
(2009) 09 OHC CK 0039
In the Orissa High Court

Sankar Das

APPELLANT

Vs

Paradeep Phosphates Ltd. and Another

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Industrial Disputes Act, 1947 — Section 33

Citation : (2009) 108 CLT 553 : (2009) 2 OLR 790

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—This Review Petition has been filed by the petitioner with a prayer to modify the order dated 17.03.2009 passed in W.A. No. 97 of 2008 by deleting the observation portion with regard to restart the inquiry from the point it stood vitiated.

2. The grounds of challenge are as under:

(A) The Division Bench of this Hon''ble Court while deciding the W.A. No. 97/08 filed by the Management when did not interfere with the orders of Courts below should not have given the option to the Management to restart the enquiry from where it is vitiated;

(B) While deciding the W.A. 97/08 this Hon''ble Court instead of giving direction of reinstatement has given liberty to the Management to start the enquiry;

(C) The Hon''ble High court has no jurisdiction to interfere with the findings of the Presiding Officer, Industrial Tribunal, Bhubaneswar;

(D) This Hon''ble Court while deciding the W.A. 97/08 filed by the Management should have directed the appellant to reinstate the petitioners as the findings of learned Tribunal is against the 1st Party-Management;

(E) The Management of PPL instead of reinstating the petitioner-workman

appointed an Advocate as Enquiry Officer to start the inquiry again is also illegal;

(F) The interest of justice, enquiry and fair play unless the petitioner-workman is reinstated in service with back wages the petitioner will be highly prejudiced.

3. Mr. Jagannath Pattnaik, learned Senior Advocate appearing on behalf of the petitioner vehemently argued that this Court while deciding the Writ Appeal filed by the Respondent-Management should not have given the option to the Management to re-start inquiry from the point in stood vitiated, particularly when this Court did not interfere with the orders of the Courts below. This Court should also have given direction for reinstatement of the petitioner. The Respondent-Management instead of reinstating the petitioner workman, illegally appointed an Advocate as Enquiry Officer to restart the inquiry. According to Mr. Pattnaik, the High court does not have jurisdiction to interfere with the decision of the learned Presiding Officer of the Tribunal.

Relying on a decision of apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , Mr. Pattnaik contended that non-approval of the order of dismissal or failure to make application u/s 33(2)(b) seeking approval renders dismissal, inoperative and it becomes ineffective from the date it was passed. The employee becomes entitled to wages from the date of dismissal till the date of disapproval of the application.

Mr. Pattnaik further submitted that in Amrit Vanaspati Co. Ltd. v. Khem Chand and Anr. 2006 LabIC 3992, the apex Court held that in a case where inquiry conducted by the employer was found to be defective, fresh opportunity was given to the employer and employee to adduce evidence before the Tribunal. The opposite party-Management has not filed any application before the learned Tribunal to adduced additional evidence for justifying their action.

4. Per contra, Mr. Ganeswar Rath, learned Counsel appearing. on behalf of the O.P. Management while supporting the order of this Court seriously contended that in view of the settled position of law decided by the apex Court and this Court, this Court has rightly given liberty to the Management to restart the inquiry from the point it was vitiated.

Referring to the decision of apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and N.V. Krishnan Kutty v. Union of India and Four Ors. 2009 (108) CLT 103, it was argued that in case punishment is set aside, authority/management should be given liberty hold fresh inquiry from the stage it stood vitiated.

Relying on the decision of the apex Court in Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, , it was contended that there shall not be any reinstatement but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced.

Mr. Rath, further submitted that basing on the finding of the apex Court in Managing Director, ECIL (supra), the review petitioner was placed under

suspension and subsistence allowance deposited by the opposite party-Management in SB Account No. 8030/220/4887 of Syndicate Bank from which employee draws the same.

It is further argued that the petitioner has not made out a case under Order 47 Rule 1, C.P.C., and there is not even any pleading to that effect, by the petitioner, hence, the review petition is liable to be dismissed.

5. At this stage, it would be appropriate to reproduce the impugned order dated 17.03.2009.

17-03-2009 This writ appeal has been filed against the judgment and order dated 9.5.2008 passed by the learned Single Judge in W.P.(C) No. 6715 of 2008 by which the writ petition filed by the present appellant has been rejected and the order of the Labour Court u/s 33(2)(b) of the Industrial Disputes Act disapproving the order of termination on the ground that the enquiry had not been conducted in accordance with law, particularly giving the opportunity of hearing to the workman to defend himself was upheld. The Labour Court has recorded a finding that the witnesses of the employer have admitted that they had received the application of the delinquent-employee to adjourn the enquiry as he was not physically fit and able to attend the enquiry. In spite of that the enquiry was concluded. Therefore, the labour court held that the enquiry was conducted without meeting the requirement of observing the principles of natural justice. The learned Single Judge has confirmed the said finding.

There is no occasion for us to interfere with the finding of fact recorded by the courts below. However, it is the settled legal proposition that in such fact situation the enquiry can be re-started from the point it stood vitiated. Learned Counsel for the respondent does not dispute the said legal proposition.

In view of the above, it shall be open to the employer to take up the enquiry from the point it stood vitiated and complete the same expeditiously, preferably within a period of two months in accordance with law. Needless to say that in case the delinquent employee does not cooperate with the enquiry, the Enquiry Officer has always a right to proceed ex parte after recording the reasons.

With the aforesaid observation, the Writ Appeal is disposed of.

Urgent certified copy of the order may be given on proper application.

6. A plain reading of the above order reveals that this Court has expressed inter alia its view for not interfering with the findings of fact recorded by the Courts below. Thus this Court concurred with the finding regarding non-observance of the principles of natural justice and gave liberty to the employer to restart the inquiry from the point it stood vitiated. This Court further held that it is the settled legal position that in the given facts situation the inquiry can be restarted from the point it stood vitiated and learned Counsel for the respondent-Management does not dispute the said legal position. It may be relevant to quote here the order dated 03.03.2009 passed by this Court prior to passing of the

impugned order in W.A. 97 of 2008, which reads as follows:

03-03-2009 Mr. A. Mohanty, learned Counsel appearing on behalf of the respondents prays and is given one week's time to inform the Court as to whether it would be proper to give an opportunity to the employer to take up the case afresh from the point the proceeding stood vitiated for not serving the enquiry report.

List this matter after one week.

Thus, the direction regarding restart of the inquiry from the point it stood vitiated was raised and decided after hearing the learned Counsel appearing on behalf of the present petitioner.

In view of the above, now it is not open for the petitioner to file Review Petition to delete the direction of the Court with regard to restart of the inquiry from the point it stood vitiated on the ground that while this Court held that there was no occasion to interfere with the order of the Courts below it should not have given option to the Management to restart the inquiry.

7. The grounds with regard to appointment of an Advocate as Enquiry Officer to restart the inquiry and the reinstatement of the employee are consequential to this Court's order and do not come within the purview of review. Once the order of termination is held to be bad for non-observance of principles of natural justice, the natural consequences follow.

8. The point of jurisdiction of this Court taken in ground "C was neither urged before the learned Single Bench nor before the Division Bench of this Court, in any event, the said ground is without any substance because of the nature of the writ jurisdiction. Therefore, on this point also the review is not maintainable.

9. In this context, it may be relevant to refer to Section 114 read with Order 47, Rule 1, C.P.C. and some of the decisions of the apex Court.

Section 114 read with Order 47, Rule 1, C.P.C. prescribes the limitations for entertaining a review petition. The limitations are that the party filing the application for review has discovered a new and important matter or evidence after exercise of due diligence, which was not within his knowledge or could not be produced by him at the time when the decree or order was passed, or on account of some mistake or error apparent on the face of the record or "for any other sufficient reason". The aforesaid limitations are prescribed in a crystal clear language.

The expression "any other sufficient reason" contained in Order 47, Rule 1, means "sufficient reason" which is analogous to those specified immediately to it in the provision of Order 47, Rule 1, C.P.C.

In *Chhajju Ram v. Neki and Ors.* AIR 1922 PC 112, it was held by the Privy Council that analogy must be discovered between two grounds specified therein namely; (i) discovery of new and important matter or evidence; and (ii) error

apparent on the face of record, before entertaining the review on any other sufficient ground.

In *Delhi Administration v. Gurdip Singh Uban and Ors.* AIR 2000 SC 3737, the Hon"ble apex Court deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bypass the procedure prescribed for hearing a review application.

In *Subhash Vs. State of Maharashtra and Another*, , the apex Court emphasized that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits that the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

In the garb of review, a party cannot be permitted to reopen the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that may be possible for the Court to take a view contrary to what had been taken earlier. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even in the garb of doing justice or substantial justice, to engage the Court again to decide the controversy already decided. If a party is aggrieved by a judgment, it must approach the higher Court but entertaining a review to reconsider the case would amount to exceeding its jurisdiction conferred under the limited jurisdiction for the purpose of review.

The apex Court in *Rajender Kumar and Others Vs. Rambhai and Others*, , held that 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.

The Hon"ble Supreme Court in *Jain Studios Limited through its President Vs. Shin Satellite Public Co. Ltd.*, held that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A review of old and over ruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection only in exceptional cases.

10. There is no quarrel over the legal propositions settled by the apex Court in the judgments relied on by the petitioner. So far as the review of impugned order is concerned, the said decisions are of No. help to the petitioner.

11. In the above facts situation, no case for review under Order 47, Rule 1, C.P.C. is made out. The well-known parameters of review, as indicated above, having not been fulfilled, there is no scope for review. The Review petition is accordingly dismissed.