
(2005) 07 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51757 of 2005

Precision S.G. Iron Foundry (P) Ltd.

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 4K

Citation : (2006) 2 AWC 1080

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : J.N. Tiwari and C.B. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri 3.N. Tewari, Senior Advocate assisted by Sri C.B. Gupta, Advocate on behalf of the petitioner and learned Standing Counsel on behalf of respondent Nos. 1 and 2.

2. M/s Precision S.G. Iron Foundry (P) Ltd., Nand Gaon Road, Koshikalan, District-Mathura through its Managing Director has filed this writ petition against the orders dated 15th December, 2004 and dated 29th April, 2005 passed by the Presiding Officer, Labour Court, U.P. New Agra in Adjudication Case No. 156 of 2000. The petitioner is an industry engaging in manufacturing of Foundry Iron and Cast Iron situated at Mathura.

3. The respondent No.3, namely, Ramjeet was admittedly employed in the aforesaid industry. The respondent No.3 raised an industrial dispute with regard to his termination from service enforced w.e.f. 23rdDecember, 1996. The dispute was referred for adjudication u/s 4-K of the Industrial Disputes Act, 1947 and was registered as Adjudication Case No. 150 of 2000. The Labour Court by means of its ex parte award dated 27th March, 2002 held that parties have entered into a settlement dated 9th September, 1998 and therefore, the

proceedings are being concluded in terms of the policy of the settlement dated 9th September, 1998. The said award was published on 30th August, 2002. The workman (respondent No.3) filed an application for recall of the ex parte award dated 27th March, 2002 admittedly after more than 30 days of its publication.

4. On behalf of the workman it was claimed that the agreement alleged to have been entered into between the parties is not bona fide inasmuch as the workman did not enter into any such compromise with the employer, therefore, the entire award, which is based on the aforesaid forged settlement is legally not sustainable and is liable to be recalled. The application so filed by the workman was allowed by the Presiding Officer, Labour Court by means of the order dated 15th December, 2003 after recording a finding that on the compromise presented by the employers, the workman had not been issued notice of the date on which the alleged compromise was presented and has specifically denied of any such compromise. It is therefore, in the interest of justice that the workman may be afforded an opportunity in respect of the alleged compromise and therefore, the ex parte award dated 27th March, 2002 be recalled. Against the said order of the Labour Court the petitioner preferred a review application. The review application so filed by the petitioner (employers) was rejected by the Labour Court vide order dated 29th April, 2005 after recording a finding that the Labour Court has no power to review its order.

5. On behalf of the petitioner it has fairly been conceded that the finding recorded by the Labour Court to the effect that the Labour Court does not have any power to review its order, cannot be disputed. However, the Learned counsel for the petitioner submits that the order passed by the Labour Court dated 15th December, 2003 setting aside the ex parte award dated 27th March, 2002 cannot be legally sustained in the eyes of law, inasmuch as the application for setting aside the ex parte award had been filed by the workman after expiry of more than 30 days of the publication of the award and therefore, the Labour Court had become functus officio and could not have entertained the application filed by the workman for recall of ex parte award dated 27th March, 2002.

6. I have heard counsel for the parties and have gone through the records of the writ petition.

7. From the findings recorded by the Labour Court it is apparently clear that the Labour Court proceeded to decide the reference made u/s 4-K of the Industrial Disputes Act on the basis of compromise filed by the petitioner (employers) on the date the workman was admittedly absent. The Labour Court could not have relied upon the ex parte compromise and could not have passed ex parte award on the basis of the compromise in absence of the workman. In case the employers were relying upon the compromise alleged to have been arrived at between the employers and workman, to decide the proceedings, it was but necessary to the Labour Court to have verified the compromise after affording opportunity of hearing to the workman concerned in respect of the same which has admittedly not been done. In such circumstances the Labour Court has

rightly exercised its jurisdiction in recalling its ex parte award and restoring the reference to its original number. {Reference; Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

8. Thus this Court is satisfied that the Labour Court had committed a procedural mistake by accepting the compromise in absence of the workman without affording any notice and opportunity to the workman concerned. The Labour Court, as such, has only corrected its procedural defect and has now provided an opportunity to the workman to have his say specifically in the matter with reference to the alleged compromise set up by the employers. The powers of the Labour Court to review or recall its order are of two categories, (a) to review/recall of its award on the ground of substantial justice, and (b) to review/recall its award on the ground of procedural defect like the notice or opportunity having not been afforded. The Hon"ble Supreme Court in the judgment reported in 2005 (2) AWC 1075 ; Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Anr.) has held that every Court has inherent power to review/recall an order on the ground of procedural defect in the proceedings. The relevant portion of the judgment of Hon"ble Supreme Court in the case of Kapra Mazdoor Ekta Union (Supra) reads as follows.

"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 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 re-heard 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 proceedings."

9. In the opinion of the Court the said judgment of Hon"ble Supreme Court is squarely covered with the category (b) referred to above. In such circumstances the order of the Labour Court recalling its ex parte award dated 27th March, 2002 cannot be faulted with. Even otherwise the ex parte award of the Labour Court, whereby the workman has not been afforded opportunity of hearing in respect of alleged compromise set up by the employers does not call for any interference under Article 226 of the Constitution of India. (Reference- Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and Ghanshyam Dass and Others Vs. Dominion of India and Others, wherein it has been held that the substantial justice and technicalities, if pitted against each other, the cause of substantial justice should be defeated on technicalities. No procedure in court of law should be allowed to defeat the cause of substantial justice on some technicalities).

10. The writ petition is accordingly dismissed.

11. However, the Labour Court is directed to complete the aforesaid reference made by the workman being Adjudication Case No. 156 of 2000, at the earliest possible, preferably, within four months from the date a certified copy of this order is produced before the Labour Court.