

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 23rd, 2008

WP(C) No.5704/2007

S.Chand & Co. Ltd. PETITIONER
! Through: Mr. Diwan Singh, Advocate.

Versus

\$ Nagma Sahar RESPONDENT
^ Through : Mr. M.A.Niyazi with Ms.Ananmika
Ghai, Advocates.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioner-management has impugned the order dated 20th February, 2007 allowing the application of the workman/respondent under Order VI Rule 17 of the Code of Civil Procedure.

2. The respondent/workman filed a claim against the petitioner contending inter alia that she was in employment of management since 1st April, 1997 and her services were illegally terminated by letter dated 30th November, 2001 without assigning any reason and neither giving any opportunity to her and therefore, her termination is

illegal.

3. By the application for amendment under Order VI Rule 17 of the Code of Civil Procedure, the respondent/workman wanted to incorporate a plea that after her termination on 30th November, 2001, she has never been gainfully employed anywhere since then.

4. The application for amendment was contested by the petitioner-management on the ground that the respondent-workman is trying to fill up lacuna and the application is not maintainable in view of amendment in CPC and the respondent has failed to show sufficient grounds for amendment after commencing of the trial. It was also contended that the workman is raising a new case.

5. The Labour court held that the workman had been claiming reinstatement and in the circumstances it was impliedly stated that she was not employed anywhere. The contention of the petitioner that the respondent was not setting up a new case was rightly rejected as the petitioner had cross-examined the respondent extensively about re-employment after her termination on 30th November, 2000.

6. Since the workman has been even cross-examined by the petitioner about her re-employment, it cannot be inferred that the

respondent-workman is setting up a new case. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down in various precedents. Though the amendment cannot be claimed as a matter of right and under all circumstances but the Courts while deciding such prayer should not adopt a hyper technical approach. The purpose and object of Order 6 Rule 17 is to allow either party to alter or amend his pleading in such manner and on such terms as may be just. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

7. In AIR 2001 SC 3295 = (2001) 8 SCC 97, M/s. Estralla Rubber Vs. Das Estate Pvt. Ltd. the apex Court held that it is open for the defendant to take an alternative or additional defense and merely because there was delay in making an amendment application will not cause any prejudice or shall take away any right accrued and in such circumstances the amendment should not be rejected. It was held by the Apex Court as under:

8. It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such

a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.

The Supreme Court in another judgment in *B.K. Narayana Pillai v. Parameswaran Pillai* (2000) 1 SCC 712 after referring to a number of decisions, in para 3 has stated, thus: (SCC p. 715)

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

In para 4 of the same judgment the Court has quoted the following passage from the judgment in *A.K. Gupta and Sons Ltd. v. Damodar Valley Corpn* (1966) 1 SCR 796 (AIR pp.97-98, para 7)

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different

case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das v. Amir Khan* (AIR 1921 pc 50) and *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.*(AIR 1957 SC 357)”

8. In the circumstances, the Labor Court has not committed any error in allowing the application of the respondent/workman specifically incorporating in her claim petition that she is unemployed since the time her services have been terminated. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should not interfere with factual findings of the lower courts while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the

conclusion which the authority reaches is necessarily correct in the eye of the court.

9. In the totality of circumstances, there is no manifest error or perversity in the order of the Labour court allowing the respondent-workman to incorporate the plea that she has not been gainfully employed after her illegal termination on 30th November, 2001 and allowing her application for amendment under Order 6 rule 17 of the Code of Civil Procedure. The writ petition in the facts and circumstances is without any merit and therefore, is dismissed. Parties are, however, left to bear their own costs.

January 23rd, 2008
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ANIL KUMAR, J.