

(2010) 08 AHC CK 0062
In the Allahabad High Court
Case No : Special Appeal No. 1255 of 2010

Mukesh

APPELLANT

Vs

Prescribed Authority, Payment of Wages Act Assistant Labour
Commissioner, Gaziabad and Others

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Payment of Wages (Procedure) Rules, 1937 — Rule 8(3)
Payment of Wages Act, 1936 — Section 15(5B)

Citation : (2011) 2 LLJ 756

Hon'ble Judges : Ferdino Inacio Rebello, C.J.;A.P. Sahi, J

Bench : Division Bench

Judgement

Ferdino Inacio Rebello C.J. and A.P. Sahi, J.—Heard learned Counsel for the Appellant and the learned Counsel for the State.

2. The Appellant herein was the original Petitioner in the petition pending before this Court. He was also one amongst 14 employees who had moved an application before the Prescribed Authority, Payment of Wages Act, 1936. The Authority after following the procedure proceeded ex-parte and by an order dated December 19, 2009 allowed the claim of the Appellant and 39 others for the amount set out therein. Subsequent thereto the Authority considering the provisions of Section 15(5-B) applied to the Magistrate for recovery of the amount directed to be paid and the fine imposed thereunder.

3. Accordingly, the recovery was set into motion with a request by the Assistant Labour Commissioner to the District Magistrate on April 9, 2010.

4. It appears that the employer before the Authority thereafter moved an application dated May 6, 2010 to set aside the order dated September 11, 2009 as also the direction dated December 19, 2009 and permit the Appellants to file their statements. During the pendency of the application the Authority by order dated May 25, 2010 was pleased to direct stay of the operation of the letter dated April 9, 2010 which was an application made to the Magistrate for

recovery. The Appellant herein aggrieved by the said order preferred a writ petition before the learned Single Judge.

5. A contention was raised that the Prescribed Authority had No. power under the Payment of Wages Act and the Rules framed thereunder to grant any interim relief. The learned Single Judge observed that it was not necessary to address the said issue as the matter was fixed for August 11, 2010 for hearing the restoration application and the writ petition was disposed of with a direction that the restoration application filed by the employer might be heard and disposed of on August 11, 2010 at any rate not later than 15 days from August 3, 2010. It is this order which is the subject-matter of challenge in the present appeal.

6. We have heard learned Counsel for the Appellant as also learned Counsel for the State.

7. It is No. doubt true that the submissions made by the learned Counsel for the Appellant, that in so far as the purported order which has stayed only the application made for recovery, to that extent there was nothing to stay. However, it cannot result in holding that the Authority had No. power to stay the proceeding considering that an application for restoration was pending before him.

8. The issue as to whether an Authority under Payment of Wages Act has the power of review is No. longer res integra in view of the judgment of the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, The following paragraph would be relevant which reads as follows at p. 330 of LLJ:

13.....The expression "review" is used in 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 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 *Narshi Thakershi's* 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.

9. It is thus clear that the Supreme Court has made a distinction between procedural review and the substantial review. The procedural review which is either inherent or implied in a Court of Tribunal, an application for restoration of a proceeding *ex-parte* is also an exercise of procedural power. The Supreme Court considering the issue and the provisions of the Industrial Disputes Act, 1947, the order of the Industrial Tribunal was upheld.

10. However, the declaration by the Court namely that such a power is inherent in every Court or Tribunal must result in holding that any authority or a Court

has this inherent power of procedural review.

11. Learned Counsel for the Appellant contended that the Authority had No. jurisdiction even otherwise as it had become functus officio and even if the employer was aggrieved by any recovery proceedings he ought to have availed of some other remedy.

12. The question as to whether in a matter of ex parte order the Tribunal becomes functus officio was also dealt with by the Supreme Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.* (supra) and it was laid down as under 1981 I LLJ 327 at p. 331:

14.....It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is No. finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable order.

13. In the instant case there is a similar provision of setting aside the order, passed by the Authority on good cause being shown as contained in proviso to Sub-rule (3) of Rule 8 of the Payment of Wages Rules. The proviso is being quoted below for ready reference;

Provided that an order passed under Sub-rule (2) or Sub-rule (3) may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on opposite party of the date fixed for rehearing.

14. The other issue of the matter is that if the Court has power of procedural review then to prevent the miscarriage of justice or to secure the ends of justice it must have also the power to pass an interim order.

15. In the instant case the Authority has proceeded wrongly in not staying the ex-parte order dated December 19, 2009, Considering the matter the order to that extent is corrected and the order of the Authority dated December 19, 2009 is stayed during the pendency of the application for restoration.

16. We make it clear that the Authority has to dispose of the proceedings in accordance with law including considering the proviso to Rule 8. We further make it clear that we are not deciding the matter on merits. The Authority may proceed in accordance with law as directed by the learned Single Judge.

17. Accordingly, the special appeal is disposed of.