

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 254 OF 2014

M/s. Vicco Laboratories(Goa),
A Partnership Firm,
Registered under the Partnership Act, 1936
having its factory at
24/1 D2, Maloga de Orara,
Corlim, Illhas Goa.
Represented by its Partner
Shri Ajay Y. Pndharkar
aged 49 years, Partner.

..... Petitioner

V e r s u s

1. Shri Naresh Parsekar,
Rep. By the President
Vicco Laboratories Workers Union,
Shetye Sankul, 3rd floort,
Tisk Ponda Goa.
2. Hon'ble Presiding Officer,
Labour Court-II,
Government of Goa,
At Panaji, Goa.
3. State of Goa,
Through the Chief Secretary,
having its office at Secretariat,
Porvorim, Goa.

..... Respondents

Mr. G. K. Sardessai, Advocate for the Petitioner.

Mr. S. Karpe, Advocate for the Respondents.

Coram :- **F. M. REIS, J**

Date : **17th July, 2015.**

ORAL JUDGMENT

Heard Shri Sardessai, learned Counsel appearing for the Petitioner
and Shri Karpe, learned Counsel appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the parties. Learned Counsel appearing for the Respondents, waives service.

3. The above Petition takes exception to the Order passed by the learned Labour Court dated 04.04.2014 whereby an application for amendment filed by the Petitioners came to be dismissed.

4. Upon hearing Shri Sardessai, learned counsel appearing for the Petitioners and Shri Karpe, learned Counsel appearing for the Respondents, the main objection to the proposed amendment filed by the Petitioners is whether it would withdraw an admission in the pleadings on the part of the Petitioners. This aspect revolves around the averments in the statement of the Respondents at para 16 and the reply filed by the Petitioner at para 13. On perusal of Para 16, it is inter alia claimed by the Respondents that as the Respondent is a Member of the Trade Union, the services have been terminated by the Petitioners.

5. On the other hand, whilst meeting the said contentions, there is no specific denial in Para 13 to the averments at Para 16. It is not in dispute that in the meanwhile the evidence of both the parties has concluded. The only prayer sought by the Petitioners is to include the word "denied" in para 13 of the Written statement. It is now well settled that even if there is an admission, it is always open to the party to explain such admission. Merely because an alleged admission is being withdrawn on the ground of non-traversal by itself will not be a ground to refuse an application for amendment when no prejudice would occasion to the

Respondents and bonafides are not doubted. In the present case, Shri Sardessai, learned Counsel appearing for the Petitioners, upon instructions, states that the Petitioners shall not lead any further evidence in case leave is granted to the Petitioners to amend the written statement at para 13 in the manner stated above.

6. In such circumstances, the contention of Mr. Karpe, learned Counsel appearing for the Respondents, that in the evidence of the parties it clearly indicates that these facts are in fact admitted, would not be taken away in case leave is granted to the Petitioners. Whether the inferences drawn by Mr. Karpe, learned Counsel, are correct, it will have to be examined at the time of the appreciation of evidence. To examine whether there is an admission, the tenor of the pleadings and the evidence adduced by the parties would have to be appreciated. As such, I find that the learned Judge was not justified to refuse leave to the Petitioners to incorporate the word "denied" in para 13 of the written statement. No doubt, as pointed hereinabove the learned Judge can always draw inferences on the basis of the material on record whilst appreciating the evidence of both the parties whilst deciding the Reference in accordance with law.

7. Subject to the Petitioners not leading any further evidence, the Petitioners are granted leave to amend the written statement to substitute the word "stated" by the word "denied", subject to the Petitioners paying costs of Rs.7,500/- to the Respondents as condition precedent. The learned Tribunal shall try and dispose of the proceedings as expeditiously as possible as it is reported that the matter is ripe for final arguments.

8. Rule stands disposed of in the above terms. Petition stands disposed of accordingly.

F .M. REIS, J.

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