

(2016) 10 OHC CK 0020
In the Orissa High Court
Case No : R.V.W.P.E.T. No. 236 of 2016

Paradeep Phosphates Ltd.

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Citation : (2017) 152 FLR 116 : (2016) 4 LLJ 700

Hon'ble Judges : Ms. Sanju Panda and Mr. S.N. Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Durga Prasad Nanda, R.K. Kanungo, B.P. Panda, S.B. Sahoo, S.R. Rath, P. Raj and Mrs. S. Moharana, Advocates, for the Petitioner; M/s. Sudhansu Sekhar Pratap, M. Nayak and G.C. Paikry, Advocates, for the Opposite Parties

Final Decision : Dismissed

Judgement

Mr. S.N. Prasad, J. - The instant review application has been filed for review of the order passed by this court in W.P.(C) No.9180 of 2010 on 30th August, 2016.

2. The facts of the case in short is that a dispute has been raised by the workmen against the action of the Management by which the age of superannuation has been reduced from 60 years to 58 years and on failure of conciliation, reference was made which has given rise to the I.D. Case No.16 of 2003 in which the award has been passed by the Industrial Tribunal holding the action of the management in reducing the age of superannuation from 60 years to 58 years as illegal and unjustified.

The said award has been challenged before this court in a writ petition being W.P. (C) No.9180 of 2010 and this Court after appreciating rival submissions of the parties, has passed order on 30th August 2016 declining to interfere with the award, against the said order this review application has been filed on the grounds that the Industrial Tribunal has passed an award in I.D. case No.2 of 2007 whereby and where under the same prayer has been rejected by the

Tribunal but while passing the award in I.D. case No.16 of 2003 which is subject matter of W.P.(C) No.9180 of 2010, the Industrial Tribunal ought to have taken into consideration the binding precedence of the award passed in I.D. case No.2 of 2007, the binding precedence of W.P.(C) No.8419 of 2008 has not been taken into consideration, the court has not considered the intention of the Government of India who has reduced the age of superannuation from 60 years to 58 years to save sick industries, the age of superannuation has never been amended in the Certified Standing Order and Service Rules, the employees of ITI Ltd. in its Allahabad Unit and Karnataka Unit in which the age of retirement when rolled back by another administrative order, the courts have declined to interfere but the Court has not taken into consideration this aspect of the matter.

3. Before appreciating the argument advanced on behalf of the review petitioner/ writ petitioner, it is necessary to deal with the scope of review under Article 226 of the Constitution of India. The power to review is the creation of a statute. It must be conferred by law either specifically or by necessary implication. Review is not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in the review petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice, then certainly this can be said to be ground for review, but the mere fact that different views on the same subject are possible, cannot be said to be a ground to review the earlier judgment passed by a Court of Law.

This Court has considered the judgment of Hon"ble Apex Court regarding width and scope of power of review as has been rendered in the case of Moran Mar Basselios Catholicos and Anothers v. Most Rev. Mar Poulouse Athanasius and Others, reported in AIR 1954 SC 526 particularly at paragraph 32 which reads as under.

"32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47, Rule I of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified, grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason."

In the case of Shivdev Singh v. State of Punjab, reported in AIR 1963 SC 1909,

in a review petition filed under Order 47, Rule 1 C.P.C., the Supreme Court held that the power of review of its own order by the High Court inheres in every Court of plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In doing so, the Court was only upholding the principles of natural justice. This decision indicates that the Court's power of review while exercising jurisdiction under Article 226 of the Constitution extends to correct all errors to prevent miscarriage of justice.

The judgment rendered by Hon'ble Apex Court in the case of Sow. Chandra Kanta and Another v. Sheik Habib reported in AIR 1975 SC 1500 wherein it has been held that "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." It is the settled proposition as has been held by Hon'ble Apex Court in the judgment discussed herein above the scope of review which can only be done in case of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, mistake or error apparent on the face of the record and for any other sufficient reason and in the light of this legal position the fact of this review needs to be appreciated.

4. So far as the first ground, i.e. the Tribunal has got binding precedence of an award passed by it in the similar situation, but it has not been followed by the Tribunal or the fact regarding appreciation of the order passed by this court in W.P.(C) No.8419 of 2008 or the Government policy to save sick industries or the Certified Standing Order has not been amended and the order passed by the Allahabad High Court has not been considered, all these grounds have been argued by the earlier counsel who was representing the petitioner ? management in the writ petition and we after taking into consideration these grounds have passed an elaborate judgment approving the award and as such this argument is not acceptable to this court for the reason that the order is to be passed by a Court of Law depending upon the material produced before it and merely for the reason that one award has been passed by the Tribunal, the same is to be followed by the Tribunal even if the material which has been produced by the parties in the subsequent dispute of similar nature the Tribunal shut its eyes only for the reason that the award has already been passed and as such on this ground it cannot be said that any award or order passed by the Tribunal or Labour Court has got binding precedence over it. Moreover this court has no occasion to examine the award passed in I.D. case No.2 of 2007.

Further, the award passed in I.D. case No.16 of 2003 was under judicial review and as such this court has considered the finding given by the Industrial Tribunal in the award as to whether it is based upon documentary evidence or within the framework of law/rule or not and that has been assessed by us, thereafter the

award has been approved.

So far as consideration regarding W.P.(C) No.8419 of 2008, this has also been taken into consideration by this court in its order dated 30th August 2016 by making observation that the order passed therein is after passing of the award by the Industrial Tribunal.

So far as the fact that the award passed in I.D. case No.2 of 2007 has been affirmed by the learned Single Judge of this court in W.P.(C) No.8419 of 2008 and as such this ought to have been taken into consideration is concerned, but we after taking into consideration the fact and circumstances that the award which is based upon cogent evidence and as such there is no reason to make any comment upon the order passed by this court in W.P.(C) No.8419 of 2008. Moreover against the order passed in W.P.(C) No.8419 of 2008 writ appeal has been filed which is pending consideration before this court and if any observation would have been made by us in the order dated 30th August 2016 with respect to the order passed in W.P.(C) No.8419 of 2008, the same will be said to be transgressing with the jurisdiction since the said writ petition is under judicial review under letters patent appeal jurisdiction of this court and any adverse observation would have prejudiced the case of the parties therein.

So far as the policy of the Government to save sick industries is concerned, the same has also got no force for the reason that saving the sick industry does not mean that the competent authority will act arbitrarily and in defiance of the statutory provision, since we are living in the arena of rule and law and it is expected from every body to follow the rule and the provisions of the statute, however the same has been taken note in the judgment sought to be reviewed.

So far as the Certified Standing Order having not been amended, the same has elaborately been discussed in the judgment dated 30th August 2016.

So far as non-consideration of judgment passed by Hon''ble Allahabad High Court and Karnataka High Court are concerned, the same is altogether on different footing having not arising out of a dispute, hence not applicable.

5. Thus after going through the grounds taken by the petitioner for review of the judgment dated 30th August 2016 and after re-appreciating the grounds for review in the review petition, in our conscious view, no ground for review has been made out for the reason that there is no discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the judgment was passed or mistake or error apparent on the face of the record or for any other sufficient reason rather it is only repetition of argument but by different set of counsel, as such there is no reason for us to review the judgment passed on 30th August 2016.

6. Accordingly the review petition is dismissed.