HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.29710 OF 2011

Premsingh, S/o.late Mahipathi Singh,
Aged 57 years, Occ:Ex.Operator(Field)
H.No.6-11-173, Namdevwada,
Vittaleshwara Temple, Nizamabad.

....Petitioner

VERSUS

The General Manager (Retail) South,
Bharath Petroleum Corporation Ltd.,
1, Ranganathan Garden, Off 11th Main Road,
Anna Nagar, Chennai – 600 040 and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 31.08.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals?	Yes/No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

J. SREENIVAS RAO, J

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! Counsel for the Petitioner : Sri V. Narsimha Goud

^ Counsel for the Respondent : Ms. V. Uma Devi

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2013 2 SCC 698
2. 2005 13 SCC 777
3. 1998 2 ALT 252
4. 1994 2 ALT 253
5. 1980 supp SCC 420

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.29710 of 2011

ORDER:

This writ petition is filed seeking writ of certiorari to quash the impugned order dated 14.09.2011 passed in I.A.No.84 of 2006 in L.C.I.D No.146 of 2006 on the file of respondent No.2 Labour Court as illegal, arbitrary and violative of Article 14 of Constitution of India and without jurisdiction.

2. Heard Sri V. Narsimha Goud, learned counsel for the petitioner and Ms. V. Umadevi, learned counsel appearing on behalf of respondent No.1.

3. **Brief facts of the case:**

3.1 The petitioner was appointed as Generator Operator in respondent No.1 establishment on 11.01.1982 and he was suspended on 29.12.1998 pending enquiry. Respondent No.1 issued charge sheet dated 12.06.1999 with the following charges.

> I. that the applicant has demanded illegal gratification ranging from Rs. 50/- to 100/- per tank lorry for every unload and loading.
>
> II. demanded Rs.500/- for every tank lorry in every month for several years.
>
> III. on the report of operation audit of Nizamabad Depot it is revealed that you have colluded with Sri. Rama Krishna, Senior Operation Officer of Nizamabad Depot as well as Balasumiah (field)

in unloading /directing tank Lorries with an intention in serving illegal gratification from PCVO's (Private Contract Vehicle Operation).

iv. the above would reveals that you have scent respect to the interest of Company rules and therefore charged under the following clauses extract them from the charges;

3.2 The petitioner submitted his explanation to the above charges and being not satisfied with the same, respondent No.1 appointed an enquiry officer to conduct enquiry and the enquiry officer after conducting bonafide enquiry, submitted the enquiry report. Respondent company issued notice calling explanation from the petitioner by enclosing a copy of the enquiry report as to why the punishment of dismissal cannot be imposed against him, after receiving the explanation from the petitioner, the disciplinary authority dismissed the petitioner from services by its order dated 05.11.2003. Aggrieved by the same, the petitioner raised the dispute invoking the provisions of Section 2 (A)-2 of the ID Act, 1947.

3.3 In the said I.D, the petitioner raised objection about the validity of the domestic enquiry conducted by the respondent No.1 Company stating that respondent No.1 appointed one Sri V. Rajagopalan, Advocate as a enquiry officer who is an outsider of the respondent Company. Appointing outsider as enquiry officer is against the standing order as there is no provision to appoint an

outsider as enquiry officer and further contended that apart from that, M/s. Gopalan and Company is the Advocates Firm, which is looking after the matters of Respondent company and thus his appointment as an enquiry officer is against the law and there was every likelihood of the bias against the employees. The petitioner further contended that the enquiry officer conducted enquiry in a biased manner and also stated that one Sri C.J.Vijayan appointed as Prosecuting officer was examined as M.W.1, thus his evidence is not sustainable under law because he was part of the investigation team. Thus, the entire enquiry conducted by the enquiry officer vitiated and further contended that prosecuting officer as well as enquiry officer who were Tamil speaking persons conducted enquiry which is nothing but arbitrary because enquiry should have been conducted by the persons who were well-versed with the regional language. As the petitioner was not conversant either with Tamil or with English he had to face much hardship. He further submits that the enquiry officer has prepared the report based on a hasty evidence. In the said I.D. petitioner raised objection that the domestic enquiry conducted by the respondent No.1 is not valid under law and requested the Court to decide the issue in respect of validity of the domestic enquiry conducted by the respondent No.1 Company as a preliminary issue.

3.4 Respondent No.1 filed counter contending that during the course of enquiry the enquiry officer has given all the opportunities to the petitioner to defend his case and also to cross examine the management witnesses. The petitioner participated in the enquiry and the enquiry officer by strictly following the principles of natural justice and after considering the entire evidence submitted detailed report. The respondent Company after following due procedure as contemplated under the Standing Orders and also under law, passed the order removing the petitioner from services and the petitioner is estopped to contend that the enquiry officer was appointed contrary to Standing Orders and the enquiry report is not valid, even without placing the relevant clause of the standing order and he has made a vague statement and the same is not permissible under law.

3.5 The Labour Court passed order on 30.03.2010 holding that the domestic enquiry is not valid under law. On 15.07.2011 respondent No.1 filed application *vide* I.A.No.84 of 2011 under Section 9 Rule 13 of C.P.C. R/w Section 11 of I.D. Act, 1947('Act' for brevity) seeking to recall the order dated 30.03.2010 on the preliminary issue relating to validity of Domestic Enquiry and permit the respondent company to have an opportunity of advancing its arguments against the contention of the petitioner

workman in the interest of justice. In support of the said application one Sri E.V.Suresh filed sworn affidavit, wherein he pleaded that the case before Labour Court was entrusted to junior advocate of his office and no communication was received from him with regard to the day to day proceedings and further pleaded that the respondent Counsel as well as the company were in the impression that all necessary documents in respect of the case of the respondent company were filed before the Labour Court as the junior Counsel of his office was not regular in attending the tribunal and informing about prospects of the case, he had failed to furnish the information regarding listing of the case for arguments on the issue of validity of domestic enquiry on 30.01.2010 and he came to know that the Labour Court passed order on 30.03.2010 on the preliminary issue relating to the validity of the domestic enquiry and not attending the Court on the day on which the matter was posted is neither willful not wanted but due to communication gap and prayed to give opportunity to submit arguments or else the respondent company will be put to irreparable loss and injury.

3.6 The petitioner filed counter in I.A No.84 of 2011 in I.D.No.146 of 2006 denying the averments made by the respondent No.1 contending that respondent No.1 filed application

with an intention to drag the proceedings and the application filed by respondent after lapse of more than 16 months is barred by limitation and further submits that respondent management has been attending the tribunal regularly and the averments made in support of the affidavit is not true and correct and further no prejudice is going to be caused to the respondent management with the impugned order dated 30.03.2010 passed by Labour Court.

3.7 The Labour Court after taking into consideration the contentions of both the parties and after verification of the records allowed the application subject to payment of costs of Rs.500/- by its order dated 14.09.2011 and directed the parties to appear before the Labour Court on 13.10.2011 for arguments on the question of legality and validity of the domestic enquiry. Aggrieved by the above said order, the petitioner filed the present writ petition.

4. Sri V. Narsimha Goud, learned counsel for the petitioner vehemently contended that the application filed by the respondent No.1 *vide* I.A.No.84 of 2011 invoking the provisions of Section 9 Rule 13 of CPC R/w Section 11 of the Act, is not maintainable and the Labour Court is not having jurisdiction to entertain the said application and to pass impugned order. He further submits that

the Industrial Tribunal passed the detailed order on merits on 30.03.2010 holding that the domestic enquiry is not valid under law. As per the provisions of the Act, Labour Court is not having jurisdiction to review his own order. Hence the impugned order passed by respondent No.2 dated 14.09.2011 is without jurisdiction.

4.1. He further contended that by virtue of the orders passed by Labour Court dated 30.03.2010 no prejudice is going to be caused to respondent management and they are entitled to the adduce the evidence in the main I.D. He also contended that in the absence of express provision, quasi-judicial authority or tribunal is not having power to reopen the matter and he also contended that the Labour court without properly considering the contention of the petitioner passed the impugned order and the same is contrary to law. In support of his contentions he relied upon the following judgments:

1. ***Cine Exhibition Pvt. Ltd. and Ors. Vs. Collector, District Gwalior and Ors[1].***

2. ***Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Ors[2].***

3. ***K.Venkatrama Naidu Vs. State of Andhra Pradesh and Ors.[3]***

[1] 2013 2 SCC 698
[2] 2005 13 SCC 777
[3] 1998 2 ALT 252

4. ***G. Chandrakanth Vs. Guntur Dist. Milk Producers' Union Ltd[4].***

5. *Per contra,* Ms. V. Umadevi, learned counsel for respondent No.1 Company vehemently contended that respondent Management initiated common enquiry against the petitioner and one Balasowrayya. Pursuant to the charge memo, the petitioner submitted his explanation and respondent management ordered regular enquiry by appointing an enquiry officer. During the course of enquiry, the petitioner participated in the enquiry and enquiry officer after giving all opportunities to the petitioner submitted an enquiry report. Hence, the allegation made by the petitioner that respondent No.1 appointed enquiry officer contrary to the Standing Orders is not tenable under law. Respondent No.1 appointed enquiry officer strictly in terms of Standing Orders of respondent No.1 Company. According to the docket proceedings the Labour Court on 04.02.2010, adjourned the case to 20.03.2010 for hearing and on that day the matter was not listed and the Labour Court passed the ex-parte order on 30.03.2010. The date which was given by the Labour court i.e., 20.03.2010 was altered into 30.03.2010. Learned counsel specifically contended that there is a material alteration. The Labour Court without giving reasonable opportunity to the respondent No.1

[4] 1994 2 ALT 253

passed the impugned order. She further submits that the petitioner has not produced any document in support of his contention that the appointment of the enquiry officer is contrary to Standing Orders before the Labour Court or this Court. The Labour Court after considering the contentions of the petitioner, rightly allowed the application and passed the impugned order dated 14.09.2011 and there is no illegality or irregularity in the said order.

5.1. She further submits that the impugned order passed by the Labour Court dated 30.03.2010 is contrary to the records and the Labour Court is having power to recall the orders or to set aside the order dated 30.03.2010 and the application filed by the respondent company invoking provisions of Section 9 Rule 13 of CPC R/w Section 11 of I.D. Act is very much maintainable under law and the Labour Court has rightly passed the impugned order dated 14.09.2011. In support of her contention she relied upon the judgment of the Hon'ble Apex Court in ***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others***[5].

6. Having considered the rival submissions made by respective parties, it clearly reveals that questioning the removal order passed by the respondent No.1 dated 05.11.2003 the

[5] 1980 supp SCC 420

petitioner raised a dispute invoking the provisions of Section 2 - A(2) of the Act before Labour Court, Hyderabad, *vide* I.D.No.146 of 2006 wherein the petitioner raised a preliminary issue in respect of validity of domestic enquiry that appointing an outsider of the company as an enquiry officer is bad in law. The Labour Court passed the order on 30.03.2010 holding that the domestic enquiry is not valid. It appears from the impugned order dated 30.03.2010 that the Labour Court passed the ex-parte order after hearing the petitioner and there was no representation on behalf of the respondent No.1.

6.1. The specific contention of learned counsel for respondent No.1 is that respondent No.1 is not aware of the listing of the matter on 30.03.2010. As per the docket proceedings the Labour Court on 04.02.2010 posted the matter to 20.03.2010. Subsequently, the Labour Court passed the ex-parte order on 30.03.2010 in the absence of respondent No.1.

6.2. Respondent No.1 filed I.A.No.84 of 2011 under Section 9 Rule 13 of CPC R/w Section 11 of the I.D.Act seeking to set aside the ex-parte order dated 30.03.2010 and requested the Labour Court to hear the matter by giving opportunity. In support of the said application, Mr. E.V. Suresh, who is one of the counsel appearing on behalf of the respondent No.1 filed affidavit stating

that the matter was entrusted to a junior advocate of their office and no communication was received from him with regard to the day to day proceedings and he had not informed regarding the listing of the case for arguments on the issue of Domestic Enquiry on 30.01.2010 and due to the same he or respondent No.1 not represented the case before the Labour Court and the same is neither willful nor wanted and requested the Court below to give one opportunity to the respondent No.1 to advance arguments on the preliminary issue of validity of the domestic enquiry or else the respondent No.1 would be put to irreparable loss and injury. The Labour Court after considering the contentions of both parties and also after due verification of the records allowed the application and passed the impugned order dated 14.09.2011 recalling the earlier order dated 30.03.2010 with costs and posted the matter to 30.10.2011 for arguments on the question of legality and validity of the domestic enquiry. The Court below with an intention to render substantial justice to the parties recalled the ex-parte order dated 30.03.2010 and by virtue of the said order no prejudice is going to be caused to the petitioner and the petitioner has to argue the matter once again on merits.

7. In ***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others***, the Hon'ble Supreme Court

held that:

> **6.** We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.
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> **10.** When sub-section (1) of Section 11 expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh.
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> **11.** The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfilment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but such power is subject to the fulfilment of the condition laid down in Rule 22. The power to proceed ex parte under Rule 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.
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> **12.** Under Rule 24(*b*) a Tribunal or other body has the powers of a civil court under Order 17 of the Code of Civil Procedure, relating to the grant of adjournments. Under Order 17, Rule 1, a civil court has the discretion to grant or refuse an adjournment. Where it

refuses to adjourn the hearing of a suit, it may proceed either under Order 17, Rule 2 or Rule 3. When it decides to proceed under Order 17, Rule 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9, or to make such other order as it thinks fit. As a necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of Order 9, Rule 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.

13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in *Patel NarshiThakershi* v. *PradyumansinghjiArjunsinghji* [(1971) 3 SCC844 : AIR 1970 SC 1273] is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression "review" is used in the two distinct senses, namely (*1*) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (*2*) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in *Patel NarshiThakershi case* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debitojustitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.

14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable

> under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by Respondent 3, acting on behalf of Respondents 5 to 17 on January 19, 1977 i.e. before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

8. In the above judgment the Hon'ble Apex Court specifically held that as per the Rule framed under Act, 1947 the tribunal is having power of a Civil Court to exercise the provisions of Order IX Rule 13 of CPC and the said provisions are also applicable to the Labour Court.

9. In view of the same, the application viz., I.A.No.84 of 2011 filed by respondent No.1 seeking to setaside the ex-parte order dated 30.03.2010 is maintainable under law and the Labour Court has rightly passed the impugned order.

10. In ***Cine Exhibition (P) Ltd. v. Collector,*** the Hon'ble Apex Court held that:

> *18.* We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance one for review. In that event, the Court could either reject the application straightaway with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.
>
> **8.** We are of the view that the ratio laid down in the abovementioned judgment squarely applies to the facts of this case as well. Generally an application for correction of a typographical error or omission of a word, etc. in a judgment or order would lie, but a petition which is intended to review an order or judgment under Order 47 Rule 1 of the Code of Civil Procedure and in criminal proceedings except on the ground of an error apparent on the face of the record, could not be achieved by filing an application for clarification/modification/recall or rehearing, for which a properly constituted review is the remedy. Review power is provided under Order 40 of the Rules, which reads as follows:
>
> "**1.** The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order 47 Rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.
>
> **2.** An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review.
>
> **3.** Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.
>
> **4.** Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of justice to do

so, direct the refund to the petitioner of the court fee paid on the application in whole or in part, as it may think fit.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter."

9. Under Order 40 of the Rules a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without an order giving an oral hearing or whether notice is to be issued to the opposite party. Many a times, applications are filed for clarification/modification/recall or rehearing not because any clarification/modification is found necessary but because the applicant in reality wants a review and also wants hearing by avoiding circulation of the same in chambers. We are of the view that a party cannot be permitted to circumvent or bypass this circulation procedure and indirectly obtain a hearing in the open court, what cannot be done directly, cannot be permitted to be done indirectly.

11. In ***Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Ors,*** the Hon'ble Apex Court held that:

13. The respondent Management herein preferred a writ petition before the High Court of Delhi at New Delhi and sought quashing of the order dated 19-2-1990 passed by Industrial Tribunal II, Delhi, and for declaration that the award dated 12-6-1987 earlier made by the Tribunal effectively terminated the reference pending before it. The High Court by its impugned judgment and order allowed the writ petition and granted the reliefs prayed for. The judgment and order of the High Court has been impugned before us in this appeal.

14. The core question which arises for consideration is whether the Industrial Tribunal was justified in recalling the earlier award made on 12-6-1987 and in framing an additional issue for adjudication by the Tribunal. According to the appellant the recall of the order was fully justified in the facts of the case, while the respondents contend to the contrary. Two issues arise for our consideration while considering the legality and propriety of the order of the Tribunal in recalling its earlier award. Firstly, whether the Tribunal had jurisdiction to recall its earlier order which amounted virtually to a review of its earlier order; and secondly, whether the Tribunal had

no jurisdiction to entertain the application for recall as it had become functus officio. The High Court answered the first question in favour of the respondent Management and the second in favour of the appellant.

19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (*sic* ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.

20. The facts of the instant case are quite different. The recall of the award of the Tribunal was sought not on the ground that in passing the award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and

consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

23. Learned counsel for the respondents did not dispute the legal position as it emerges from these two judgments. It was submitted that the facts of this case clearly establish that the Conciliation Officer intervened when there was considerable Labour unrest and brought the parties to the negotiating table. Several meetings were held, some of them in the chambers of higher officials of the Labour Department, and ultimately a settlement was worked out. This is quite apparent from the fact that the terms of settlement have also been signed by the Conciliation Officer, apart from the representatives of the Management and representatives of the two workers' unions. We entertain no doubt that the settlement was brought about in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer.

24. It was also urged before us by the learned counsel for the appellant that the Tribunal ought to have considered, while passing an award on 12-6-1987, that the settlement was just and fair and protected the interest of the workmen. The recall of the order was sought on the ground that this aspect of the matter has not been considered when an award was made in terms of the settlement. This was precisely the ground on which the Tribunal entertained the application for recall and allowed it by order dated 19-2-1990. The Tribunal in our view proceeded on a factually incorrect assumption. The High Court has found that the Tribunal while making an award in terms of the settlement has in clear terms recorded its satisfaction in para 25 of its order (which we have quoted earlier in the judgment) that the settlement was fair and just. We entirely agree with the High Court.

12. In ***K. Venkatrama Naidu Vs. State of Andhra Pradesh and Ors.,*** this Court held that:

12. Looking to the chronological events as stated above, it is evident that the original plaintiff and his Counsel were not ready to adduce the further evidence. In fact, the Court held that the plaintiff has no further evidence to lead and since there is no evidence on behalf of the original plaintiff to substantiate his claim, the suits came to be dismissed. In such circumstances, it must be held that the suit was

dismissed by the learned Judge on its merits. In that event, it cannot be said that the suit was dismissed in default of the original plaintiff and therefore this Court has no hesitation in holding that the application for setting aside the order of dismissal under Order 9 Rule 9 C.P.C. would not lie. The only remedy open for the original plaintiff to file an appeal under Order 41 C.P.C. before the proper forum. Therefore, this Court holds that the learned Judge rightly dismissed the I. As., which were filed under Order 9 Rule 9 C.P.C.

13. In ***G. Chandrakanth Vs. Guntur Dist. Milk Producers' Union Ltd.,*** this Court held that:

4. The learned Counsel appearing for the petitioner submitted that—

1. The charge memo issued to the delinquent officer is vague, imprecise and not capable of understanding correctly and therefore it does not conform to the standards set by a series of decisions of the Apex Court and the High Courts. Consequently the impugned charge should be held to be bad in law and the superstructure built upon such a charge memo should also fall to the ground.

Further the learned Counsel for the petitioner submitted that even taking what is stated in the charge memo is true and correct, it will not constitute a misconduct within the meaning of the relevant Bye-laws, governing disciplinary proceedings.

(2) As per Bye-law 27 of the Bye-laws the Disciplinary Authority may itself hold the domestic enquiry or it may cause an enquiry to be held against a delinquent official by appointing any other authority superior in rank to the employee charged and in the instant case an outsider-advocate was appointed as an enquiry officer. The appointment of an outsider like an advocate as an enquiry officer is wholly illegal and on that count also the entire proceedings stand vitiated and the impugned order based on such a report should also fall to the ground.

(3) The learned Counsel also submitted that three officials including the petitioner who were alleged to have been involved in the commission of alleged misconduct and in that view of the matter the Disciplinary Authority was required in law to hold a joint and common enquiry against all the delinquent officials. But, the Disciplinary Authority held separate and individual enquiry against each of these three delinquent officials and such a procedure adopted by the Disciplinary Authority is wholly invalid and illegal.

(4) Fourthly, the learned Counsel for the petitioner contended that after holding departmental enquiry against the other two delinquent officials, the Disciplinary authority has exonerated them from the charges, whereas the petitioner delinquent official is imposed with the punishment of removal from service. According to the learned Counsel this tantamounts to discrimination violating the mandate of Article 14 of the Constitution of India.

(5) Lastly, the learned Counsel also contended that the punishment imposed on the delinquent official is very severe and disproportionate to the alleged misconduct committed by the delinquent official.

14. The Principle laid down in the above judgments are not applicable to the facts and circumstances of the case, on the ground that main case is pending and the labour court only recalled the ex-parte order dated 30.03.2010 with an intention to give one opportunity to the respondent no.1 to submit their arguments. Similarly, the grounds raised by the learned counsel for petitioner that the labour court is not having jurisdiction to review its own order and the provisions of order IX Rule 13 of CPC is not applicable to the Labour court, are also not tenable under law, especially in view of the principle laid down by the Hon'ble Apex Court in ***Cine Exhibition (p) Ltd. v. Collector*** as stated *supra*.

15. It is already mentioned above that the objections raised by the petitioner is purely procedural and technical and no prejudice is going to be caused to the petitioner by virtue of the impugned order dated 14.09.2011 passed by the Court below. It

is the settled proposition of the law that while exercising the powers conferred under Article 226 and 227 of Constitution of India, the technical and procedural lapses will not come in the way to render substantial justice to the parties. The Labour Court has rightly passed the impugned order dated 14.09.2011 and allowed the application by setting aside the ex-parte order. Therefore, this Court do not find any illegality, irregularity or jurisdictional error in the impugned order. It is also relevant to mention here that after going through the records, it reveals that respondent No.1 also not diligently prosecuted the matter. In such circumstances, the Labour court ought to have imposed more costs instead of imposing meager amount of Rs.500/-.

16. For the reasons mentioned above, the impugned order dated 14.09.2011 passed by Labour Court is upheld subject to payment of costs of Rs.10,000/- in addition to Rs.500/- as directed by the Labour Court to the petitioner within a period of one(1) week from the date of receipt of a copy of this order. It is needless to observe that the petitioner raised the dispute before the Labour Court in the year 2006, questioning the termination order passed by respondent No.1 and the same is pending. In view of the same, the Labour court is directed to pass appropriate orders, in accordance with law, in respect of the validity of the

domestic enquiry within a period of four (4) weeks from the date of receipt of a copy of this order after giving opportunity to both the parties and also to decide the main L.C.I.D.No.146 of 2006, as expeditiously as possible preferably within a period of six (6) months.

17. With the above directions, the writ petition is disposed of. No order as to costs.

18. As a sequel thereto, miscellaneous applications, if any, pending in this writ petition shall stand closed.

JUSTICE J SREENIVAS RAO

31st August, 2023
Note: L.R. Copy to be marked: 'Yes'

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PSW