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**(2007) 12 AHC CK 0140**  
**In the Allahabad High Court**

Virendra Swaroop Srivastava

APPELLANT

Vs

Vaishya Brothers and Co. (P) Ltd.

RESPONDENT

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**Date of Decision :** 20-12-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

**Citation :** (2007) 12 AHC CK 0140

**Hon'ble Judges :** S.P. Mehrotra, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.P. Mehrotra, J.—The present Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner, inter alia, praying for quashing the order dated 6.3.2000 (Annexure-1 to the Writ Petition) passed by the Presiding Officer, Labour Court (2), U.P., Kanpur (respondent No. 2).

2. It appears that the State Government made a reference to the Labour Court under the U.P. Industrial Disputes Act, 1947 to the effect as to whether removal/deprivation of the petitioner (workman) from work by the employer (respondent No. 1) was improper and/or illegal, and if yes, as to what benefit/relief the petitioner (workman) was entitled and with what other details.

The said reference was registered as Adjudication Case No. 406 of 1991.

3. It further appears that in the said Adjudication Case, the petitioner (workman) filed Written Statement, inter alia, alleging that the petitioner (workman) was appointed as Foreman (Head Mistri) by the respondent No. 1 (employer) on 29.6.1987 after interview on a consolidated salary of Rs. 1800/-; and that on 7.7.1987, the petitioner (workman) was posted for working on Dehradun-Raipur site by the respondent No. 1 (employer); and that the petitioner (workman) worked at the said place upto 2.2.1989; and that on 2.2.1989, the respondent No. 1 (employer) directed the petitioner (workman) to report at the Head Office

of the establishment; and that accordingly the petitioner (workman) presented himself before the Head Office of the establishment, and continued to get his presence recorded at the Head Office upto 6.2.1989; and that on 7.2.1989, the Director of the Establishment orally removed the petitioner (workman) from the work.

4. It was, interalia, further alleged in the said Written statement filed on behalf of the petitioner (workman) that the respondent No. 1 (employer) neither gave any appointment letter to the petitioner (workman) nor gave any order at the time of removal from work; and that the respondent No. 1 (employer) did not comply with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 while removing the petitioner (workman) from the work.

4. It further appears that Written Statement was filed on behalf of the respondent No. 1 (employer) in the said Adjudication Case. It was, interalia, alleged on behalf of the respondent No. 1 (employer) that the establishment of the respondent No. 1 (employer) was a governmental construction Company, which used to carry on work of construction of buildings and plants on contract; and that the petitioner (workman) was temporarily posted for a fixed period at Dehradun for the construction work which was going on at Dehradun-Raipur site; and that on completion of work at Dehradun-Raipur site, full and final payment of salary for the period upto 31.1.1989 was made to the petitioner (workman) on 1.2.1989; and that the place of accrual of cause of action for the industrial dispute was Dehradun, and, therefore, the Labour Court at Kanpur (respondent No. 2) had no jurisdiction to hear the industrial dispute in question.

5. It was, interalia, further alleged in the said Written Statement filed on behalf of the respondent No. 1 (employer) that as the petitioner (workman) was engaged on temporary basis for working at Dehradun-Raipur site, and on completion of the work, full and final payment was made to the petitioner (workman), therefore, the petitioner was not entitled to get any relief.

It further appears that the petitioner (workman) filed rejoinder in reply to the aforesaid Written Statement filed on behalf of the respondent No. 1 (employer).

It was, interalia, alleged by the petitioner (workman) in the said rejoinder that on 2.2.1989 the respondent No. 1 (employer) gave order to the petitioner (workman) to report at the Head Office of the establishment at Kanpur, and accordingly, the petitioner (workman) reported at the Head Office at Kanpur, and continued to so report upto 6.2.1989; and that on 7.2.1989, the respondent No. 1 (employer) orally removed/deprived the petitioner from work, therefore, the cause of action arose at Kanpur.

6. It further appears that in the said Adjudication Case, Like respondent No. 1 (employer) also filed rejoinder in reply to the aforesaid Written Statement filed on behalf of the petitioner (workman).

It further appears that in the said Adjudication Case, the petitioner (workman)

filed three documents and examined himself as WW-1. The respondent No. 1 (employer) filed one document but did not lead any oral evidence.

It further appears that by the Award dated 31.3.1997, the Labour Court (respondent No. 2) held that the removal/deprivation of the petitioner (workman) on 7.2.1989 was improper and illegal. The Labour Court (respondent No. 2) accordingly directed that the petitioner (workman) be reinstated with continuous service with effect from 7.2.1989.

Directions for payment of salary and other benefits with effect from 7.2.1989 were also given in the said Award passed by the Labour Court (respondent No. 2).

7. In the said Award, it was, interalia, noticed by the Labour Court (respondent No. 2) that the respondent No. 1 (employer) had not given any appointment letter to the petitioner (workman) which would have proved the allegation of the respondent No. 1 (employer) that the petitioner (workman) had been appointed on temporary basis for a particular period for working at Dehradun-Raipur site, and, therefore, the Labour Court concluded that the petitioner (workman) was engaged by the respondent No. 1 (employer) for work on permanent basis, and on 2.2.1989, the petitioner (workman) was directed to submit his joining at the Head Office at Kanpur, and in compliance thereof, the petitioner (workman) joined on 3.2.1989 at the Head Office of the establishment of the respondent No. 1 (employer) at Kanpur, and that on 7.2.1989, the respondent No. 1 (employer) orally removed/deprived the petitioner (workman) from his work.

8. It was, interalia, further held by the Labour Court (respondent No. 2) that the respondent No. 1 (employer) did not give any documentary evidence regarding completion of work at Dehradun-Raipur site.

It further appears that the said Award dated 31.3.1997 was published on 6.10.1997.

Copy of the said Award has been filed as Annexure-2 to the Writ Petition.

It further appears that the respondent No. 1 (employer) filed an Application (No. 43/D) dated 24.3.1999 purporting to be u/s 6(6) of the U.P. Industrial Disputes Act, 1947, interalia, praying that the mistake, which had occurred due to accidental slip or omission in the said Award dated 31.3.1997 (published on 6.10.1997), be corrected.

Copy of the said Application has been filed as Annexure-4 to the Writ Petition.

9. A perusal of the said Application dated 24.3.1999, filed on behalf of the respondent No. 1 (employer), shows that the said Application was based on the following two main grounds:

1. In the Adjudication Case before the Labour Court (respondent No. 2), the respondent No. 1 (employer) had raised the plea that full and final payment had been made to the petitioner (workman), and the respondent No. 1 (employer) had filed a document (Exhibit E-I) in this regard, and during cross-examination

the petitioner (workman) accepted the said document (Exhibit E-I). The Labour Court did not consider the said document (Exhibit E-I) in its Award, nor did the Labour Court give any finding on the said document (Exhibit E-I) in the said Award.

2. The respondent No. 1 (employer) had raised the plea that the cause of action in regard to the industrial dispute in question had arisen in Dehradun, and, therefore, the Labour Court at Kanpur had no territorial jurisdiction to hear the industrial dispute in question. The Labour Court in the said Award did not consider the said plea raised on behalf of the respondent No. 1 (employer).

10. Other averments made in the said Application, filed on behalf of the respondent No. 1 (employer), pertain to the effect of the above two grounds on the merits of the case.

In reply to the said Application, filed on behalf of the respondent No. 1 (employer), the petitioner (workman) filed reply/objections (No. 45/D) dated 12.4.1999, copy whereof has been filed as Annexure-5 to the Writ Petition.

In the said reply/objections, it was, inter alia, alleged by the petitioner (workman) that there was no clerical or arithmetical error in the Award dated 31.3.1997 nor was there any error arising in the said Award due to accidental slip or omission; and that the respondent No. 1 (employer) had failed to make out any case falling u/s 6(6) of the U.P. Industrial Disputes Act, 1947.

11. The Labour Court (respondent No. 2) by its order dated 6.3.2000 decided the said Application (No. 43/D) dated 24.3.1999 filed on behalf of the respondent No. 1 (employer). The Labour Court held that the question of jurisdiction of the Labour Court at Kanpur, as mentioned in the said Application (No. 43/D), was an important question, and, therefore, it was necessary on the basis of principles of natural justice to reconsider the Award dated 31.3.1997 in view of the facts mentioned in the said Application (No. 43/D). In consequence, the Labour Court by the said order dated 6.3.2000 set-aside the Award dated 31.3.1997, and fixed 17.4.2000 for hearing of the case. Copy of the said order dated 6.3.2000, as mentioned above, has been filed as Annexure-1 to the Writ Petition.

12. I have heard Shri Bhupendra Nath Singh, learned Counsel for the petitioner, and Shri S.K. Gupta, learned Counsel for the respondent No. 1 at length, and perused the record.

Shri B.N. Singh, learned Counsel for the petitioner has made the following submissions:

1. Question of jurisdiction sought to be raised by the respondent No. 1 (employer) in the said Application (No. 43/D) dated 24.3.1999 was not raised on behalf of the respondent No. 1 (employer) before the Labour Court (respondent No. 2), and this is why, no specific finding was recorded by the Labour Court (respondent No. 2) on the said question in its Award dated 31.3.1997.

2. The Labour Court (respondent No. 2) in the said Award dated 31.3.1997 concluded that the petitioner (workman) was engaged by the respondent No. 1 (employer) for work on permanent basis, and on 2.2.1989, the petitioner (workman) was directed to submit his joining at the Head Office at Kanpur, and in compliance thereof, the petitioner (workman) joined on 3.2.1989 at the Head Office of the establishment of the respondent No. 1 (employer) at Kanpur, and that on 7.2.1989, the respondent No. 1 (employer) orally removed/deprived the petitioner (workman) from his work. In view of the said findings, it is evident that the Labour Court (respondent No. 2), by implication, rejected the plea of the respondent No. 1 (employer) that the place of accrual of cause of action for the industrial dispute was Dehradun, and the Labour Court at Kanpur (respondent No. 2) had no jurisdiction to hear the industrial dispute in question.

3. In any view of the matter, the grounds raised in the said Application (No. 43/D) dated 24.3.1999 regarding non-consideration of the document (Exhibit E-I) regarding the alleged full and final payment as also regarding non-consideration of the plea regarding territorial jurisdiction of the Labour Court at Kanpur (respondent No. 2) could not be characterized as either "clerical mistake" or "arithmetical mistake" in the Award, nor could the same be characterized as arising in the Award "from any accidental slip or omission" within the meaning of the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. Therefore, the said Application (No. 43/D) dated 24.3.1999 purporting to be under Sub-section (6) of Section 6 of the U.P. industrial Disputes Act, 1947 was not maintainable. The Labour Court (respondent No. 2) acted with manifest illegality in passing the impugned order dated 6.3.2000.

4. The Labour Court (respondent No. 2) failed to appreciate the distinction between the review of an Award and the correction of an Award. The Labour Court (respondent No. 2) failed to notice that while the power to correct an Award has been given to the Labour Court under Sub-section (6) of Section 6 of the U.P. industrial Disputes Act, 1947, no power of review has been given to the Labour Court. The grounds sought to be raised in the said Application (No. 43/D)-dated 24.3.1999 may provide grounds for review of the Award, but the Labour Court (respondent No. 2) has no jurisdiction to review its Award.

5. In any case, under the garb of correcting the Award dated 31.3.1997 in exercise of powers purporting to be under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, the Labour Court (respondent No. 2) set-aside the said Award dated "31.3.1997 itself, and directed for rehearing of the Adjudication Case. This was not permissible, under the provisions of Sub-section (6) of Section 6 of , the U.P. Industrial Disputes Act, 1947.

13. Shri B.N. Singh, learned Counsel for the petitioner has placed reliance on the following decisions:

1. U.P. State Road Transport Corporation, Kanpur Region Vs. Babu Singh and Others,

2. Ramesh Chandra Dixit v. Presiding Officer, Industrial Tribunal and Anr. 1992(65) FLR 766.

3. U.P.S.R.T.C. Vs. Imtiaz Hussain,

In reply, Shri S.K. Gupta, learned Counsel for the respondent No. 1 (employer) has made the following submissions:

1. A perusal of the Award shows that the question of territorial jurisdiction was raised before the Labour Court (respondent No. 2). The submission of the learned Counsel for the petitioner that the said question was not pressed before the Labour Court (respondent No. 2) is not correct.

2. The document (Exhibit-E-1), filed on behalf of the respondent No. 1 (employer), clearly established that the petitioner (workman) had accepted full and final payment at Dehradun on 1.2.1989, therefore, it was apparent that the petitioner (workman) worked at Dehradun upto 31.1.1989, and his engagement came to an end on the said date. Therefore, there was no occasion for the respondent No. 1 (employer) for directing petitioner (workman) on 2.2.1989 to submit his joining at Kanpur or for the petitioner (workman) to join at Kanpur on 3.2.1989 or for the respondent No. 1 (employer) to orally remove/deprive the petitioner (workman) from his work on 7.2.1989. There was, thus, an error in the Award dated 31.3.1997 arising from accidental omission, and the same could be corrected under the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

Similarly, the question of territorial jurisdiction of the Labour Court at Kanpur (respondent No. 2) was raised on behalf of the respondent No. 1 (employer) before the Labour Court (respondent No. 2), and the Labour Court (respondent No. 2) referred to the said plea taken on behalf of the respondent No. 1 (employer) in its Award dated 31.3.1997, but it did not record any specific finding in regard to the said plea of territorial jurisdiction of the Labour Court at Kanpur (respondent No. 2). Hence, the Labour Court (respondent No. 2) made an accidental omission giving rise to error in the said Award dated 31.3.1997, and such error could be corrected under the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

3. In case, one part of the reference or one part of the claim is answered by the Labour Court in its Award while the other part of the reference or the other part of the claim is left unanswered, then in view of the decisions of the Supreme Court, the same would amount to omission in the Award, and the same may be corrected under the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. However, in case, the reference or the claim is fully decided in the Award, but subsequently the Labour Court changes its opinion and seeks to make correction in the Award, then the same is not permissible as the same is not an omission within the purview of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, but is, in fact, change of opinion by the Labour Court on the merits of the case. Reference is made to the

provisions of the Income Tax Act, 1961 and the U.P. Trade Tax Act, 1948 regarding reopening of assessments, and it is submitted that mere change of opinion cannot provide a ground for reopening of assessments.

However, the present case is not a case of change of opinion but is a case of omission in the Award as the said relevant document (Exhibit E-I) and the said relevant point regarding jurisdiction have been omitted from consideration in the said Award dated 31.3.1997.

4. The nature of the omission in the present case was such as could be corrected only by setting-aside the Award dated 31.3.1997 and hearing the Adjudication Case again. This is why, the Labour Court (respondent No. 2) by the impugned order dated 6.3.2000 set-aside the Award dated 31.3.1997 and directed for hearing the parties again.

5. Shri Gupta has placed reliance on the following decisions:

1. Master Construction Co. (P) Ltd. Vs. State of Orissa and Another,

2. Tulsipur Sugar Company Ltd. Vs. State of U.P. and Others,

3. J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another,

14. In rejoinder, Shri B.N. Singh, learned Counsel for the petitioner has reiterated his earlier submissions, and has further submitted as under:

1. In J.K. Synthetics Ltd. case (supra) (paragraph 8 of the said JT), the Supreme Court explained its earlier decision in Tulsipur Sugar Company Ltd. Vs. State of U.P. and Others, observing as follows:

...In Tulsipur Sugar Company, this Court found that the reference to the Labour Court consisted of two parts. The award answered only the first part and had omitted to answer the second (consequential) part. While modifying the award on an application u/s 6(6), the Labour Court neither upset nor altered any of the findings recorded in its original award, but only answered the second part of the reference, which had earlier been omitted. Therefore, this Court held that such correction was permissible.

In the present case, as is apparent from a perusal of the award dated 31.3.1997, the Labour Court answered the complete reference, and no part of the reference was left to be decided. Therefore, the Application (No. 43/D) dated 24.3.1999 u/s 6 (6) of the U.P. Industrial Disputes Act, 1947, filed on behalf of the respondent No. 1 (employer), was not maintainable.

2. The Supreme Court in the above-quoted paragraph of its decision in J.K. Synthetics Ltd. case (supra) emphasised that while modifying the award on an application u/s 6(6) of the U.P. Industrial Disputes Act, 1947, the Labour Court neither upset nor altered any of the findings recorded in its original award.

In the present case, the grounds raised on behalf of the respondent No. 1 (employer) in the Application (No. 43/D) dated 24.3.1999 would evidently result

in upsetting and altering the findings recorded by the Labour Court in its original award dated 31.3.1997.

In fact, the Labour Court by the impugned order dated 6.3.2000 passed on the Application (No. 43/D) dated 24.3.1999 set-aside the original award dated 31.3.1997, and directed for rehearing of the Adjudication Case. This was not permissible under the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

3. In J.K. Synthetics Ltd. case (supra) (paragraph 8 of the said JT), the Supreme Court laid down various propositions regarding the scope of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. The proposition No. (c) was as follows:

c) The power cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions.

In the present case, the Labour Court by passing the impugned order dated 6.3.2000 on the said Application (No. 43/D) dated 24.3.1999 acted contrary to the above proposition laid down by the Supreme Court.

4. Even if the alleged receipt regarding full and final payment was given by the petitioner, still he could not be debarred from challenging the action of the authority. Reliance in this regard is placed on the decision of the Supreme Court in Nar Singh Pal Vs. Union of India and Others,

15. I have considered the submissions made by the learned Counsel for the parties.

Let us first take-up the rival submissions made by the learned Counsel for the parties on the questions as to whether the plea of jurisdiction sought to be raised by the respondent No. 1 (employer) in the said Application (No. 43/D) dated 24.3.1999 was raised on behalf of the respondent No. 1 (employer) before the Labour Court (respondent No. 2) in the said Adjudication Case, and as to whether the Labour Court in the said award dated 31.3.1997 considered and decided the said plea of jurisdiction.

16. A perusal of the award dated 31.3.1997, particularly paragraphs 3 and 4 thereof, shows that the Labour Court (respondent No. 2) noticed the rival submissions made on behalf of the respondent No. 1 (employer) and the petitioner (workman) in regard to the question of jurisdiction of the Labour Court at Kanpur (respondent No. 2) to hear the reference in question. Hence, I am of the opinion that the submission made by the learned Counsel for the petitioner that the plea of jurisdiction was not raised on behalf of the respondent No. 1 (employer) before the Labour Court (respondent No. 2) in the said Adjudication Case, cannot be accepted.

16.1 A perusal of the said award dated 31.3.1997, -particularly paragraph 10 thereof, shows that the Labour Court (respondent No. 2) concluded that the petitioner (workman) was engaged by the respondent No. 1 (employer) for work on permanent basis, and on 2.2.1989, the petitioner (workman) was directed to submit his joining at the Head Office at Kanpur, and in compliance thereof, the petitioner (workman) joined on 3.2.1989 at the Head Office of the establishment of the respondent No. 1 (employer) at Kanpur, and that on 7.2.1989, the respondent No. 1 (employer) orally removed/deprived the petitioner (workman) from his work.

16.2 Reading the said findings recorded in paragraph 10 of the said award dated 31.3.1997 with the rival submissions made on behalf of the respondent No. 1 (employer) and the petitioner (workman) on the question of jurisdiction of the Labour Court at Kanpur, as noticed in paragraphs 3 and 4 of the said award, it is evident that the Labour Court (respondent No. 2), by implication, rejected the plea of the respondent No. 1 (employer) that the place of accrual of cause of action of the industrial dispute was Dehradun, and the Labour Court at Kanpur (respondent No. 2) had no jurisdiction to hear the industrial dispute in question. The submission made by the learned Counsel for the petitioner in this regard, in my view, is correct.

17. However, as submitted by the learned Counsel for the respondent No. 2 (employer), it is correct that the express finding on the question of jurisdiction was not recorded by the Labour Court (respondent No. 2) in the said award dated 31.3.1997.

Therefore, the question arises as to whether non-recording of express finding on the question of jurisdiction of the Labour Court at Kanpur (respondent No. 2) could be characterised as either "clerical mistake" or "arithmetical mistake" in the said award dated 31.3.1997, or could be characterised as error arising in the said award "from any accidental slip or omission" within the meaning of the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

18. Similarly, question arises as to whether non-consideration of the document (Exhibit E-I) regarding the full and final payment could be characterised as either "clerical mistake" or "arithmetical mistake" in the said award dated 31.3.1997, or could be characterised as error arising in the said award "from any accidental slip or omission" within the meaning of the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

In order to appreciate the submissions made by the learned Counsel for the parties on the above questions, it is necessary to refer to the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, which is as follows:

[6. Awards and action to be taken thereon.-(1) to (5)....

(6) A Labour Court, Tribunal or Arbitrator may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award, or errors arising therein from any accidental slip or omission; whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act; relating to the publication of an award shall mutatis mutandis apply thereto.].

Thus, Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 gives power to the Labour Court to correct the following mistakes/errors in the award:

- i) Clerical mistakes in the award,
- ii) Arithmetical mistakes in the award.
- iii) Errors arising in the award from any accidental slip or omission.

19. The correction of the above mistakes/errors may be made the Labour Court either on its own motion or on the application of any party to the dispute.

Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 is similar to Section 152 of the Code of Civil Procedure, 1908, which provides as follows:

152. Amendment of judgments, decrees or orders.-Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Thus, u/s 152 of the Code of Civil Procedure, the Court has power to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. Such correction may be made by the Court either of its own motion or on the application of any of the parties.

20. It is further pertinent to note that while sub-section of Section 6 of the U.P. Industrial Disputes Act, 1947 gives power to the Labour Court to correct the mistakes/errors, as mentioned above, in its award, the Labour Court has not been given any power of review of its award as is given to Civil Court under the Code of Civil Procedure.

Section 114 and Order XLVII, Rules 1 and 8 of the CPC deal with the power of review of judgment given to Civil Court. Section 114 of the CPC is as follows:

114. Review.- Subject as aforesaid, any person considering himself aggrieved,-

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which an appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

21. Order XLVII, Rule 1 of the CPC lays "Sown as under:

1. Application for review of judgment- 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 to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

22. Order XLVII, Rule 8 of the CPC lays down as under:

8. Registry of application granted, and order for rehearing.-When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the rehearing as it thinks fit.

As noted above, while the Labour Court has power to make correction of mistakes/errors of the nature mentioned in Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it has no power to review its award.

Therefore, in order to appreciate the scope of subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it is essential to appreciate the distinction between the power of correction/amendment as given to Civil Court u/s 152 of the CPC and the power of review given to Civil Court u/s 114 read with Order XLVII, Rules 1 and 8 of the Code of Civil Procedure.

23. From a perusal of Section 152 of the CPC dealing with the power of correction/amendment as given to Civil Court and the provisions of Section 114 read with Order XLVII, Rules 1 and 8 of the CPC dealing with the power of review

given to Civil Court, the following, amongst others, distinctions are evident:

1. Section 152 of the CPC gives power to Civil Court to correct the mistakes or errors of the nature mentioned in the said provision which have occurred in the judgments, decrees or orders. Hence, under the said provision only mistakes or errors of the nature mentioned in the said provision are corrected, and, therefore, the existence of such judgments, decrees or orders remains intact.

On the other hand, Section 114 read with order XLVII Rule 1 of the CPC gives power to the Civil Court to review its judgment on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure. In case the review is granted by the Civil Court, the same may result in existence of the judgment coming to an end. The Court will thereupon proceed to rehear the case as provided in Rule 8 of Order XLVII of the Code of Civil Procedure.

2. u/s 152 of the Code of Civil Procedure, the Civil Court may correct the following mistakes/errors in the judgments, decrees or orders:

- (a) Clerical mistakes in the judgments, decrees or orders.
- (b) Arithmetical mistake in the judgments, decrees or orders.
- (c) Errors arising in the judgments, decrees or orders from any accidental slip or omission.

On the other hand, review of the judgment may be made by the Civil Court u/s 114 read with Order XLVII Rule 1 of the CPC on the following grounds:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence by the person applying for review, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.
- (ii) Mistake or error apparent on the face of the record.
- (iii) Any other sufficient reason.

3. u/s 152 of the Code of Civil Procedure, correction of mistakes or errors may be made by the Court either of its own motion or on the application of any of the parties.

Review of judgment u/s 114 read with Order XLVII, Rule 1 of the CPC may be made by the Civil Court on an application made by a person aggrieved by the decree or order or decision passed/given by such Court as mentioned in the said provisions.

4. Where correction in judgments, decrees or orders is sought to be made u/s 152 of the CPC in regard to the errors arising in such judgments, decrees or orders from any accidental slip or omission, the following points are required to be kept in mind:

(a) Where one part of the claim made by a party in the case is considered and adjudicated upon in the judgment, decree or order, while the order part of the claim made by the said party in the case is not considered or adjudicated upon, this may be a case of error arising in the judgment, decree or order from accidental slip or omission, and the Court may make correction in the judgment, decree or order u/s 152 of the Code of Civil Procedure.

However, if the entire claim made by a party in the case is considered and adjudicated upon by the Civil Court in the judgment, decree or order, then such judgment, decree or order cannot be sought to be corrected on the ground that certain points relevant for deciding the claim or certain documents relevant for deciding the claim have not been considered by the Civil Court. Non-consideration of certain points relevant for deciding the claim or certain documents relevant for deciding the claim cannot be characterized as error arising in the judgment, decree or order from accidental slip or omission where the entire claim has been considered and adjudicated upon. Non-consideration of such points or such documents may in appropriate cases provide a ground to seek review of the judgment under the provisions of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure.

(b) While making correction u/s 152 of the CPC in regard to errors arising in the judgment, decree or order from accidental slip or omission, the reasoning, findings and conclusions recorded in such judgment, decree or order cannot be altered.

24. On the other hand, in case of review u/s 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, the existence of judgment including the reasoning, findings and conclusions recorded therein may come to an end, and the Court may pronounce a fresh judgment after re-hearing the case.

Keeping in mind the above distinctions between power to make correction as given to Civil Court u/s 152 of the CPC and power of review as given to the Civil Court u/s 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, let us examine the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 which gives power to the Labour Court to correct the mistakes/errors in the award.

As mentioned above, Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 is similar to Section 152 of the Code of Civil Procedure. Applying the above distinctions to the provisions of Sub-section (6) of Section 6 of the U.P. industrial Disputes Act, 1947, it is evident that while exercising its power under Sub-section (6) of Section 6 of the said Act, the Labour Court may correct clerical mistakes in its award or arithmetical mistakes in its award or errors arising in its award from any accidental slip or omission. However, while exercising power under subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, the Labour Court cannot set-aside the award and rehear the adjudication case afresh. Such power of setting-aside the award and rehearing

the adjudication case afresh can only be exercised in exercise of power of review but the Labour Court, as noted above, has no power of review.

Again, in case one part of the reference made to the Labour Court has been considered and adjudicated upon and answered by the Labour Court while the other part of the reference has not been considered or adjudicated upon or answered by the Labour Court, this may be a case of error arising in the award from accidental slip or omission, and the Labour Court may make correction in the award under subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

25. However, in case the entire reference made to the Labour Court has been considered and adjudicated upon and answered by the Labour Court, the Labour Court cannot exercise its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 to make correction in the award on the ground of non-consideration of certain points relevant for deciding the adjudication case or non-consideration of certain documents relevant for deciding the adjudication case. Non-consideration of such points or such documents may in appropriate cases provide a ground to seek review of the award but the Labour Court has no power of review.

Again, in exercise of power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, the Labour Court cannot alter the reasoning, findings and conclusions recorded in its award on the ground that there has been error in the award arising from accidental slip or omission. Such power may be exercised in appropriate cases while exercising the power of review but the Labour Court has no power of review.

26. Keeping in mind the above principles, let us examine the facts of the present case.

As noted above, the State Government made reference to the Labour Court which was registered as Adjudication Case No. 406 of 1991. The Labour Court by its award dated 31.3.1997 (published on 6.10.1997) decided the said Adjudication Case and answered the entire reference made to it.

27. An Application (No. 43/D) dated 24.3.1999 purporting to be u/s 6(6) of the U.P. Industrial Disputes Act, 1947 was filed on behalf of the respondent No. 1 (employer), inter alia, praying that the mistake, which had occurred due to accidental slip or omission in the said award, be corrected. The main grounds raised in the said Application were firstly regarding non-consideration of the document (Exhibit E-I) in respect of the alleged full and final payment, and secondly, regarding non-consideration of the plea in respect of territorial jurisdiction of the Labour Court at Kanpur (respondent No. 2).

28. The Labour Court by its order dated 6.3.2000 decided the said Application (No. 43/D) dated 24.3.1999 filed on behalf of the respondent No. 1 (employer) and, inter alia, set-aside the said award dated 31.3.1997, and fixed 17.4.2000 for

hearing of the case.

29. It is, thus, evident that the Labour Court in exercise of its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 set-aside the award and directed for rehearing of the Adjudication Case. This could not be done by the Labour Court in exercise of its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. Such setting-aside and rehearing could only be done in exercise of power of review in appropriate cases but the Labour Court( respondent No. 2) had no such power of review under the U.P. Industrial Disputes Act, 1947.

30. Again, the entire reference made to the Labour Court was answered by the Labour Court in its award dated 31.3.1997 and no part of the reference was left unanswered. Therefore, it was not open to the Labour Court to make any correction in the said award on the ground that certain point relevant for deciding the said Adjudication Case was not considered while giving the said award dated 31.3.1997 or certain document relevant for deciding the said Adjudication Case was not considered while giving the said award dated 31.3.1997.

31. It is further noteworthy that in case the Labour Court were to consider the plea regarding territorial jurisdiction of the Labour Court at Kanpur or regarding the effect of the said document (Exhibit E-I) in respect of the alleged full and final payment, the same would evidently involve altering the reasoning, findings and conclusions as recorded in the award dated 31.3.1997. This could not be done by the Labour Court in exercise of its power to make correction under subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

32. Hence, it is evident that in the present case, the "Labour Court could not exercise its power to make correction under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 on the ground of error arising in the award from any accidental slip or omission. The Application (No. 43/D) dated 24.3.1999 filed on behalf of the respondent No. 1 (employer) was, thus, not maintainable keeping in view the scope of Sub-section (6). of Section 6 of the U.P. Industrial Disputes Act, 1947. The Labour Court, in my view, acted illegally in passing the impugned order dated 6.3.2000 allowing the said Application (No. 43/D) dated 24.3.1999 in purported exercise of its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

33. Let us now consider certain JUDICIAL DECISIONS including those cited at the bar.

We may first notice the decisions in regard to Section 152 of the Code of Civil Procedure.

In Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, , their Lordships of the Supreme Court laid down as follows (paragraph 7 of the said AIR):

7. The material part of Rule 83 of the said Rules reads : "The Commissioner of Sales Tax, may at any time correct any arithmetical or clerical mistakes or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him, or it.

Rule 83 provides a summary remedy within a narrow compass. The jurisdiction of the Commissioner under this rule is limited and is confined only to the correction of mistakes or omissions mentioned therein. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification, namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. But however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance. If that was the scope of Rule 83, the question is, whether the Commissioner's order is within its scope.

(Emphasis supplied)

This decision, thus, lays down that the expression "accidental slip or omission used in Rule 83 of the Orissa Sales Tax Rules, 1947 (similar to Section 152 of the Code of Civil Procedure) cannot countenance a reargument on merits on the questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance.

34. The said propositions laid down by the Supreme Court in Master Construction Co. (P) Ltd. case (supra) will also apply to Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. It is not open to a party to make a reargument on merits on questions of fact or law, or to raise new arguments which he has not advanced at the first instance.

35. Applying the above propositions to the present case, it will be noticed that the pleas raised in the said Application (No. 43/D) dated 24.3.1999 would evidently involve a reargument on merits on questions of fact as well as law. This is not permissible under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

In Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, their

Lordships of the Supreme Court opined as follows (paragraph 17 of the said AIR):

17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order 7, Rule 3 and Order 20, Rule 3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the C.P.C. depending on the facts and circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected u/s 152 of the C.P.C. by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47, C.P.C. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the C.P.C.

This decision, thus, lays down that an inadvertent error, not affecting the merits of the case, may be corrected u/s 152 of the CPC by the Court which passed the decree by supplying the omission. Therefore, while exercising power to make correction u/s 152 of the Code of Civil Procedure, it is not open to the Court to affect the merits of the case.

36. The above propositions laid down by the Supreme Court in *Pratibha Singh* case (*supra*) in regard to Section 152 of the CPC will also apply to the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

Hence, in exercise of power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it is not open to the Labour Court to affect the merits of the award.

In the present case, as noted above, the pleas raised in the said Application (No. 43/D) dated 24.3.1999 regarding the territorial jurisdiction of the Labour Court at Kanpur or regarding the effect of the said document (Exhibit E-I) in respect of the alleged full and final payment would evidently affect the merits of the award dated 31.3.1997 given by the Labour Court. The said Application was, therefore, not maintainable under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

37. It is noteworthy that the Labour Court by the impugned order dated 6.3.2000 passed on the said Application (No. 43/D) dated 24.3.1999 set-aside the original award dated 31.3.1997, and directed for re-hearing of the Adjudication Case. This was evidently not permissible under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

In *State of Punjab Vs. Darshan Singh*, , their Lordships of the Supreme Court

held as follows (paragraphs 11,12 and 13 of the said AIR):

11. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the Tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefore and subject to the conditions or limitations provided therein. The powers u/s 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however "erroneous that may be. It has been noticed that the Courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in *Dwaraka Das Vs. State of Madhya Pradesh and Another*, and *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*,

12. The basis of the provision u/s 152 of the Code is founded on the maxim "actus curiae neminem gravabit" i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law," said Cresswell, J. in *Freeman v. Tranah* 12 CB 406 . An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to

the Court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

13. Above being the position, the first appellate Court was not justified in exercising power u/s 152 of the Code and the High Court was equally in error by putting its seal of approval thereon. Therefore, the appeal relating to the judgment in Second Appeal No. 3618/1987 is dismissed while the one relating to Second Appeal No. 1472/1988 is allowed. There shall be no order as to costs.

(Emphasis supplied)

38. Thus, the following propositions, amongst others, have been laid down by the Supreme Court in the above decision in State of Punjab case (supra).

1. The very Court or the Tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefore and subject to the conditions or limitations provided therein.

2. The powers u/s 152 of the CPC are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it.

3. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review.

4. No Court can, under the cover of Section 152 of the Code of Civil Procedure, modify, alter or add to the terms of its original judgment, decree or order.

5. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

39. Applying the above propositions to the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it is evident that the said provision cannot be invoked for new arguments or re-arguments on merits of the award earlier given by the Labour Court. It is not open to the Labour Court under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 to modify, alter or add to the terms of the award.

In case the omission sought to be corrected goes to the merits of the case and results in modifying, altering or adding to the terms of the original award, then

this cannot be done by the Labour Court in exercise of its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. This can be done in exercise of power of review but the Labour Court has no power to review its awards.

In *Bijay Kumar Saraogi Vs. State of Jharkhand*, , their Lordships of the Supreme Court held as follows (paragraph 3 of the said AIR):

3. We find no reason to interfere with the order of the High Court because a mere perusal of Section 152 makes it clear that Section 152 C.P.C. can be invoked for the limited purposes of correcting clerical errors or arithmetical mistakes in the judgment. The Section cannot be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order which has attained finality reviewed. If any authority is required for this proposition, one may refer to the decision of this Court in *State of Punjab Vs. Darshan Singh*,

(Emphasis supplied)

This decision, thus, lays down that Section 152 of the CPC cannot be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order which has attained finality reviewed.

40. Applying the above propositions to Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it is evident that the said provision cannot be invoked for claiming a substantive relief which was not granted in the original award nor can the said provision be used as a pretext to get the award which has attained finality reviewed.

41. In the present case, as noted above, the pleas raised in the said Application (No. 43/D) dated 24.3.1999, have evidently been raised on behalf of the respondent No. 1 (employer) in order to claim substantive relief which was not granted under the original award. Such pleas in fact amount to review of the original award, which is not permissible under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

In *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others*, , their Lordships of the Supreme Court opined as follows (paragraph 15 and 16 of the said AIR):

15. We are unable to countenance the argument advanced by learned Additional Solicitor General appearing for the respondents. A careful perusal of the impugned judgment does not deal with decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned Counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing

of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well-settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice.

16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference.

(Emphasis supplied)

This decision, thus, lays down that in case the order has been passed by a Court without deciding important issues or by ignoring material on record or without considering relevant documents, then such a case is a case of error apparent on the face of the record, and the Court concerned should review such order.

42. It is, thus, evident that where important issues have not been decided or material on record has been ignored or relevant documents have not been considered, then the Court concerned has power to review its earlier order. Therefore, it follows that in such cases, the Court cannot exercise its power of correction u/s 152 of the Code of Civil Procedure.

43. The plea raised in the said Application (No. 43/D) dated 24.3.1999 regarding non-consideration of the question of territorial jurisdiction of the Labour Court at Kanpur or regarding non-consideration of the effect of the said document (Exhibit E-I) in respect of the alleged full and final payment by the Labour Court in its original award dated 31.3.1997 may provide a ground for review of the said award but such pleas cannot provide a ground for exercise of power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. As already noted, the Labour Court has no power to review its award.

44. Let us now consider certain decisions in regard to subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

In *Tulsipur Sugar Company Ltd. Vs. State of U.P. and Others*, their Lordships of the Supreme Court laid down as under (paragraph 4 of the said AIR):

4. As already stated, the Wage Board had recommended revised wage scales, revised categories and fitment of workmen in their respective categories on the

revised wage scales as from November 1, 1960. The State Government had accepted those recommendations fully including the date of their implementation and the consequent fitment of workmen in appropriate categories and revised wage scales. Its notification made it clear that such fitment on the revised wage scales should be as recommended by the Wage Board as from November 1, 1960. In the belief, perhaps, that the said recommendations and their acceptance by the Government were not binding on it, the company did not implement them and hence the union raised the dispute which was ultimately referred to the Labour Court. The terms of that reference leave no doubt that it comprised of two questions, (1) of fitment and (2) the date from which it was to have effect. The award of the Labour Court that the company was liable to fit the two workmen in grades II and IV respectively and pay them at the revised scales in respect of these grades was binding and therefore the company was liable to carry out the fitment and pay the revised scales in accordance with such fitment. But the award did not decide or fix the date from which the said fitment, when made, was to have effect. As rightly held by the High Court, the Labour Court thus omitted to answer the second question as it was bound to do and the reference remained partly unadjudicated. The Labour Court, no doubt, did direct that the award should be implemented within one month after it became enforceable under the Act, i.e., on or before February 7, 1964. But that direction meant only that the company should fit the two workmen in the two grades it had ordered and still left the question, as to the date from which such fitment was to have effect, unanswered. Thus, the fact that the Labour Court failed to answer the second question admits of no doubt. There can also be no doubt that since the first question was answered by it in accordance with the Wage Board's recommendations and the Government's notification accepting them fully, if its attention had been drawn it would in all probability have answered the second question also in consonance with those recommendations and the said notification. There is, therefore, no question that there was an error in the award due to an accidental omission on the part of the Labour Court, which error it undoubtedly had the jurisdiction to correct u/s 6(6). The error was that there was no direction in the award as to the date from which the fitment of the two workmen in the said grades and the revised scales should take effect, arising from an accidental omission to answer that part of the reference.

(Emphasis supplied)

This decision, thus, lays down that if the reference to the Labour Court comprised of two questions, and the Labour Court in its award answered only the first question while left the second question unanswered, then it would be a case of an error in the award due to accidental omission and the Labour Court would have jurisdiction to correct the same under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947.

Applying the above proposition to the present case, it will be noticed that in the present case the Labour Court in its award dated 31.3.1997 answered the entire

reference made and did not leave any, part ,,of the reference unanswered. Thereafter the Labour Court could not resort to the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 on the ground of non-consideration of the plea regarding territorial jurisdiction of the Labour Court at Kanpur or regarding the effect of the said document (Exhibit E-I) in respect of the alleged full and final payment.

45. In U.P.S.R.T.C. Vs. Imtiaz Hussain, their Lordships of the Supreme Court held as under (paragraphs 2.1, 7, 8, 9 and 10 of the said JT):

2.1. The respondent who was appointed as a conductor of the appellant-Corporation during inspection on 5.6.1989 he was found not to have issued tickets to the passengers. He was placed under suspension on 20.6.1989. The reply submitted by him was found to be unsatisfactorily and it was decided to conduct disciplinary enquiry. After conducting the enquiry, the enquiry officer submitted his report wherein charges were held to have been proved against the respondent. A show cause notice was issued to the respondent proposing to award the punishment of removal from service and after considering the reply submitted to the show cause notice and other relevant record, the appointing authority passed an order removing him from service. An industrial dispute was raised by him questioning the legality of the order dated 31.12.1990. The labour court held that the enquiry was not conducted in a fair manner. However, being of the view that the respondent was not in the list of permanent conductors, it was held that he was not entitled to get any back wages. Therefore, only an order of reinstatement was passed. An application purported, to be u/s 6(6) of the Uttar Pradesh Industrial Disputes Act, 1947 (in short the "U.P. Act") was filed stating that the conclusion of the labour court that he was not in the permanent list was not correct and, therefore, he was entitled to the benefit of back wages. The labour court held that though from the pleadings of the parties it was not clear that the employee concerned was not in the waiting list of permanent candidates yet the award was to be modified. Certain directions about the payment of salary, allowances etc. from 31.12.1992 till reinstatement with continuity of service was directed. This was questioned by the appellant before the Allahabad High Court. A learned single Judge held that though payment of back wages was not the normal rule yet on the facts of the case the respondent was entitled to 50% of the back wages with 9% interest. Said order is challenged in this appeal.

7. Section 152 provides for correction clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and do not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal on mere change of view, is not entitled to vary the

terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefore and subject to the conditions or limitations provided therein. The powers u/s 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Section 151 and 152 of Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in *Dwaraka Das Vs. State of Madhya Pradesh and Another*, and *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*,

8. The basis of the provision u/s 152 of the Code is founded on the maxim "*actus curiae neminem gravabit*" i.e. an act of court shall prejudice no man. The maxim "*is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law*", said Cresswell J. in *Freeman v. Tranah* 12 C.B. 406 . An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

9. The maxim of equity, namely, *actus curiae neminem gravabit*- an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*-the law does not compel a man to do what he cannot possibly perform. The law itself and its administration

is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , and *Mohammad Gazi v. State of M.P. and Ors.* JT 2000 (4) SC 55 : 2000 (4) SCC 342. The principles as applicable to Section 152 CPC are clearly applicable to Section 6(6) of the U.P. Act. In the aforesaid background the labour court was not justified in modifying the award as was originally made. The High Court also had not considered this aspect and decided the writ petition filed by the present appellant on issues other than this vital issue.

10. Looked at from any angle the order of the labour court modifying the award and the impugned judgment of the High Court are indefensible and are set aside. The appeal is allowed. Costs made easy.

(Emphasis supplied)

In the above case, the Labour Court in its award passed an order of reinstatement of the concerned employee (Conductor). However, the Labour Court concluded that the concerned employee was not in the list of permanent Conductors, and therefore, the Labour Court declined to grant relief of back-wages.

46. Thereafter, an application under Sub-section (6) of -Section 6 of the U.P. Industrial Disputes Act, 1947 was filed before the Labour Court. The Labour Court held that though from the pleadings of the parties, it was not clear that the employee concerned was not in the waiting list of permanent candidates yet the award was to be modified. Certain directions about the payment of salary, allowances etc. from 31.12.1992 till reinstatement with continuity of service were given.

47. The order of the Labour Court directing the aforesaid modification in the award was challenged before the High Court. The High Court held that though payment of back-wages was not the normal rule yet on the facts of the case, the concerned employee was entitled to 50% of the back-wages with 9% interest.

In the Appeal before the Supreme Court, their Lordships of the Supreme Court set-aside the order of the Labour Court modifying the award and the judgment of the High Court upholding the said order with certain modifications.

48. The Supreme Court laid down that where the Labour Court On the basis of a particular conclusion declined to grant relief (namely, back-wages) in its award, it was not open to the -Labour Court to entertain an application under subsection (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 and reach a different conclusion and grant relief which had earlier been declined. The Supreme Court held that principles as applicable to Section 152 of the CPC would be applicable

to Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947. Referring to Section 152 of the Code of Civil Procedure, the Supreme Court held that power u/s 152 of the CPC "are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it". The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 of the Code of Civil Procedure.

49. Applying the propositions laid down in the above decision of the Supreme Court to the present case, it will be noticed that the Labour Court in its award dated 31.3.1997 held that the removal/deprivation of the petitioner (workman) on 7.2.1989 was improper and illegal. The Labour Court accordingly directed that the petitioner (workman) be reinstated with continuous service with effect from 7.2.1989. Directions for payment of salary and other benefits with effect from 7.2.1989 were also given in the said award passed by the Labour Court.

50. However, on the said Application (No. 43/D) dated 24.3.1999 purporting to be under Sub-section (6) of Section 6 of the U.P. industrial Disputes Act, 1947, the Labour Court passed the impugned order dated 6.3.2000 setting-aside the said award dated 31.3.1997 and fixing date for hearing of the case.

51. This evidently could not be done by the Labour Court while exercising power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 keeping in view the propositions laid down in the above decision of the Supreme Court.

52. In J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, their Lordships of the Supreme Court referred to the decisions of the Supreme Court in Tulsipur Sugar Co. Ltd. case (supra) and in U.P.S.R.T.C. v. Imtiaz Busain case (supra), and held as follows (paragraphs 8 and 9 of the said JT):

8. A careful reading of Section 6(6) and the two decisions show that the two decisions considered two different situations. In Tulsipur Sugar Company this Court found that the reference to the Labour Court consisted of two parts. The award answered only the first part and had omitted to answer the second (consequential) part. While modifying the award on an application u/s 6(6), the Labour Court neither upset nor altered any of the findings recorded in its original award, but only answered the second part of the reference, which had earlier been omitted. Therefore, this Court held that such correction was permissible. On the other hand in Imtiaz Hussain, the Labour Court, in its award had specifically refused back-wages to the employee on the ground that his name was not in the list of permanent employees. But on an application u/s 6(6), it re-examined the issue and held that though his name was not in the list of permanent employees, he was entitled to payment of salary and allowances from the date of termination till the date of reinstatement with continuity of service. In Tulsipur Sugar Company, there was a correction of an omission which fell within Section 6(6). In

Imtiaz Hussain, there was a review of the original order which of course, was impermissible. We may now summarize the scope of Section 6(6) of the Act thus:

a) If there is an arithmetical or clerical or typographical error in the order, it can be corrected.

b) Where the Court had said something which it did not intend to say or omitted something which it intended to say, by reason of any accidental slip/omission on the part of the court, such inadvertent mistake can be corrected.

c) The power cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions.

9. In this case, the reference to Labour Court consisted of two parts- whether the termination of the workmen was proper and legal, and if the answer was in the negative, then the benefits or compensation to which the workmen was entitled. The award originally made, answered the first part in the negative, but did not answer the consequential second part of the reference. In fact the award ended rather abruptly. On an application being made u/s 6(6), the Labour Court recorded that it had accidentally omitted to answer the second part of the reference and rectified the omission by adding a paragraph. This case, therefore, squarely falls under *Tulsipur Sugar* (supra). We are of the view that the Labour Court had the power to amend the award.

(Emphasis supplied)

53. In the above case, reference to the Labour Court consisted of two parts. The award originally made answered the first part but did not answer the second part of the reference. On an application made under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, the Labour Court recorded that it had accidentally omitted to answer the second part of the reference and rectified the omission by adding a paragraph. The Supreme Court held that the Labour Court had the power to amend the award as mentioned above.

54. The Supreme Court laid down that in *Tulsipur Sugar Co. Ltd.* case (supra), there was a correction of an omission which fell within Section 6(6) of the U.P. Industrial Disputes Act, 1947. On the other hand, in *U.P.S.R.T.C. v. Imtiaz Husain* case (supra), there was a review of the original award, which was impermissible.

55. The Supreme Court further laid down that the power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 "cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions".

56. Applying the above principles to the present case, it is(evident that in the

present case, the power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 has been exercised by the Labour Court for rehearing of the adjudication case on merits. The plea regarding the territorial jurisdiction of the Labour Court at Kanpur or regarding the effect of the said document (Exhibit E-I) in respect of the alleged full and final payment would evidently involve reconsideration of questions of fact and law. Moreover, the said pleas would evidently involve changing the reasoning and conclusions as recorded in the original award dated 31.3.1997.

57. Therefore, in view of the principles laid down in the above decision of the Supreme Court, the Labour Court could not exercise its power under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, and the impugned order dated 6.3.2000 suffers from manifest illegality.

In *Ramesh Chandra Dixit v. Presiding Officer, Industrial Tribunal and Anr.* 1992(65) FLR 766, a learned Single Judge of this Court held as follows (paragraph 2 of the said FLR):

2. This petition has been filed against the impugned award dated 2.7.87 as also the order 16.4.88 (Annexure 5 to the petition) passed on the review application. Since in my opinion there is no provision for review of an award of the Labour Court in the U.P. industrial Dispute Act hence the review application was clearly not maintainable. However, since it appears that the petitioner was wrongly advised to file a review I condone the delay in filing this writ petition and I am proceeding to hear the writ petition against the award on merits.

58. This decision, thus, lays down that there is no provision for review of an award of the Labour Court under the U.P. Industrial Disputes Act, 1947, and, therefore, the review application is not maintainable. As already noted, the pleas sought to be raised in the said Application (No. 43/D) dated 24.3.1999 amounted to review of the original award dated 31.3.1997. However, the Labour Court has no power of review as laid down in the above decision. Therefore, the said Application (No. 43/D) dated 24.3.1999 was not maintainable.

In *U.P. State Road Transport Corporation, Kanpur Region Vs. Babu Singh and Others*, a learned Single Judge of this Court held as follows (paragraphs 14,15,16, 17, 19 and 21 of the said FLR):

14. In *Krishna Ashram Educational Trust and another Vs. District Judge, Allahabad and others*, after placing reliance upon a large number of judgments of the Hon'ble Supreme Court, this Court held that in absence of a provision for review, the Authority becomes functus officio after deciding the case and it has no competence to entertain review application and change the order passed by it earlier. Nor the Order/Award be reviewed under the garb of clarification/rectification/correction.

15. Therefore in view of the aforesaid settled legal proposition it can be summarized that in absence of any statutory provision providing for review,

entertaining an application for review or under the garb of clarification/modification/correction is not permissible. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, and *Satnam Verma Vs. Union of India (UOI)*, the Hon''ble Apex Court distinguished the power of setting aside of an ex-parte Award from review and held that even after publication of the Award, Labour Court is competent to set aside the same if other requisite conditions are fulfilled.

16. In the instant case no such issue was involved as the earlier Award was not made ex-parte. Application was filed u/s 6(6) of the Act, 1947 which reads as under:....

17. Language used in the aforesaid section is verbatim to Section 152 of the CPC (hereinafter called the C.P.C.) and in exercise of that power correction is permissible only when it is necessary to give effect to the judgment, decree or order so that the manifest rights of the parties intended to be effectuated by the earlier decision of the Court may not be defeated. When decree is not clear as to what was decided and what the Court intended, the Court may amend it so as to carry out its meaning. (Vide AIR 1931 104 (Privy Council) and AIR 1944 46 (Privy Council) This provision cannot be resorted to in order to annul the decree or where there is no clerical or arithmetical mistake or error arising from accidental slip or omission or the power can be used to re-determination the rights of parties already adjudicated upon. In *Dwaraka Das Vs. State of Madhya Pradesh and Another*, the Hon''ble Apex Court held that powers cannot be used to grant some thing which had not been granted earlier as it would not amount to accidental omission or mistake. In *L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others*, , the Apex Court held that as in the decree the mesne profit had been typed as a net profit and it was merely a typographical error in exercise of power u/s 152 C.P.C. the word "net" must be substituted by "mesne". The powers of the Court are limited only to correct this kind of typographical mistakes. In *K. Rajamouli Vs. A.V.K.N. Swamy*, the Hon''ble Supreme Court held that if while deciding a case interest pendente lite had not been granted it cannot be granted while allowing the application u/s 152 C.P.C. In *Plasto Pack Mumbai v. Ratnakar Bank Limited* AIR 2001 SCW 3626 , a similar view has been reiterated observing that power to amend a decree cannot be exercised so as to add to or substract therefrom any relief granted earlier.

19. But the power to rectification of clerical and arithmetical errors or accidental slips does not empower the Court to have a second thought over the matter and to find a better order or decree could or should be passed. There cannot be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the Court may find that it may have committed a mistake in passing an order in certain terms but every such mistake cannot be rectified in exercise of the Court's inherent powers as contained u/s 152 C.P.C. It is to be confined to something initially intended to left

out or added against such intendment.

21. Thus in view of the above, It is held that under the garb of entertaining the application for correction u/s (6) of the Act, 1947, it was not permissible for the Labour Court to review its earlier award. The power under the said provision was limited only to the extent of correcting the typographical or clerical error or error arising from the accidental slip or omission. Thus subsequent award, being without jurisdiction, remains inexecutable and unenforceable in law.

This decision, thus, lays down that "in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.

59. It has further been laid down that under the garb of entertaining the application for correction under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, it is not permissible for the Labour Court to review its earlier award. The power of rectification/correction does not empower the Court to have a second thought over the matter and to find a better order or decree could or should be passed. There cannot be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification.

60. Applying the above principles to the present case, it is evident that the said Application (No. 43/D) dated 24.3.1999 though purporting to be under the provisions of Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947, was in fact an application for review of the award dated 31.3.1997.

61. The pleas raised in the said Application involved reconsideration of merits of the matter, and amounted to review of the award dated 31.3.1997. As the Labour Court had no power of review, the said Application (No. 43/D) dated 24.3.1999 was not maintainable.

62. In view of the above discussion, I am of the opinion that the said Application (No. 43/D) dated 24.3.1999 purporting to be under Sub-section (6) of Section 6 of the U.P. Industrial Disputes Act, 1947 was not maintainable, and the Labour Court acted with manifest illegality in passing the impugned order dated 6.3.2000.

The writ Petition, therefore, deserves to be allowed, and the same is accordingly allowed. The impugned order dated 6.3.2000 (Annexure-1 to the Writ Petition) passed by the Labour Court is quashed. However, on the facts and in the circumstances of the case, there will be no order as to Costs.