

In the High Court of Punjab and Haryana at Chandigarh

CR- 5897 of 2017(O&M)

Date of Decision:4.9.2017

M/s Rajyashree Textiles

---Petitioner

vs.

Ram Sagar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Rekha Mittal, J.

Challenge in the present petition has been laid against order dated 5.7.2017 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal-cum- Labour Court, Faridabad (hereinafter to be referred as “the Tribunal”) whereby application of the petitioner/respondent for amendment of the written statement has been partly dismissed.

The respondent-workman namely Ram Sagar raised an industrial dispute with regard to termination of his services and Reference No. 239 of 1992 made by the Government of Haryana was answered by the Tribunal vide award dated 10.6.1999 (Annexure P-2). The workman filed an application under Section 33(c)(2) of the Industrial Disputes Act, 1947 (in short “the Act”) for computation of wages from 17.2.1992 to 31.10.1999, bonus from the year 1992 to 1999, allowances and incentives etc. for the said period and prayed for an amount of Rs. 2,04,531/-. The application

was decided by the Tribunal on 17.9.2009 (Annexure P-3). Challenge to the said order by way of CWP No.8396 of 2010 did not find favour with this Court in view of decision dated 9.4.2014 (Annexure P-4). It is further argued that the workman filed another application under Section 33(c)(2) of the Act claiming wages till 7.5.2005 when he reaches the age of retirement. The petitioner-management filed reply to application (Annexure P-7). Later, the instant application was filed for amendment of written statement to add three submissions detailed in sub para (A) to (C) of para 2 of the application. Reply to the application was filed by the respondent-workman. After having heard representatives of both the parties, the Tribunal passed the impugned order and a relevant extract therefrom reads as follows:-

“After hearing learned ARs for the parties and having gone through the case file carefully, I am of the considered opinion that there is absolutely no merit in the present application and same deserves outright rejection for the reason that so far as pleas as to limitation and estoppel are concerned, same being purely legal pleas, can be raised even at the time of final arguments without being incorporated in the pleadings by way of amendment in the reply whereas the plea as mentioned in Para No. 2(C) of the application as sought to be incorporated by way of amendment, already stands considered and dealt with in detail by Labour Court-III, Faridabad while passing order dated 17.9.2009. In para No. 16 of said order, matter with regard to concern of Smt. Bhartia with applicant/management M/s Rajyashree Textiles was dealt with

in the following manner:-

“In the absence of any cogent and convincing evidence on record on behalf of Smt. Bhartia it is not proved that she had retired from the proprietorship of respondent No. 1 and therefore she cannot claim that she was not responsible for the acts of respondent No. 1 any more and no claim could be filed against her. At the most she can claim indemnification from the group of H.P.Lohia and with these observations, I reject the claim of Smt. Bhartia.”

7. Thus, it was held that Smt. Bhartia cannot claim that she was not responsible for acts of applicant/management M/s Rajyashree Textiles and no claim could be filed against her. Her plea that she had retired from proprietorship of M/s Rajyashree Textiles was rejected. Finding so returned by Labour Court was upheld by Hon'ble Punjab and Haryana High Court firstly vide judgment dated 09-04-2014 passed in CWP NO. 8396 of 2010 and then by the order dated 11-11-2014 passed in LPA NO. 1408 of 2014. It, therefore, becomes manifest that what applicant/management seeks to do by way of present amendment is to incorporate a plea which already stands adjudicated upon and, thus, Smt. Rajyashree Bhartia through whom applicant/management M/s Rajyashree Textiles has been sued, somehow with a view to avoid her liability is seeking to re-agitate the matter which already stands decided even up to the level Hon'ble High Court whereby it has been categorically held that Smt. Bhartia cannot run away from her liability towards the workman under the garb of pleas taken by her. Thus, though the proposition of law laid down in the authorities cited by learned AR for applicant/management cannot be disputed but these authorities are not applicable to the peculiar fact situation obtaining in the present case. Application being completely misconceived, is hereby

dismissed.”

Feeling aggrieved against the impugned order disallowing amendment incorporated in sub para (c) of para 2 of the application, the management has approached this court under Article 227 of the Constitution of India.

The sole submission made by counsel for the petitioner is that as in the earlier proceedings initiated under Section 33(c)(2) of the Act, culminated in order dated 17.9.2009 passed by the Tribunal and affirmed by this Court by deciding CWP No. 8396 of 2010 and LPA No. 1408 of 2014, the petitioner never raised any such issue that the entire factory compound was disposed of by the said management and no building or unit exists thereafter, as such the applicant has no cause of action for re-employment in the closed unit after the factory and business set up was wound up in the year 1995, the Tribunal has committed a grave error rather illegality by rejecting plea of the petitioner to make amendment by adding averments set up in sub para (c) of para 2 of the application. However, counsel would state that the petitioner does not press its claim qua addition of allegations raised in sub para (c) to the following effect:-

“That East India Textile Mill was in which M/s Raj Shree Textile Mill in existence was closed much earlier to 1999.”

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to note that the Tribunal allowed plea of the petitioner to raise legal issues incorporated in sub paras (A) and (B) of para

2 of the application for amendment but its prayer for making addition of sub para (c) of para 2 has been rejected.

Indisputably, Ram Sagar workman raised an industrial dispute and the State of Haryana vide endorsement No. 91144-149 dated 18.11.1992 made reference to the Tribunal “whether the termination of services of Sh. Ram Sagar is legal and justified. If not, to what relief he is entitled.”

The reference remained pending before the Tribunal till 10.6.1999. While deciding issue No. 2, the Tribunal has taken note of statement of Sh. Narender Tanger, AR for Management recorded on 24.3.1999, reads as under:-

“All the record pertaining to the present case is lying inside the factory premises of the respondent, the workers of the factory are holding Dharna at the factory gate and are not allowing the officers of the management to enter the factory and to collect the relevant record. So, I am unable to produce the said record.”

There is no denial that application filed by the workman for computing wages, bonus and allowances etc. was allowed by the Tribunal and the workman was held entitled to back wages to the tune of Rs. 1,05,000/- upto 10.6.1999. As soon as the Tribunal has decided liability of the management to pay back wages from July 1992 to 10.6.1999 and the said order has attained finality, no error much less illegality can be found in findings of the Tribunal that the management cannot be allowed to agitate that the factory was closed for re-employment as such in the closed unit since 1995. The Tribunal has rightly held that this issue sought to be raised

in sub para (c) of para 2 of the application already stands answered in the earlier proceedings, therefore, cannot be allowed to be agitated by way of amendment.

For the foregoing reasons, finding no merit, the petition fails and is dismissed in limine.

(Rekha Mittal)
Judge

04.09.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No