

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

Sr. No.201

C.R. No.5611 of 2015

Date of decision: 29.08.2018

Shubh Ram and another

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sandeep Singal, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 17.08.2015 passed by the Additional District Judge, Rohtak (for short – 'the Appellate Court') dismissing the application filed by the petitioners under Order 6 Rule 17 CPC through which at the appellate stage they sought amendment of their plaint.

The facts in brief which need to be noticed for adjudicating upon the present petition are that in the year 2005, the petitioners filed a suit seeking therein declaration to the effect that their services be regularized w.e.f. 01.02.1996. Consequential benefits were also prayed for.

The case set up by the petitioners, who are two in number, was that they had been appointed as Labourers in the year 1991 and 1977 respectively and thereafter, they continued to uninterruptedly serve the

respondents. Relying upon the regularization policy of the Government dated 01.02.1996, they claimed regularization of their services. Since even after service of notice, the respondents failed to appear before the Trial Court, they were proceeded against ex parte. The Trial Court after sifting the evidence which came on record, through judgment and decree dated 14.01.2012 dismissed the petitioners' suit against which the petitioners preferred an appeal, which is pending. During the pendency of their appeal an application was filed by the petitioners seeking therein to amend their plaint to the effect that they now wanted to claim regularization of their services on the basis of the regularization policy of the respondent-State dated 01.10.2003 instead of 01.02.1996 on which they had originally based their case at the time of filing of their suit. The amendment application having been dismissed by the Appellate Court occasioned the filing of the present petition.

Learned counsel for the parties have been heard.

Order 6 Rule 17 CPC, reads as under:-

"17. Amendment of pleadings.- The Court may at any stage of 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."

As per the afore-quoted provision, the Court, at any stage of the proceedings, may allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the purpose of determining the real questions in controversy between the parties. However, as per the proviso, no application for amendment is to be allowed after the commencement of the trial, unless the Court is convinced that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

The petitioners had sought regularization of their services through the suit filed by them in the year 2005. At the time of filing of their suit they based their claim on the regularization policy of the State dated 01.02.1996. The Trial Court dismissed their suit. Such dismissal was challenged by them by way of an appeal and during the pendency thereof they filed an application seeking therein amendment of their plaint to the effect that they now sought to rely on the regularization policy of the State dated 01.10.2003 instead of the regularization policy dated 01.02.1996. Once they were claiming regularization of their services they cannot plead ignorance of a notified regularization policy of the State dated 01.10.2003 which was in existence even prior to the filing of their suit. Even if, they could plead ignorance it is only they who have to suffer for their negligence.

A perusal of the judgment of the Trial Court reveals that during the course of leading of their evidence before the Trial Court, the petitioners had knowledge of the regularization policy of the State dated 01.10.2003 as the policy is duly referred to in the judgment. However, they took no steps to amend their suit at that time and let the same be decided.

Further, it is the admitted position that the policy of the State dated 01.10.2003 was withdrawn by the State on 25.04.2007.

In view of the above observations, proviso to Order 6 Rule 17 CPC is clear bar in the way of the petitioners to seek amendment in their plaint at the appellate stage.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 29, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No