

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

249

**CR No. 6889 of 2018
Date of decision : 13.2.2019**

Rajinder Prashad

.....Petitioner

v.

The State of Punjab and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Raj Kumar, Advocate, for the petitioner

Mr. Arun Kaundal, DAG, Punjab

RAJ MOHAN SINGH, J.

Petitioner is aggrieved of order dated 7.9.2018 passed by Additional Civil Judge (Senior Division), Sri Muktsar Sahib, vide which the application for amendment of plaint under Order 6 Rule 17 CPC was declined.

The plaintiff-petitioner filed a suit for declaration to the effect that he is entitled to be assigned seniority of Senior Assistant and to be placed above the said Senior Assistants w.e.f. 15.10.1993. He also claimed consequent promotions on the post of Superintendent from the date on which his junior was promoted and also sought arrears of salary of promotional post with interest @ 18% p.a. from the date of each amount

due till realization. The said relief was claimed as consequence of order dated 24.4.2009. The further declaration was sought that the order dated 24.4.2009 to the extent of denying the interest on the amount of arrears of salary and increments of the promotional post of Senior Assistant from 2.3.1998 till the date of payment is illegal, null and void. By way of proposed amendment, the petitioner sought to incorporate following paragraphs :-

“a. The plaintiff wants to add the following words before the full stop at the end of the para No.14 of the plaint as under :

'Whereas the plaintiff is entitled to the interest on the given amount of arrears of the salary of the promotional post of Senior Assistant and amount of four increments from 2.3.1998 upto the date of payment.'

b. The plaintiff wants to add the following words after the word 'law' and before the word 'and' in the fifteenth line of the head note of the plaint and fifth line of page No.2 of the plaint as under :

“and for further declaration that the plaintiff is entitled to the interest @ 18% per annum on the given amount of arrears of the promotional post of Senior Assistant and four increments from 2.3.1998 till the date of payment.'

c. The plaintiff wants to add the following words after the word 'law' and before the word 'and' in the 12th line of the prayer clause on page No.10 of the plaint.

'and for further declaration that the plaintiff is entitled to the interest @ 18% per annum on the given amount of arrears of the promotional post of Senior Assistant and four increments from 2.3.1998 till the date of payment.'

d. The plaintiff wants to delete the word 'given' occurring

after the word 'Assistant' and before the word 'for' in the 12th line on page No.3 of the plaint and insert the word 'given' after the word 'the' and before the word 'amount' in 10th line on page No.3 of the plaint.

e. The plaintiff wants to delete the word 'given' occurring after the word "Assistant" and before the word 'for' in the 18th line on page No.11 of the plaint and insert the word 'given' after the word 'the' and before the word 'amount' on page No.11 of the plaint.

f. The plaintiff wants to add the word 'given' at the start of 28th line on page No.2 of the plaint and also add it after the word 'the' and before the word 'amount' in the last line of the prayer clause on page No. 10 of the plaint.”

Perusal of the aforesaid proposed amendment would show that the same is clerificatory in nature and would enable the Court to decide the claim of the petitioner fully and effectively. The case is still at the stage of leading plaintiffs' evidence. The defendant-respondent would be at liberty to lead their own evidence and also to cross examine the witnesses, if any, on the aspect of amendment in question. It is a settled principle of law that all bona-fide amendments should be allowed. The effect of amendment is to be seen at the relevant stage of decision by the trial Court. The amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and also to give verdict in a more satisfactory manner. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow

amendment at any stage, however, knowledge and diligence are the consideration on which bona-fides of a party has to be tested in order to prevent frivolous application for amendment.

Reference can be made to **Ramchandra Sakharam Mahajan v. Damodar Trimbak Tanksale (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal v. K.K. Modi, AIR 2006 SC 1647.**

Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court for amendment in the pleadings, second part is somehow imperative and obligates the Court to allow amendments which are necessary in real determination of issue between the parties. The Court can allow amendment at any stage of the litigation to determine real issue between the parties and also to prevent multiplicity of the litigation, however, bona-fide of a party is the consideration which is to be tested by the Court on the basis of material on record. Reference can be made of **Abdul Rehman and another v. Mohd. Ruldu and others, 2012 (4) RCR (Civil) 481.** The proposed amendment cannot be held to be barred by limitation.

Keeping in view the nature of the suit and the stage of litigation, no prejudice is going to be caused to the respondents. The object of the Rule is that the Court should try the merits of the case for determining the real question

between the parties provided it does not cause prejudice to the opposite side. The power of the court to allow the amendment is wide enough and the same can be exercised at any stage of litigation. The principle enunciated in J. Samuel and others v. Gattu Mahesh and others, 2012(1) RCR (Civil) 903 can be relied in the aforesaid context.

In view of the aforesaid facts and material on record, I deem it appropriate to accept this revision petition. Impugned order is set aside. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

13.2.2019
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No