

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 565 OF 2019

Aban Offshore Limited

..Petitioner.

V/s.

Kingsley Joseph D'silva

..Respondent.

Ms. Mitra Das a/w Mr. Jayesh Desai I/b Desai and Desai Associates
for the petitioner.

Mr. Ramanuj S. Upadhyay for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : June 20, 2019.

P.C.:-

Application LC No.2/6 of 2011 is pending on the file of
Central Government Industrial Tribunal No.2, Mumbai, petitioner
moved an application for recasting of issue.

2 At Exh. 18 in the very said proceeding on April 25, 2017,
the following issues were framed.

Issues

- “1. Whether the applicant is entitled to receive Rs.2680055/-as per the details in Annexure D?*
- 2. Whether 17.37% increment falls within the ambit of expression in view of the words in the award “with other incidental benefits attached to the post”?*
- 3. To what relief the applicant is entitled to?*
- 4. What order?*

3 The submissions of the petitioner are, by virtue of order passed in Writ Petition No. 2585 of 2011, the petitioner has already deposited an amount of Rs.15,18,205/- in which an award passed in reference CGIT No.2/61/2005 was under challenged. According to learned counsel, claim in the present proceeding is that of Rs.26,80,055/-. Petitioner having already deposited an amount of Rs.15,18,205/-, in view of the Division Bench order passed in Appeal No. 90 of 2013 in Notice of Motion No. 209 of 2012 in Writ Petition No. 2585 of 2011, as there is no existing right in the respondent-employee to pursue claim to the extent of Rs.11,39,015/-. According to her, the respondent-employee is claiming to be entitled for increment. Claim of Rs.26,80,055/- as reflected in the proceedings

below is formed to be bases for framing an issue inspite of deposit of the amount of Rs.15,18,205/-. As such, the learned counsel submits that the impugned order dated December 19, 2017 rejecting the application for recasting of issue needs to be set aside. The petitioner submits that there has to be preexisting right to claim increment. In absence thereof an adjudication of the claim of respondent, to the extent of Rs.26,80,055/- should not be entertained.

4 *Per contra*, the learned counsel for respondent-employee supports the order and invited attention of this Court to the observations made in the order impugned.

5 Having dwell upon the controversy, it is noticed that order dated December 19, 2017 passed by the Presiding Officer, CCGIT-2, Mumbai, the following observations are made in para 6:-

“ I have heard both the sides. In my considered view legal position is amply clear that the money can be claimed when there is pre-existing rights. So whether the applicant is having pre-existing rights or not is the aspect which can be decided while considering Issue No.1 when the entitlement of the applicant to receive

the amount is to be considered. Whether the applicant is entitled to amount of Rs.1139015/- claimed by way of increment or not is also an aspect which can be considered while deciding Issue No.1 & 2. Considering the contentions of the applicant and opponents, the issues are properly framed as per Exh. 19. There is no necessity to re-cast the Issue No.1 and to frame the additional issues as is contended by the Opponent. Hence the application deserves to be rejected.”

6 The aforesaid observations gives liberty to the petitioner to canvass the issue as regards respondent being not entitled to claim an amount of Rs.26,80,055/- or any other lesser amount. The point sought to be canvassed by the petitioner through the prayer for recasting the issue is already ordered to be considered at an appropriate stage of the proceedings.

7 In spite of such liberty given to the petitioner, the petitioner has chosen to question the order impugned after a lapse of period of more than one and half year.

8 There is one more legal aspect of the matter. Law of Evidence and Code of Civil Procedure has no applicability to the

proceeding in question.

9 In view of above, in my opinion, no illegality or material irregularity is noticed in the order impugned. As such, the petition fails, dismissed.

(NITIN W.SAMBRE, J.)