

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10852 OF 2016

Foundation Brake Kamgar Sanghatna,
"Savali", 8, Kalyani Nagar,
Behind Dadawadi Temple,
Jalgaon, through it's General Secretary. ..Petitioner

Versus

M/s Foundation Brake Manufacturing
Private Limited, Bambhori, Taluka
Dharangaon, Dist. Jalgaon through
its General Manager. ..Respondent

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Advocate for Petitioner : Shri T.K.Prabhakaran
Advocate for Respondent : Shri Sandesh R. Patil
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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 12, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Issue is, *as to whether filing of a Written Statement / Say should be permitted in an Appeal under the Industrial Employment (Standing Orders) Act, 1946 ("the Act of 1946") and the Bombay Industrial Employment (Standing Orders) Rules, 1959 ("the Rules of 1959")*.
3. Rule.

4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

5. The petitioner / Union is aggrieved by the order dated 13.10.2016, by which, application Exhibit U/8 filed by the Union seeking amendment to the written statement before the commencement of the trial, has been rejected on the ground that the contents of the amendment application are in the nature of arguments and no Written Statement can be filed in an Appeal under the Act of 1946.

6. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the judgments - James Joseph Vs. State of Kerala [(2010) 9 SCC 642] and North Eastern Railway Administration Versus Bhagwan Das (D) By L.Rs. [(2008) 8 SCC 511], cited by the respective sides.

7. Appeal (IESO) No.1 of 2015 is the proceeding pending before the Industrial Court in relation to a dispute as regards the Model Standing Orders vis-a-vis the certified amendments. The respective claims of the parties need not be delved upon in his judgment in the light of the fact that the proceedings are at a pre-trial stage. Suffice it to say that the Management, being aggrieved by the amendments

to the M.S.O. certified by the authority, has preferred the Appeal.

8. The management is the appellant before the Industrial Court and has filed its detailed appeal with documents. The respondent Union / petitioner herein, has already filed its written statement. There is no dispute that issues have not been cast and the Industrial Court has not decided, whether evidence is to be recorded or not.

9. For the sake of clarity, Rule 13 of the Bombay Industrial Employment (Standing Orders) Rules, 1959 is reproduced as under:-

“13. Procedure in appeal. --

(1) Any person desiring to prefer an appeal against an order of the Certifying Officer shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quadruplicate accompanied by a certified copy of the amendments or modifications and of the order of the Certifying Officer against which the appeal is preferred, to the Registrar of the Industrial Court.

(2) The appellate authority shall, after giving the appellant an opportunity of being heard, unless it comes to the conclusion that the decision of the Certifying Officer is contrary to law or otherwise erroneous, confirm the amendments or modifications as certified by him.

(3) Where the appellate authority does not confirm the

amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given -

(a) where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments and where there are no such trade unions to the representatives of workmen elected under rule 4, or as the case may be, to the employer;

(b) where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;

(c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.

(4) The appellant shall furnish each of respondents, with a copy of the memorandum of appeal.

(5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.

(6) On the date fixed under sub rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or considers to be relevant.”

10. It is, therefore, apparent that though the proceedings before the Industrial Court are termed as appeal proceedings, there is a

specific method prescribed under Rule 13, thereby enabling the Industrial Court to direct or permit the litigating sides to lead evidence. That stage is yet to come in the matter.

11. Upon hearing the learned Advocates and on perusing the record, it does appear that the litigating sides have not brought to the notice of the Industrial Court the manner in which the pending appeal was to be entertained and the proceedings were to progress.

12. Rule 13(1) indicates that after receiving the memorandum of appeal accompanied by the documents and the order of the authority, the appellate authority, which is the Industrial Court, was required to give the appellant an opportunity of hearing under Rule 13(2), only after it would come to a conclusion (after perusing the documents before it) that the decision of the certifying officer is either not contrary to law or otherwise or the amendments or modifications as certified by him, deserve to be confirmed. This has not been done in this matter and the proceedings have progressed without any objection being raised by the litigating sides.

13. Rule 13(3), in pursuance to the above, indicates that if the appellant authority does not confirm the amendment or modification, it would fix a date of hearing and direct issuance of notices. This stage cannot be said to be purely an imaginary stage, so as

to mean that without passing any formal order, the Industrial Court cannot proceed to issue notices to the parties, leading to the presumption or on the presupposition that it has not confirmed the amendments or the modifications.

14. If Rule 13(1), (2) and (3) are significant and if the fullest meaning is to be attributed to the said provisions, the Industrial Court has to apply its mind at two stages. At the stage of Rule 13(2) and then 13(3), at each of such stages, it will have to record its conclusions in writing, since its impressions if not placed on record, would not be indicative of the Industrial Court having applied its mind to the documents before it and the grounds for appeal.

15. However, learned Advocates for the respective sides at this stage submit that they would not make any grievance about this aspect, considering that substantial time has been spent in this matter before the Industrial Court, two rounds of litigation have been undertaken by the parties upto this Court and the rights of the workers, who are on the verge of their retirement in relation to the dispute of actual age of retirement, are at issue.

16. Considering the above, the litigating sides before this Court are at the stage of Rule 13(4), when the memorandum of Appeal has been served upon the Union / Respondent. Though the Rule does not

prescribe, specifically, the filing of the written statement or say to the memorandum of appeal, the Union has already filed its written statement on record. It is in the light of the written say that the issue of an amendment is before this Court.

17. Time and again, this Court has ruled that though the law of evidence applies to the Labour and Industrial Courts, the Code of Civil Procedure may not be strictly applicable, though while dealing with certain issues, the Court may take recourse to or take assistance of the provisions of the CPC. Principles analogous to the provisions incorporated in the Civil Procedure Code may be made applicable for the purpose of governing the procedure.

18. Learned Advocate for the petitioner / Union has submitted that the Union was represented by another lawyer and the written statement was filed. For some reasons, the Union decided to take the assistance of another lawyer. After it was noticed that there were certain shortcomings in the written statement, an application Exhibit U/20 was filed before the Industrial Court prior to the framing of issues and recording of evidence. The grievance of the respondent / management is that the entire proposed amendment paragraphs indicate that provisions of the Standing Orders and the law have been reproduced verbatim in Marathi and the proposed amendment is in the nature of arguments.

19. The Industrial Court has rejected the application for amendment by the impugned order primarily on the ground that the filing of the Appeal Memo would not amount to a pleadings and therefore, there is no necessity to file a say to the appeal memo. It is further concluded that therefore, no say is required to be filed by the respondent in such proceedings.

20. It appears to me that the Industrial Court is dealing with the said proceedings as if, it is in the nature of a Second Appeal under Section 100 of the CPC. Neither Section 6 nor Rule 13 specifically prevents a response from the respondent to the appeal, keeping in view that it mandates that the copies of the memorandum of appeal shall have to be furnished to the respondent before proceeding to decide the appeal. There is no specific exclusion inasmuch as there is no specific bar on the respondent in filing a written statement or a written say.

21. In the absence of a specific exclusion or a bar, and in the light of the CPC not being strictly applicable to the proceedings before the Labour and Industrial Courts, I do not find that the Industrial Court would be justified in concluding that as the written say of the respondent would not amount to pleadings, there cannot be any reason to permit an amendment to the written statement. In my

view, once the respondent is made aware about the specific contentions of the appellant and the grounds raised in the light of the documents placed on record, coupled with Rule 13(4) mandating supplying of the memorandum of appeal to the respondent, in the absence of a specific exclusion, it would not be illegal or prejudicial to the interest of the appellant to permit the respondent to file a written say or a written statement.

22. Learned Advocates for the respective sides submit that there is no judicial pronouncement by any Court on this issue inasmuch as, neither the Act of 1946 nor the Bombay Rules, 1959 exclude the respondent in an appeal under Section 6 from filing a written statement. So also, the Rules do not prescribe the format of the notice to be issued to the respondent under Rule 13(4). In this backdrop, I am of the view that filing of a written statement or a written say by the respondent has not been specifically prohibited and it would neither violate the Act and the Rules framed thereunder, nor would it be prejudicial in permitting the respondents to counter the contentions in the appeal memo and assist the Court.

23. In order to decide whether a Written Statement can be filed, Rule 13(3)(a,b & c) need a closer look. Clause (a) enables the Industrial Court to issue notices to all the trade unions in that establishment. Clause (b) enables the Court to issue notices to the

employer and all trade unions. Clause (c) enables the Industrial Court to even join any workman or workmen to the Appeal and allow such Unions or workmen to participate in the adjudication of the appeal and present their case. Can this be possible without allowing such Unions / Workmen to file their returns in the proceedings? In my view, unless they express their views / points through a Written Statement / Say, there would be no adjudication on their stand / contentions. A formal expression of their contentions can only be possible through their written statement. The Legislature has not used the term 'Respondent' or 'Opponent' or 'non-applicant' in Clauses (a,b & c) under Rule 13(3) of the Rules of 1959. As such, the Industrial Court is vested with the authority to decide the parties to whom notices can be issued and also addition of respondents. This, therefore, establishes that all such Unions and workmen, who may be concerned with the appeal, are to be heard in the said proceedings and this would not be possible without their pleadings being on record.

24. So also, there is no provision under Section 6 of the Act and Rule 13, by which, an appeal could be entertained only if there is a substantial question of law involved unlike Section 82 of the Employees' State Insurance Act, 1948. Though the proceedings are termed as 'Appeal', in fact, the procedure contemplated therein is akin to original proceedings. Therefore, when the field is left open

for the appellant to raise all contentions and grounds in the appeal memo and bring all such documents on record as it deems proper, I do not see any reason for preventing or precluding the Union from countering such contentions and averments. A written statement or a say can, therefore, be permitted.

25. In so far as permitting an amendment is concerned, it is trite law that an amendment to the plaint or a complaint cannot be equated with an amendment to the written statement. The latter has to be entertained more liberally is a well settled law. If the proposed amendment neither introduces any different cause of action, nor does it change the nature of the proceedings / suit and if the same is sought to be made before the commencement of the trial, such an amendment is to be liberally entertained.

26. With the assistance of the learned Advocates, I have gone through the proposed amendments, which are in the form of paragraph Nos.21-A to 21-M. All these proposed paragraphs are not reproduction of the provisions of the Standing Orders. At some places the Standing Orders are reproduced and thereafter, the petitioner has put-forth its averments. If a litigating side intends to reproduce the provision of law, for the sake of clarity, I do not find it to be an anathema. By and large, arguments cannot take shape of pleadings. Even if it is held that the petitioner should be restricted

from reproducing the specific section, by way of an amendment, after which, there are averments set out, the said litigating side can surely be permitted to quote the section without reproducing it and put forth its averments in connection thereto.

27. In my view, the Industrial Court has not looked at the proposed amendment from this angle. It has refused the amendment only on the ground that no written statement or written say can be filed and that would not constitute 'pleadings'. Nevertheless, my conclusions in the foregoing paragraphs would settle this issue.

28. In the light of the above, this petition is allowed. The impugned order dated 13.10.2016 is quashed and set aside. The application for amendment Exhibit U/20 is allowed. The petitioner shall carry out the amendment within two weeks from today with liberty to the respondent / original appellant to file a counter, if advised.

29. Needless to state, for the sake of clarity, the Industrial Court shall refer to the English version of the Act and the Rules, considering the fact that some Standing Orders have been quoted in the proposed amendment by way of a Marathi translation. The English version under the Act and the Rules shall, therefore, prevail.

30. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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