

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.4967 of 2018
(Trucon Associates, a Proprietor Concern, Nagpur .vs. Vivek Dinkar
Khardenavis)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. S.N. Kumar, Advocate for Petitioner.
Mr. V.P. Marpakwar, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : April 29, 2019.

By this writ petition, the petitioner (original respondent before the Industrial Court) has challenged judgment and order dated 13.07.2018 passed by the Industrial Court, whereby an application for amendment (Exh.50) filed by the petitioner has been only partly allowed. The Industrial Court has held that the proposed amendment could be allowed excluding certain specified paragraphs, which pertained only to legal submissions and opinion of the petitioner, which need not be incorporated by way of amendment in the written statement filed on behalf of the petitioner before the Industrial Court in response to the complaint filed by the respondent.

2. In the first instance, the Labour Court had rejected the application for amendment filed on behalf of the petitioner in its entirety and the petitioner had filed revision application under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, to challenge the said order of the Labour Court. By the impugned judgment and order, the Industrial Court has partly

agreed with the petitioner and permitted substantial amendment of the written statement. The said order is not challenged by the respondent and, therefore, insofar as the necessity of carrying out amendment is concerned, the impugned order has attained finality as against the respondent. The only grievance of the petitioner is that certain paragraphs in the proposed amendment, which pertained to factual averments have not been allowed, thereby causing prejudice to the petitioner.

3. The main reason why the Industrial Court has disallowed certain paragraphs of the proposed amendment, is stated in the impugned order as follows:-

"I have perused the application, Exh.50. It is well settled that in the pleading the parties have to plead fact and not law. The party has not to plead their argument, their opinion, etc. In the present application of the respondent Paragraph Nos. 6,7,9,11,12 to 17, 34,35, 37 to 41 are not pleadings of the facts. It includes the ratio laid down by Hon'ble Supreme Court, legal provisions, definition of different words like employability, creative etc., provisions under Mumbai Industrial Relations Act, Industrial Disputes Act, etc. Other paragraphs relates to charges in the form of alleged misconduct. Paragraph No. 8, is in the form of request to permit the respondent to adduce evidence in support of their termination order."

4. While the reasoning adopted by the Industrial Court cannot be found fault with as it has been correctly held that a party is not expected to plead arguments, law or opinion in its pleadings, but while applying the

said reasoning it appears that the Industrial Court has committed an error.

5. A perusal of the amendment application, wherein the detailed proposed amendment is stated, shows that certain paragraphs pertaining to factual averments have also been erroneously disallowed by the Industrial Court in the impugned order. Therefore, by upholding the reasoning given by the Industrial Court while granting the amendment application of the petitioner, this Court is of the opinion that the impugned order needs to be modified in the following manner:

Accordingly, **the writ petition is partly allowed.** The impugned order passed by the Industrial Court is modified to the extent that the amendment proposed by the petitioner by application at Exh.50 is allowed excluding paragraphs 7, 35, 37, 39, 40 and 41. Amendment be carried out by the petitioner within a period of two weeks from today.

6. In the peculiar facts and circumstances of the present case, as also because the Industrial Court in the impugned order itself had directed that the complaint filed by the respondent shall be decided within a period of six months, the Labour Court is directed to decide the Complaint (ULPA) No. 96 of 2013, within a period of six months from today.

JUDGE