

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.3124/2006**

Reserved on : 12.3.2009
Date of Decision : 21.4.2009

M/S INDAG RUBBER LTD.

.....Petitioner
Through : Mr.Piyush Sharma,
Advocate.

Versus

PRESIDING OFFICER, LABOUR COURT NO.IV & ORS.

..... Respondents
Through : Mr.Rajkumar Mann,
Advocate.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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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 |

V.K. SHALI, J.

1. The petitioner in the present writ petition has challenged the orders dated 24.4.2003 and 17.2.2005 passed by the learned Labour Court-IV in ID No.64/1995 titled as Mr.Jackson Mathews Vs. M/s Indag Rubber Ltd. rejecting the application of the petitioner for amendment of their written statement to incorporate certain additional points by way of defence.
2. The second order dated 17th February, 2005 was passed on the review application of the earlier order dated 24.4.2003 rejecting the prayer for review.

3. Briefly stated the facts of the case are that an issue which was referred to the learned Labour Court by the appropriate Government on 14th April, 1975, reads as under:-

“Whether termination of services of Shri Jaskson Mathew is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The respondent/workman in pursuance to the aforesaid reference filed a statement of claim claiming that he was employed by the petitioner/Management and his services were illegally and unjustifiably terminated on 9th May, 1994 without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) pertaining to the retrenchment compensation.

5. The petitioner /Management filed its written statement and took a plea that the respondent /workman was highly indisciplined, guilty of negligent performance of his duties, habitual late comer apart from being absent and therefore, his services were terminated as warnings had failed to bring any desired result. The notable fact is that the statement of claim was filed on 17th January, 1996 and the written statement was filed on 18th May, 1996. After expiry of almost six years, the petitioner/Management filed an application seeking amendment of their written statement raising the plea of preliminary objection regarding the jurisdiction of the learned Labour Court to adjudicate the dispute and the maintainability thereof. It was also stated that the petitioner/Management may be permitted to

prove the misconduct of the respondent /workman before the learned Labour Court.

6. The learned Labour Court after obtaining the reply to the amendment application passed the impugned order on 24.4.2003 rejecting the application for seeking amendment to the written statement as it was observed that merely on account of change of the counsel by the petitioner/ Management would not enable them to raise an additional ground in the written statement. It was also observed by the learned Labour Court that the case has been dragged for a number of years and the rights of the respondent/workman were being affected. The petitioner thereafter, filed an application for recalling of this order on 15.5.2003. As there was no error apparent on the face of the record which would warrant the recalling/review of the order dated 24.4.2003, accordingly, the review application was dismissed with a cost of Rs.1,500/-.

7. I have heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner has contended that the law regarding amendment has to be construed liberally and a party should not be made to suffer on account of inadvertent mistake of the previous counsel. In order to buttress his contention, the learned counsel has cited a judgment titled **Baldev Singh & Ors. Vs. Manohar Singh & Anr.** (2006) 6 SCC 498, wherein Supreme Court has deal with the scope, power and discretion of the Court in allowing the amendment. It has been observed that the Court has very wide

and unfettered discretion to permit the amendment in a given case on such terms as it appears to the Court just and proper. Similar is the observation passed by the Apex Court in ***Andhra Bank Vs. ABN Amro Bank N.V. Ors.*** (2007) 6 SCC 167, wherein it has been observed by the Apex Court that the written statement may be permitted to be amended to introduce an additional ground of defence in the facts of the said case.

8. The learned counsel for the petitioner has contended that merely on account of the fact that no enquiry or defective enquiry was held against the workman/respondent would not render his dismissal to be illegal because the employer has to be given the right to adduce the evidence justifying its action for the first time under Section 11A of the Act which cannot be taken away by any person.

9. Per contra, the counsel for the respondent has contended that the amendment which is sought by the petitioner is actuated by malafides as the industrial dispute is pending adjudication since 1995, the written statement is filed in 1996. The parties have adduced their evidence also and the amendment application is filed belatedly on 03.3.2002 only to prolong the disposal of the matter so that the respondent /workman is financially squeezed so as to succumb to the prayer of the petitioner. It was also urged that the letter of termination dated 9th May, 1994 Annexure P-3 filed along with the paper book. It is not the case of the petitioner /Management that the services of the respondent /workman were terminated on

account of any alleged misconduct and therefore, there was no question of adducing any evidence before the learned Labour Court.

10. I have carefully gone through the record and considered the submission of the counsel for the parties. So far as the submission of the counsel for the petitioner with regard to the law regarding amendment of the pleadings is concerned, there is no dispute that the same has been considered by the Apex Court not only in the judgments relied upon by the petitioner but also in number of other judgments very liberally. However, it has been held that primarily it is the discretion of the trial Court and it must observe it as to whether the amendment is just and proper. In the instant case, the learned Labour Court below has not exercised the discretion in favour of the petitioner/Management as it has considered that the amendment is not just and proper. On the contrary, the learned Labour Court in its order dated 24.4.2003 has specifically observed that merely on account of the change of the counsel, a party cannot be permitted to raise an additional point be that it pertaining the jurisdiction or otherwise.

11. I do not find any infirmity in the impugned orders dated 24.4.2003 and 17.2.2005. On the contrary, I find that not only the entire effort of the petitioner is to indulge in dilatory tactics to exhaust the patience of the respondent/workman and prolong the disposal of the industrial dispute pending before the learned Labour Court. This is evident from the fact that amendment was

sought after six years. When the amendment is rejected instead of preferring any appeal against the rejection of such amendment, the petitioner filed an application for review, knowing fully well that the scope of review is very limited and yet he continues to try his luck therefore in which ultimately he fails by rejection of his review application on 24.4.2003. Still not satisfied, the petitioner filed the present writ petition in the year 2006 and prolonged this matter for almost three years by keeping the proceedings of the Labour Court under suspended animation. So the entire sequence of events in the opinion of this Court clearly shows that the management only on account of its resources and legal experts is trying to wear out the patience and money of the respondent /workman by prolonging his agony. To that extent, the amendment which is sought is neither just nor proper. On the contrary, it prima facie shows that it is actuated and is not bonafide.

12. So far as the plea of the counsel for the petitioner is that he may be permitted to adduced evidence before the Learned Labour Court regarding the misconduct of the respondent /workman is concerned, this cannot be permitted to be done on account of the fact that the letter of termination dated 9th May, 1994 does not show that the services of the respondent /workman were terminated on account of any alleged misconduct. Therefore, the plea which is taken now by the petitioner /Management also does not find any support from the letter of termination.

13. For the reasons mentioned above, I am of the considered opinion that there is no infirmity, illegality or perversity in the impugned orders dated 24.4.2003 and 17.2.2005, and accordingly the writ petition is dismissed with cost of Rs.10,000/-.

14. The stay which is granted by this Court on 7th March, 2006 in CM No.2639/2006 shall stand vacated.

15. Parties are directed to appear before the learned Labour Court on 1st May, 2009. The learned Labour Court is requested to decide the dispute as expeditiously as possible.

V.K. SHALI, J.

APRIL 21, 2009
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