learned Labour Court along with copy of this judgment on 29.05.2023. In view of remand of the matter for fresh adjudication of the calculation involving both the management and the workmen, this Court further observes the further release of the entitlement of the respective workmen shall be dependant on the ultimate outcome in the 33-C(2) proceeding. In the event the calculation comes lower and there is surplus from the deposit made by the management, -12- Page 12 of 12 balance amount, if any, after payments are made to the workmen, along with interest, shall be returned in favour of the management. The Labour Court is also directed on deposit of the amount by the management after release of sum of Rs.3 lacs in favour of each workman and/or legal heir the balance amount shall be kept in fixed deposit with interest in any nationalised bank for at least twelve months.

This Court further observe none of the observation herein will be taken to be observation on the merit of the case and Labour Court shall have its own decision in the dispute without being influenced by any of the observation made herein or even in the impugned order. Both the parties are directed not to take unnecessary adjournment in the proceeding before the learned Labour Court.

Ordered accordingly.”

14. Keeping in view the prayer of the Management to at least reduce the amount of deposit in paragraph-16 hereinabove, this Court taking into account the issue of financial constraint faced by the Management and to find there should not be any further hindrance in the further continuance of the proceeding under Section 33-C (2) of the I.D. Act and also keeping in view the interest of Workmen, is inclined to interfere only in the aspect of deposit directed vide paragraph-16 of the judgment dated 05.05.2023.

In modification of direction on condition imposed in paragraph-16 of the judgment this Court reduces the deposit to be made by the management to at least 50% of amount determined by the Labour Court as contained in the ordering portion in I.D. Misc.Case No.90 of 2015 disposed of on 5th July, 2017 and as taken note in paragraph-6 hereinabove. The direction on release of the amount to workmen is kept unchanged so also the manner of deposit of balance amount and payment if any after final outcome of I.D. Misc. Case No.90 of 2015 remain unaltered.

This Court permits the Management/Petitioner to deposit the amount directed hereinabove in the Labour Court, Bhubaneswar at least within a period of one month from the order in the present review petition. The I.D.Misc. Case No.90 of 2015 will be reopened for fresh adjudication on receipt of the amount under direction and shall be disposed of by filing of written statement and/or objection on behalf of management within one month from today and the proceeding is to be disposed of at least within a period of three months from the date of deposit.

15. The Review Petition succeeds in part and to the extent indicated

hereinabove. No cost.

.....