

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

CR No.6168 of 2016(O&M)
Date of Decision: 20.11.2018

Kuldeep Kaur

... Petitioner

Vs

Sarabjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranjit Singh Sidhu, Advocate for
Mr. G.S. Nahel, Advocate
for the petitioner.

Mr. Gaurav Singla, Advocate
for respondent No.1.

Mr. Arun Kaundal, DAG, Punjab.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has challenged the order dated 09.08.2016 passed by Civil Judge (Junior Division), Sangrur, vide which prayer for amendment of plaint at the instance of the plaintiff was dismissed.

[2]. At the time of issuance of notice of motion on 20.09.2016, following order was passed by this Court:-

“Learned counsel for the petitioner contends that in a suit for declaration, the plaintiff has challenged her removal from service on the basis of false complaint and without giving her any opportunity of hearing. The proposed amendment is only to incorporate factum of passing of orders dated 29.04.2013,

03.06.2013 and 07.06.2013 passed by defendants No.5, 4 and 2 respectively. These orders are also claimed to be illegal, null and void. According to learned counsel, the proposed amendment will not change the nature of the suit, rather vide aforesaid incorporation, there would be elaboration of stand taken by the plaintiff.

Notice of motion for 06.10.2016.

Trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

[3]. As per heading of the plaint, plaintiff filed a suit for declaration to the effect that respondents No.2 to 5 have removed the plaintiff/petitioner on the basis of some false complaint from the post of Anganwari helper. The factum of orders dated 29.04.2013, 03.06.2013 and 07.06.2013 passed by defendants No.5, 4 and 2 respectively were duly recited in the plaint. However, in the prayer clause of the suit, a decree for permanent injunction for issuing stay order against defendants No.2 to 5 on the basis of false complaint was made. Both the parties went to trial on specific issues.

[4]. Learned counsel for the petitioner submitted that the proposed amendment will not change the nature of the suit as the basic nature of the suit is a suit for declaration, but in the prayer clause, a suit for permanent injunction was mentioned. The proposed amendment by way of incorporation of true prayer would be an act of elaboration of the stand taken by the plaintiff.

[5]. Learned counsel for the respondents however opposed the

prayer on the ground that the plaintiff has already availed number of opportunities to lead his evidence. Plaintiff could not conclude his evidence despite eight opportunities and the proposed amendment will change the nature of the suit from permanent injunction to declaration.

[6]. I have considered the submissions made by learned counsel for the parties at the bar.

[7]. Concededly, neither the plaintiff has concluded his evidence despite number of opportunities, nor the evidence of the plaintiff has been closed. By way of proposed amendment, the plaintiff/petitioner seeks to assail the orders dated 29.04.2013, 03.06.2013 and 07.06.2013 passed by defendants No.5, 4 and 2 respectively being illegal, null and void. The proposed amendment is only to incorporate the factum of passing of aforesaid orders by defendants No.5, 4 and 2 respectively.

[8]. The basic frame of the suit as per headnote is a suit for declaration. Necessary pleadings in the context of passing of orders dated 29.04.2013, 03.06.2013 and 07.06.2013 by the defendants No.5, 4 and 2 respectively have been recited in the suit itself. It is only the prayer clause which ultimately led filing of proposed amendment seeking to assail the aforesaid orders passed by defendants No.5, 4 and 2 respectively.

[9]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves to the Court to order amendment in the

pleadings. The second part is imperative and enjoins the Court to allow all amendments which are necessary for real determination of the issues. It is a settled principle of law that all *bona fide* amendments are to be allowed. Reference can be made to **Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (dead) and others, (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647.**

[10]. The proposed amendment is not barred by any limitation as the suit itself was filed on 08.07.2013. Since the case is at the stage of plaintiff's evidence, therefore, I deem it appropriate to allow the plaintiff to amend the pleadings thereby incorporating the necessary ingredients to challenge the orders dated 29.04.2013, 03.06.2013 and 07.06.2013 passed by defendants No.5, 4 and 2 respectively.

[11]. In view of above, impugned order dated 09.08.2016 passed by Civil Judge (Junior Division), Sangrur is set aside. This revision petition is allowed, however subject to payment of costs of Rs.15,000/- to be deposited in District Legal Services Authority, Sangrur. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

20.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No