

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CR No.4887 of 2018

Date of Order: 27.08.2018

P.M Vohra.

....Petitioner

Versus

M/s Silotech Engineering Pvt Ltd & Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ajay Bhardwaj, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for the respondents.

B.S.WALIA, J (ORAL)

1] Prayer in the revision petition is for setting aside order dated 06.04.2018 (Annexure P/6) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon (for short “the Tribunal”) in Reference No.682 of 2002, allowing the application for amendment of the written statement by permitting addition of the word “not” before the word “workman” in the prayer clause.

2] Brief facts of the case leading to the filing of the instant petition are that an application was filed by the respondent-Management for amendment in the written statement at the stage of arguments on the ground that while making submissions during arguments, it had come to the notice of the Management that a clerical error had crept in the prayer clause of the written statement as the word “not” was found omitted before the word “workman”. It was the stand of the Management that its entire pleadings was that the petitioner-claimant was never engaged as a workman by it and

the missing word “not” was merely a typographical omission, therefore, the

Court in exercise of its *suo moto* powers under Section 151 CPC be pleased to rectify the mistake as Section 11 of the Industrial Disputes Act, 1947 (for short the Act) conferred the same powers on a Labour Court as were exercisable by the Civil Court, besides, it empowered the Labour Court to follow such procedure as it deemed fit.

3] The application for amendment was opposed on the ground that it had been filed belatedly, no explanation was tendered for not having filed it earlier, therefore being hopelessly time barred, the application was not maintainable.

4] The learned Tribunal allowed the application by observing that the proposed amendment was not strictly an amendment, besides it was a mere clerical or technical omission for which even it could by exercising its *suo moto* powers correct the error and that even in the rejoinder, there was not even a whisper about the mention in the prayer clause of the written statement to be an admission in favour of the claimant, rather the claimant had denied the preliminary objection in the written statement where the Management had denied him as falling under the definition of “Workman” under Section 2 (s) of the Act.

5] The Learned Presiding Officer by relying upon the decision of Hon'ble the Supreme Court in **Ragu Thilak D. John vs S Royappan, 2001 (2) SCC 472** allowed the amendment on the ground that the dominant purpose of allowing the amendment was to minimize litigation by permitting addition of the word “not” before the word “workman” in the last paragraph in line 3 of the written statement as even from the pleadings, it was apparent that the omission of the word “not” before the word “workman” in the prayer clause was merely a typographical omission.

6] Learned counsel for the petitioner contended that the amendment had been prayed for belatedly, that there was absence of due diligence, that admission once given could not be withdrawn, and that there was no power under the Act where under the Labour Court could allow amendment of pleadings. Per contra, learned counsel for the respondent reiterated that the amendment had been correctly allowed.

7] I have considered the submissions of learned counsel for the parties. Admittedly, the stand of the respondent in the written statement is that the petitioner is not a workman. It is only in the prayer clause in paragraph No. 11 that the word “not” has been omitted before the word “workman”. To my mind, the written statement has to be read in its entirety so as to determine the stand of the respondents in the proceedings. Apparently, the amendment is only qua correction arising from an accidental slip or omission and merely crystallizes what has been said in the written statement.

8] Hon'ble Calcutta High Court in **Alstom Limited vs Seventh Industrial Tribunal of West Bengal, 2002 (3) Cal HCN 394** by relying upon various decisions of Hon'ble the Supreme Court came to the conclusion that a Industrial Tribunal was competent to permit amendment of pleadings in appropriate cases. Relevant extract of the aforementioned decision is reproduced as under:-

1. xxx xxx xxx

2. xxx xxx xxx. He, however, contends that section 11(3) of the Industrial Disputes Act does not contemplate conferring of any power of amendment to the Tribunal and as such no amendment can be allowed.

3, 4, 5, 6. xxx xxx xxx

Law of Pleadings: How far applicable in Industrial Adjudication:

7. The Rules of pleadings do not strictly apply to the

resolution of the industrial disputes. Still the pleadings could not be disregarded for the purpose of reaching any conclusion considered just and proper. In **J. K. Iron & Steel Company Limited v. Iron & Steel Mazdoor Union, 1956 (I) LLJ 227 (SC)**, the Apex Court observed:

"It is evident from this fact that though these Tribunals are not bound by all the technicalities of Civil Courts, they must nevertheless follow the same general pattern. Now the only point of requiring pleadings and issues is to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. It is not open to the Tribunals to fly off at a tangent and disregarding the pleadings to reach any conclusions that they think are just and proper."

7.1. xxx

7.2 In **Management of Rashtradoot, Jaipur v. Rejesthan Working Jounialist Union, (1970) 20 FACLR 1 SC**, it was urged before the Supreme Court on behalf of the management that the worker concerned had been expelled by the union and hence since the union was not sponsoring his cause there could not have been a reference under the Act, the Supreme Court observed as follows: The Industrial Disputes Act, 1947:

"This point was not raised in the written statement and did not form the subject-matter of any issue. No evidence was, in the circumstances, led on this aspect. Shri Sen submitted that this information was made available to the management only during the course of evidence and it was for this reason that this point was sought to be argued without being raised in the pleadings. We do not think that this explanation can be accepted as justification for raising this point without including it in the pleadings. As soon as the management came to know of this aspect, an application should, in our opinion, have been made for amending the written statement so that basic facts could be found on proper plea, issue and evidence. Having failed to do so it was not open to the management to found any argument on assumption of facts, which are not properly proved. The fact that the Labour Court had allowed this point to be argued before it is no ground for this Court to entertain this argument at this stage."

7.3 In **Tandur and Nauandgi and Stone Quarries (Put.) Ltd. v. Their Workmen, 1964 (I) LLJ 737**, the Supreme Court made observations to the following effect:

"In industrial adjudication Tribunal are naturally reluctant to apply the law of pleadings in all its strictness, and the fact that all aspects of the question in reference to the character of the labourers employment were not set out by the respondents in their written statement, cannot be said to affect the creditability of the evidence led by them at the trial."

Pleadings:

8. xxx xxx xxx 8.1

Amendments:

9. The Tribunal has power to permit the parties to amend the pleadings in its discretion. The Courts and Tribunals, charged with the duties of administering justice, have to remember that it is not the form but the substance of the matter that has to be looked to and the parties cannot be penalised for inadvertent errors committed by them in the conduct of their cases [**Management of Borpukhurie Tea Estate v. Presiding Officer, Industrial Tribunal, Assam, 1978 (I) LW 558 (562) (SC)** per Jaswant Singh, J. relying on the observations in **Western Indian Match Company Ltd. v. Their Workmen, 1963 (II) LLJ 459 (464)**, per Das Gupta, J.I The amendments are to be allowed so as to give full effect to the adjudication without, however, causing substantial injury to the other party. An injury may be remedied by an amendment and an appropriate order as to costs. The principle governing the amendments of pleadings cannot be better stated than in the words of Shah, J. speaking for the Supreme Court in **Jai Jai Ram Manohar Lal v. National Building Material Supply, AIR 1969 (SC) 1267 (1269-70)**, per Shah, J.:

"Rules of procedure are intended to be a hand-maid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleadings of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side * * all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties unless by permitting the amendment injustice may result to the other side *' * * In our view, there is no rule that unless in an application for amendment of the plaint it is expressly averred that the error, omission or mis-description is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

9.1. Thus, the Tribunal always ought to give leave to amend pleadings of a party, unless it is satisfied that the party applying was acting malafide or that by his blunder he caused injury to his opponent, which cannot be compensated for by an order of costs. But, there is no rule that in the application for amendment. the party must expressly aver that the error, omission or misdescription was due to a bona fide mistake. It would be sufficient if a prima facie case for the amendment is made out by the applicant. The amendment can only be refused on recording findings that the party applying was acting mala fide or the injury caused to the opposite party by the mistake, omission or mis description committed by the applying party cannot be compensated for by payment of costs. But where no injury is caused to the opponent and the applying party acted bona fide, the rules of natural justice required that in appropriate cases, the Tribunal

may allow the amendment of pleadings. In other words, the industrial adjudicators are competent to allow the parties. when they are not actuated by any oblique motive, to modify their pleadings to sub-serve the interests of justice (**Management of Borpukhuri Tea Estate v. Presiding Officer, Industrial Tribunal, Assam, 1978 (I) LLJ 558 (562) (SC)** per Jaswant Singh, J. relying on **Patna Electric Supply Co. Ltd. v. Bali Rai, 1958 (1) LLJ 257 (259) (SC)** per Bhagwati, J.). In **Management of Borpukhuri Tea Estate v. Presiding Officer, Industrial Tribunal, Assam, 1978 (I) LLJ 558 (561-62) (SC)** per Jaswant Singh, J., the Supreme Court on fact held that it was a fit case for allowing the amendment. The case was, therefore, remanded to the Tribunal for disposal after allowing the necessary amendment. In **Royal Nepal Airlines Corporation employee's Union v. State of West Bengal, 1977 Lab I. C. (NOC) 83 (Cal)** per D. K. Sen, J., the Calcutta High Court upheld the validity of an amendment of the written statement for bringing on record the fact that a certain employee was a Nepalese national because the question of nationality was relevant for the determination of relief to be granted. The Court observed that there was no reason why such amendment be not allowed and it could not be said that it would extend the scope of the dispute or introduce a new dispute.

9.2. So far as the question of amendment sought for herein, is concerned, it appears from the schedule of amendment that those are almost formal in nature and intended to bring on record certain facts, which would be necessary. Since the designation or nomenclature or the title of the company has changed it would be necessary to record those facts, otherwise, it would be difficult to obtain the relief after the award is passed and when it is sought to be enforced. The contention of the learned Counsel for the respondents that there is no power to amend so far as the Tribunal is concerned since it is not clothed with the power of the Civil Court except the matters enumerated in section 11(3) of the I.D. Act, in view of the discussion above does not seem to be of any substance. At the same time, the Tribunal is supposed to follow its own procedure and evolve its own system. If certain facts are to be brought on record, in such event it is kept open to the Tribunal to allow such amendment in the pleadings, but it can also refuse it on the ground of the belatedness or otherwise or on the ground of mala fide.

10. xxx xxx xxx

10.1. Having regard to the facts of this case, in fact the amendment that has been sought to be brought on record is really a belated one but it cannot be said to be mala fide. If the amendment was allowed, the matter would not have been delayed, but for the rejection it has since been delayed. In the circumstances, the said facts may also be brought on record so as to give an opportunity to both the parties to contest the same.

10.2. The decision cited by the learned Counsel for the respondents that the Court cannot direct the Tribunal to do something, which is impermissible in law, does not apply in the facts and circumstances of the present case. So far as the question of capacity is concerned, it is not necessary to go into the said question at this stage. This point being kept open, it is not necessary to deal with the decision so cited.

Order.

11.1. xxx xxx xxx

11.2. Similarly, the order rejecting the amendment viz: The Order No. 30 dated 16th, May, 2001, is hereby quashed. Let the leave to amend be allowed and the Written Statement of the employer be amended accordingly. Such amendment is to be incorporated within a week from date and an amended copy of the Written Statement shall be presented before the learned Tribunal within a fortnight from date, after serving copy thereof on the Counsel for the workmen, the workmen may, if so advised, file its rejoinder within a fortnight thereof.

11.3. xxx xxx xxx 13. "

9] In the light of the position noted above, I am of the view that although the application for amendment was moved belatedly yet having regard to the facts of the case, it cannot be said that the prayer for amendment was mala fide nor can any injury be said to have been caused to the petitioner. The amendment prayed for and as allowed by the learned Tribunal is consistent with the stand of the respondent in the written statement and was necessitated solely due to the word "not" before the word "workman" having got omitted due to inadvertence. The Tribunal allowed the amendment prayed for to sub-serve the interest of justice in accordance with the principles of natural justice. The same was rightly allowed. I do not find any circumstances warranting interference in the order passed by the learned Tribunal. Accordingly, finding no merit in the revision petition, the same is dismissed.

August 27, 2018
manoj

(B.S.WALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No