M/S. U.P.S.R.T.C vs Imtiaz Hussain on 12 December, 2005

Equivalent citations: AIR 2006 SUPREME COURT 649, 2006 (1) SCC 380, 2005 AIR SCW 6522, 2006 (1) ALL LJ 658, (2005) 10 JT 496 (SC), 2005 (10) JT 496, 2005 (10) SCALE 149, 2006 (1) UPLBEC 851, 2006 (2) SRJ 301, (2006) 1 SCJ 191, (2006) 1 SERVLR 409, (2006) 108 FACLR 950, (2006) 1 LABLJ 714, (2006) 1 LAB LN 495, (2006) 1 SCT 116, (2006) 1 UPLBEC 851, (2005) 8 SUPREME 488, (2005) 10 SCALE 149, (2006) 1 ALL WC 414, (2006) 2 CALLT 72, (2006) 1 CURLR 256

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  24 of 2005

PETITIONER:
M/s. U.P.S.R.T.C.

RESPONDENT:
Imtiaz Hussain

DATE OF JUDGMENT: 12/12/2005

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court in a review application.

Factual background in a nutshell was as follows:

> 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 under Section 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.

Learned counsel for the appellants submitted that the order passed by the labour court in purported exercise of Section 6(6) of the U.P. Act was clearly untenable. The same only permitted correction of clerical or arithmetical mistakes in the award or errors arising in the award from any accidental slip or omission. The order passed by the labour court modifying the original award was clearly beyond the scope and ambit of Section 6(6) of the U.P. Act. The High Court unfortunately did not address itself to this vital question and directed payment of back wages with interest.

In response learned counsel for the respondent submitted that the labour court's order modifying the award was correct and no interference is called for particularly when the High Court has reduced the back wages to 50% with only 9% interest.

In order to appreciate rival submissions Section 6(6) of the U.P. Act needs to be extracted. The same reads as follows:

Section 6(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."

It is to be noted that there is no similar provision in the Industrial Disputes Act, 1947 (in short the 'Act'). The provision is similar to Section 152 of the Code of Civil Procedure, 1908 (in short the 'CPC').

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 therefor and subject to the conditions or limitations provided therein. The powers under Section 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 v. State of Madhya Pradesh and Anr. (1999 (3) SCC 500) and Jayalakshmi Coelho v. Oswald Joseph Coelho (2001 (4) SCC 181).

The basis of the provision under Section 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. v. State of Orissa (AIR 1966 SC 1047) 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.

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 v. Tarapada Dey (1987 (4) SCC 398), Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459) and Mohammod Gazi v. State of M.P. and others (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.

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.