

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5615 of 2019
Date of decision: 07.05.2019

Shamsher Singh

....Petitioner

Versus

Presiding Officer, Industrial Tribunal, Jalandhar
and another

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Vaibhav Jain, Advocate for the petitioner.

B.S. Walia, J.

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for setting aside order Annexure P-7 dated 07.09.2018 passed by respondent No.1 vide which the application for allowing the petitioner-workman to adduce additional evidence has been dismissed.

2. Brief facts of the case as per set up by the petitioner are that the petitioner who was an active trade unionist and was employed under respondent No.2 was dismissed from service on 29.07.2006 in derogation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') whereupon he served demand notice dated 01.08.2006 upon the Management. On refusal of the Management to reinstate the petitioner, the petitioner initiated conciliation proceedings before the Assistant Labour Commissioner, Hoshiarpur vide demand notice Annexure P-1. Eventually, the matter was referred to the Presiding Officer Labour Court, Jalandhar. Issues were framed in the case on 10.09.2009 including the issue with regard to the status of the petitioner being a Workman with onus to prove said issue

on 30.01.2015 whereas respondent No.2-Management closed its evidence on 16.08.2016. Thereafter, while the case was pending for arguments, application was moved for leading additional evidence on the ground that the petitioner-workman was earlier being represented by Sh. K.D. Sharma who had disassociated himself from the case. Thereafter, the petitioner had engaged another authorized representative at the stage when the case was fixed for evidence of the Management. The Management had also closed evidence but on the last date of hearing it had come to the knowledge of the authorized representative of the petitioner that no evidence on the issue with regard to the petitioner being covered within the definition of 'Workman' had been led and since the issue was vital and could be decided only on the basis of evidence, prayer was for being allowed to lead additional evidence.

3. The application was opposed by the Management by filing reply on the ground that the application was not maintainable as it was not signed by the petitioner-workman, besides allowing the same would amount to allowing filling up of lacunae. Moreover, the petitioner had not mentioned in the application as to what additional evidence he intended to lead and in the facts and circumstances of the case, it was clear that the application was merely to prolong the litigation. The learned Presiding Officer, Industrial Tribunal, Jalandhar on consideration of the stand of the respective parties, dismissed the application.

4. Learned counsel for the petitioner reiterated the submissions made before the learned Tribunal and prayed for setting aside of the impugned order and grant of opportunity to lead additional evidence.

5. I have heard learned counsel for the petitioner and have gone through the file.

6. Admittedly, the reference was made in the year 2008. Issues were framed in the case on 10.09.2009. The earlier authorized representative representing the petitioner was replaced by the subsequent authorized representative in the year 2012. Thereafter, the subsequently engaged authorized representative concluded evidence on behalf of the petitioner on 30.01.2015 after which the respondent-Management closed its evidence on 16.08.2016 whereafter, the matter remained pending for arguments. Onus to prove the issue with regard to the status of the petitioner being workman was on the petitioner-workman. The petitioner-workman concluded his evidence after engaging a new authorized representative in the year 2012 on 30.01.2015. The petitioner was required to lead evidence in affirmative on the issue. Therefore, once he closed his evidence and even the respondent-Management closed its evidence, the petitioner could not claim to be allowed to lead additional evidence without making out a case that the evidence sought to be relied upon was not to his knowledge or that despite best efforts, the same could not be produced earlier. Evidence which the petitioner sought to lead by way of application for additional evidence was well within his knowledge from the very beginning. The plea as put forth by the petitioner that he had changed authorized representative who came to know about the failure to lead evidence qua the issue of status of the petitioner as Workman is without any basis since as has been noted above, the reference is of the year 2008, issues were framed on 10.09.2009 while subsequent authorized representative was engaged by the petitioner in the year 2012 who led evidence and concluded the same on 30.01.2015 whereafter the respondent-Management closed its evidence on 16.08.2016.

After the Management has closed its evidence it is not open to the petitioner

evidence was not to his knowledge earlier or that the same could not be led due to circumstances beyond his control. Allowing of application after the Management had concluded its evidence and the case was fixed for arguments would amount to allowing filling up of lacunae.

7. The petitioner already having knowledge of the evidence which he subsequently sought to lead by way of application for additional evidence, if allowed would amount to allowing filling up of lacunae which is not permissible. Reference in this context can be made to the decision of Hon'ble the Delhi High Court in **Gulati versus Suraj 2016 (1) CCC** and **Jai Singh versus Shakuntala and Hon'ble Supreme Court in AIR 2002 Supreme Court 1428, M/s Bagai Construction through its proprietor Mr. Lalit Bagai versus M/s Gupta Building Material Store 2013(14) SCC 1** wherein it was held that power under Section 151 or Order 18 Rule 17 of the CPC was not intended to be used routinely and merely for the asking, secondly that the application seeking permission to lead additional evidence was required to satisfy the Court that non-production of the same earlier was for valid and sufficient reasons. Thirdly, that if the application was found to be mischievous, or frivolous, or to cover up negligence or lacunae, it was to be rejected with heavy costs. Relevant extract of the decision in **M/s Bagai Construction's** case (supra) is reproduced as under:

“10) In Velusamy (supra) even after considering the principles laid down in Vadiraj Naggappa Vernekar (supra) and taking note of Section 151 CPC, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that nonproduction earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

11) The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-

1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.”

8. In the light of the position as noted above, no case is made out for interfering with the impugned order since admittedly no satisfactory explanation has been given for the earlier non-production of the evidence now sought to be led, besides the application being a covert attempt to fill up the lacunae and the decision in **M/s Bagai Construction’s** case (supra) being categorical that a party cannot be allowed to file an application to fill up the lacunae in the evidence. The onus of the issue in respect of which additional evidence is sought to be led was on the petitioner. Not only was the evidence of the petitioner concluded on 30.01.2015 even the respondent-Management concluded its evidence on 16.08.2016 whereafter the case was at the arguments stage at which point of time, the application for additional evidence was moved.

9. In the light of the position as noted above, I do not find any circumstances warranting interference with the well reasoned order passed by the learned trial Court. Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S. WALIA)
JUDGE

May 07, 2019
ps

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No