

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11385 OF 2015

- 1 Dashrath Ramlal Garandwal
Age : 29 years, Occupation : Service
R/o. Bhalgaon, Tal. Dist. Aurangabad.
- 2 Suresh Himmat Borse
Age : 29 years, Occupation : Service
R/o. Shivajinagar Pailad, Amalner,
Dist. Jalgaon.
- 3 Shyam Jagannath Ahire
Age : 30 years, Occupation : Service
R/o. Plot No. 108, Near Ganesh Temple,
Rajiv Gandhi Nagar, N-2, Cidco, Mukundwadi
Aurangabad.
- 4 Vijay Babruwahan Kamble
Age : 30 years, Occupation : Service
R/o. Babanrao Dhakane School,
Savitrinagar, Chikalthana.
Dist. Aurangabad.
- 5 Navnath Namdeo Deokar
Age : 26 years, Occupation : Service
R/o. Golegaon, Tal. Khultabad.
Tal. Dist. Aurangabad.
- 6 Anil Sheshrao More
Age : 29 years, Occupation : Service
R/o. Haradf, Tal Hadgaon
Dist. Nanded.
- 7 Ankush Janardhan Rithe
Age : 22 years, Occupation : Service
R/o. Hadgaon Sarak,
Tal, Dist. Aurangabad.
- 8 Lahu Trimbakrao Shingare
Age : 25 years, Occupation : Service
R/o. Kandari (B), Tal, Badnapur,
Dist. Aurangabad.
- 9 Jiwan Prakash Ekbote
Age : 33 years, Occupation : Service
R/o. -6, E-10/12 Sambhaji Colony,
Aurangabad.

- 10 Yogesh Nivruti Barbaile
Age : 28 years, Occupation : Service
R/o. Choudhary Colony,
Aurangabad.
- 11 Sandeep Tulsiram Katankar
Age : 27 years, Occupation : Service
R/o. Turkhed, Tal. Anjangaon
Dist. Amrawati.
- 12 Vithal Devidas Dahiware
Age : 22 years, Occupation : Service
R/o. Amba, Tal. Partur,
Dist. Jalna.
- 13 Krishna Chandrabhan Shinde
Age : 25 years, Occupation : Service
R/o. Kawitkheda, Post. Balegaon,
Tal, Vijapur, Dist. Aurangabad.
- 14 Kiran Bhanudas Rude
Age : 26 years, Occupation : Service
R/o. Plot No. 7. N-9, M-2, Hudco.
Aurangabad.
- 15 Trimbak Dattu Sadgir
Age : 32 years, Occupation : Service
R/o. Aherwadi, Tal. Yeola
Dist. Nashik
- 16 Dnyaneshwar Karbhari Borse
Age : 23 years, Occupation : Service
R/o. Jamdi (J), Tal. Kannad
Dist. Aurangabad.
- 17 Rameshwar Sampati Kangule
Age : 28 years, Occupation : Service
R/o. H No. 5/9/150, Pasaydan Building
Galli No. 4 Shivaji Colony, Mukundwadi
N-2, Cidco Dist. Aurangabad.
- 18 Shaikh Iqbal Sk. Unus
Age : 30 years, Occupation : Service
R/o. Sawargaon, Tal. Kannad
Dist. Aurangabad.
- 19 Gajanan Kakarao Sable
Age : 24 years, Occupation : Service
R/o. Georai Tayaga, Tal. Fulambri
Dist. Aurangabad.

..Petitioners

Versus

- 1 M/s. Ahmednagar Forgings Limited
Through its Plant Head
B-20, Five Star MIDC Shenra,
Aurangabad.
- 2 Mr. Arind Dham - Chairman and
Managing Director
M/s. Ahmednagar Forgings Limited
3, I.sc. Pamposh Enclave, Greater Kailash-I
New Delhi 110 048.
- 3 Mr. S. Rajgopalan - Executive Director
M/s. Ahmednagar Forgings Limited
3, I.sc. Pamposh Enclave, Greater Kailash-I
New Delhi 110 048. ..Respondents

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Advocate for Petitioners : Shri Kawre B.R.
Advocate for Respondents : Shri Malte Uday S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 01, 2015
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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioners, who are complainants in Complaint (ULP) No.35 of 2014 are aggrieved by the order dated 26.10.2015, by which application Exhibit U/14 seeking deletion of paragraph Nos.3(a) and (c) and permission

to add paragraph No.3(v) and 3(w) has been rejected.

5. Both the litigating sides were before this Court in Writ Petition No. 8728 of 2014 which has been decided by this Court by order dated 27.8.2015. The following directions under paragraph No.9 were issued by this Court, while passing the order dated 27.8.2015:-

“9. As such, this petition is disposed off with the following directions:-

(A) The litigating sides shall submit draft issues to the Industrial Court on/or before 16.9.2015 for its assistance, in the event the issues are not yet cast.

(B) The Industrial Court shall consider the draft issues and shall frame the issues on/or before 23.12.2015.

(C) Both the litigating sides shall abide by the dates of hearing posted by the Industrial Court and shall not seek adjournments on unreasonable / trivial grounds.

(D) In the event, the Industrial Court is not convinced with the reasons stated in the any adjournment application, it shall be at liberty to reject the said application.

(E) The Industrial Court shall decide Complaint (ULP) No. 35 of 2014, on/or before 2.1.2016.

(F) The petitioners shall deposit the monthly wages before the Industrial Court w.e.f. 1.9.2015 on/or before the 10th day of each month, which is the pay day.

(G) The respondents shall withdraw two month's salary from the Industrial Court and the rest of the amount shall be retained by the Industrial Court and which shall be subject to the result of the complaint.

(H) Issue as regards payment of salary from the date of transfer, till the decision in the complaint, shall be a matter of pleadings and subject to the decision which the Industrial Court shall arrive at on the Complaint.

(I) Needless to state, the Industrial Court shall decide the complaint on the basis of the oral and documentary evidence and shall not be influenced by the impugned interim order dated 2.9.2014.”

6. Shri Kawre, learned Advocate for the petitioners submits that paragraph Nos.3(a) and 3(c) are sought to be deleted. Paragraph Nos.3(v) and 3(w) are sought to be introduced by the application for amendment, dated 16.9.2015. Grievance is that the Industrial Court has rejected the said application, primarily on the ground that the proposed amendment, if allowed, is likely to unnecessarily prolong the hearing of the Complaint.

7. He further submits that the proposed paragraphs are sought to be introduced for bringing on record a contention of the petitioners that the transferred place is a company / factory which does not belong to the respondent / management and as such there can be no privity of contract between the petitioners and the management at the place of transfer. He submits that the respondents can oppose the said paragraphs by placing on

record an additional written statement.

8. Shri Malte, learned Advocate for the respondent has strenuously supported the impugned order. He submits that there is no justification set out in the application to indicate proper reasons for deleting paragraph Nos.3(a) and 3(c). The petitioners have already been granted interim relief on the basis of the pleadings. When draft issues were to be submitted, the petitioners have proposed an amendment and have, therefore, delayed the hearing of the matter.

9. He further submits that the pleadings in the proposed paragraph Nos.3(v) and 3(w) in fact, contain allegations and refer to Section 9A of the Industrial Disputes Act. Law need not be pleaded and the petitioners can bring in their case within the ambit of Section 9 while addressing the Industrial Court finally. He further submits that the respondents had specifically opposed the amendment even on the ground that it would change the nature of the cause of action. The Industrial Court has rightly considered the fact situation and has disallowed the application. No perversity can be pointed out in the impugned order.

10. I have considered the submissions of the learned Advocates as have been recorded herein above.

11. Directions issued by this Court below paragraph 9 of the order dated 27.8.2015, reproduced above, makes it amply clear that while the

petitioners have been granted two months' salary without working, equities have been balanced by expediting the adjudication of the complaint.

12. It is trite law that an amendment under Order VI Rule 17 of the Code of Civil Procedure can be permitted at a stage when it cannot be said to be too late to be allowed. It is also trite law that the merits of the amendment need not be assessed at the time of considering an application for amendment. It is not in dispute that issues are yet to be formalized by the Industrial Court.

13. From the application for amendment, I do not find any justification having been put forth by the petitioners for deleting paragraph Nos. 3(a) and 3(c). The respondent has filed its written statement and has countered these two paragraphs. According to the respondent the contents of these two paragraphs in some way would indicate the fallacy in the case of the petitioners. I, therefore, do not find any justification in the request made by the petitioners for deleting these two paragraphs.

14. In so far as the proposed paragraphs 3(v) and 3(w) are concerned, they pertain to the contention that the place of transfer is a factory, which cannot be said to be the employer of the petitioners. It, therefore, appears that the petitioners desire to drive home the point that there is no employer - employee relationship between the petitioners and the factory / location at which they are transferred. This issue seems to be material.

15. Rule 17 below Order VI of the CPC reads as under:-

“17. Amendment of Pleadings.- The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

16. As such, in the event, it turns out that the place of transfer is in no way connected with the respondent and does not share employer - employee relationship with the petitioners, it would strike at the very root of the issue of transfer. In my view, the controversy could then be adjudicated upon by the Industrial Court as is enunciated in Rule 17 below Order VI of the CPC.

17. This Court, in the matter of Sanjay Suganchand Kasliwal Vs. Jugalkishor Chaganlal Tapadia [2015 (3) Mh.L.J. 121], has considered the various judgments delivered by the Apex Court, while permitting an amendment.

18. I quite see that if the application for amendment is allowed, either in part or in full, the hearing of the Complaint would be delayed as the respondent would have to be granted the liberty to file its additional

written statement. The time schedule as directed by this Court under paragraph 9 of the order dated 27.8.2015, reproduced above, will eventually be staggered.

19. Considering the fact situation as above, this petition is partly allowed. The application for amendment to the extent of seeking deletion of paragraph Nos.3(a) and 3(c) stands rejected. The said application stands allowed to the extent of introducing paragraph Nos.3(v) and 3(w).

20. Consequentially, the petitioners shall carry out the amendment in their complaint on/or before the 10th day of December, 2015. The respondents are at liberty to keep their written statement ready, preferably on the same date, since the respondents are aware that paragraphs 3(v) and 3(w) are being introduced by way of an amendment. As such the written statement could be filed on/or before 15th December 2015. The prayer clause (c) of the amendment application, deleting respondent Nos.2 and 3, who are high ranking officers and added in person is also allowed and the said respondent Nos.2 and 3 shall stand deleted from Complaint (ULP) No.35 of 2014.

21. The time for deciding Complaint (ULP) No.35 of 2014 shall stand extended till 31st March, 2016. It is made clear that the respondents will not be required to deposit monthly wages after 2nd January 2016, till the complaint is decided on/or before 31st March, 2016.

22. Rule is made partly absolute in the above terms.

23. At this juncture, the respondents pray for stay to this order for a period of four weeks. Request is opposed by the petitioners. Considering that the time for disposal of the Complaint has been extended in the interest of the litigating sides, and considering the fact that the respondent / employer is permitted to file an additional written statement for refuting the contents of the proposed amendment, the request of the respondents is rejected.

(RAVINDRA V. GHUGE, J.)

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