

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

LPA-320-2018(O&M)
Date of decision: 01.02.2019

Automax Karamchari Union

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mrs. Abha Rathore, Advocate, for the appellant.
Mr. Deepak Balyan, Additional Advocate General, Haryana.
Mr. Abhilaksh Grover, Advocate, for respondent No.2.

This is an intra-court appeal under Clause X of the Letters Patent against an order and judgment dated 30.01.2018, vide which learned Single Judge declined the application moved by the appellant-petitioner seeking amendment in the writ petition, and not just that, in the wake of the said order, further held that even the main case, i.e. Writ Petition, does not survive for consideration and accordingly dismissed the same as well:

“Having regard to the pleading of the petitioner in respect of stating how many workers are working with the respondent which is not specific; it varies from 285 to 315 workers; further in the amended petition in Annexure P-3, it was pointed out that more than 500 workers were working; it was also pointed out from Annexure P-3 that there are 285 regular workers and 140 on contract basis, it is evident that petitioner has not pleaded specifically how many workers are working with the respondent-company so as to challenge order dated 24.06.2017. Thus, there is a dispute relating to

number of workers. Whereas the respondent has taken the contention that there were 293 workers working with the respondent-company and since it is not having 300 workers, therefore, question of obtaining permission from the respective department or Government do not arise in view of the provisions of the ID Act.

In view of these facts and circumstances, petitioner has not made out a case for amendment of the petition.

Accordingly, application stands dismissed.

CWP-11638-2017 (O&M)

In view of the order passed in the application for amendment, the main writ petition as well as application for impleadment and other applications do not survive for consideration.

Accordingly, main writ petition and all other applications stand dismissed.”

In brief, the grievance of the appellant-Union has been that since the number of workers employed with the respondent-management were more than 300, thus, before declaration of closure, the approval/permission in terms of Section 25(o) read with Section 25(k) of the Industrial Disputes Act, 1947, was mandatory. Whereas, on the contrary, the specific case set out by the respondent-management was that: since the workmen employed with the respondent(s) were less than 300, the provisions referred to above were not even remotely attracted to the dispute. It was in this background, the appellant-Union sought to amend the writ petition and place on record some additional document/material to substantiate their claim that the actual work-force employed with the respondent-management was above 300, and particularly for post institution of the writ petition: vide order dated 24.06.2017, respondent-management

had declared closure and notice for termination of services of the workmen was also issued. But as indicated above, not only the proposed amendment was declined, but as a consequence thereof, the writ petition too was dismissed.

We had heard learned counsel for the parties at some length, when learned counsel for the appellant urged that rather than examining the issue as to whether the learned Single Judge erred in declining the amendment prayed for or whether the proposed amendment ought to have been granted, and most importantly just because the amendment prayed for was declined the writ petition itself could be dismissed, let this Court instead permit the appellant to withdraw the writ petition itself, with liberty to file afresh incorporating all the pleas as admissible in law.

Albeit, learned counsel for the respondent(s) sought to oppose even this prayer, but nothing substantive is urged either to show if the amendment prayed for could be declined for the reasons cited in the impugned order and the writ petition itself was liable to be dismissed just because the amendment prayed for was declined.

We have heard learned counsel for the parties and on a due and thoughtful consideration of the matter, we rather deem it expedient that instead of examining the questions; if the amendments sought to be made in the writ petition were indeed crucial or since the proposed amendment actually go to the root of the matter, this would have enabled the Court to arrive at a just and fair decision, and if 'Yes' the matter would have to be remitted for re-consideration to the learned Single Judge, the ends of justice would be served, if the appellant (petitioner) is permitted to withdraw the writ petition with liberty to file afresh, setting up all the pleas as admissible

in law or were sought to be set up by way of proposed amendment. Accordingly, the writ petition itself is permitted to be withdrawn with liberty prayed for. As a necessary consequence the impugned order dated 30.01.2018 pales into insignificance and is accordingly set aside. We may, however, record that any observations made hereinabove would not constitute an expression of opinion on merits of the case of either party.

For the appeal at hands is rendered infructuous, the same is accordingly disposed of.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

01.02.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO