

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 17.09.2019

+ W.P.(C) 7048/2019 & C.M. No.29403/2019 (for stay)

BHARAT SANCHAR NIGAM LTD Petitioner
Through: Mr.Deepak Thukral, Adv.

versus

NACKCHAD Respondent
Through: Mr.S.P. Srivastava, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226/ 227 of the Constitution of India assails the order dated 13.03.2019 passed by the learned Labour Court, New Delhi whereby the respondent/workman's application seeking permission to amend his claim statement dated 13.07.2012 has been allowed by permitting him to incorporate the following additional submissions:-

“4A . That Bharat Sanchar Nigam-Limited (BSNL), is an Indian State owned telecommunication company incorporated under the Companies Act 1956 and is an industry as defined in Section 2(j) of the Industrial Disputes Act 1947 and is having about 174216 employees in different category, having total assets of Rs.70,746.75 as per information available on internet.

4B. That chapter VB of the Industrial Disputes Act 1947 is applicable on the BSNL management and therefore it was obligatory on their part to seek prior permission before terminating (Retrenching) the services of the workman. However no such permission was taken and/or compliance of other mandatory provision like notice pay or Retrenchment compensation was paid to the workman.

4C. That during the entire period when the workman was in the services of BSNL, the senior officer under whom the workman was working used to take imprest (Advance Against some urgent work for which normal procedure like bidding, inviting Quotation etc is not possible) and pay out of which to the concerned workman without taking any signature of the salary paid to the workman as a malafide practice and as well for their unlawful gain

4D. That the action of the management in terminating the services of the workman in gross violation of settled preposition of law and in non compliance of the provisions of Industrial Disputes Act 1947 either in seeking the permission or complying section 25F of the ID Act 1947 is also, violative of Article 14, 15 and 21 of the constitution of India as well Sec 23 of the Indian Contract Act.

4E. That thus in the circumstances as briefly narrated in the preceding Para's the services of the workman was terminated illegally with utter disregard to the principle of natural justice, in contradiction with service condition and in violation of settled law by the superior courts and therefore the workman is entitled to be reinstate back into the employment with continuity of service with all back wages and consequential benefits."

2. Learned counsel for the petitioner submits that the learned Labour Court, while passing the impugned order, has failed to appreciate that since evidence of the respondent/workman already stood concluded, any amendment of the claim statement at this belated stage would only cause further delay as it would result in the respondent seeking opportunity to lead evidence in support of the amended pleadings, thereby causing prejudice to the petitioner as it had already disclosed its defence by way of its reply to the original claim statement. He submits that the learned labour Court has failed to appreciate that no amendment ought to be permitted after such an inordinate delay of seven years from the date of filing of the original claim statement.

3. On the other hand, learned counsel for the respondent submits that the amendments proposed to be carried out in the claim statement by the respondent only serves the purpose of explaining the facts of the case and do not, in any manner, change the nature of the controversy involved. He further submits that the incorporation of these said additional facts will also not alter the issues already framed by the learned Labour Courts. He submits that, in any event, the workman/respondent will not seek to lead any fresh evidence after amending his claim statement and that, in these circumstances, no prejudice would be caused to the petitioner. He, therefore, prays that the writ petition be dismissed.

4. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

5. From a perusal of the amendments proposed to be made to the claim statement, I find that they are merely clarificatory in nature and are not, in any manner, seeking to alter the grounds on which the claim statement was based. These amendments do not, in any manner, change the nature, essence and character of the pleadings already on record and are bona fide and legitimate; they are, in fact, necessary for the purpose of determining the dispute raised in the claim petition. Even otherwise, once the respondent has specifically stated it is not seeking any further opportunity to lead fresh evidence on the basis of these amendments, I find that no prejudice whatsoever has been caused to the petitioner.

6. Even though there is merit in the contention of the learned counsel for the petitioner that amendments to the claim statement ought not to be ordinarily permitted after such an inordinate delay of seven years, the mere delay in making an application for amendment is not fatal and the Court has to exercise its discretion in this regard by duly considering the facts and circumstances of each case. In the present case, the Court is dealing with the case of a workman who is seeking remedy against the petitioner/Management under the provisions of the Industrial Disputes Act, 1947; once I find that the proposed amendments do not, in any manner alter, the nature of pleadings already on record, especially in the light of the categorical statement made on behalf of the respondent that he will not be seeking further opportunity to lead any fresh evidence on the basis of these amendments, there

is no reason for this Court to interfere with the discretion exercised by the labour court.

7. In this regard, reference may be made to paragraph 63 of ***Revajeetu Builders and Developers v. Narayanaswamy and Sons & Ors.*** (2009) 10 SCC 84 wherein the Supreme Court had, while considering the scope of amendment of pleading, observed as under:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

64. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

8. For the aforesaid reasons, I find no reason to interfere with the impugned order under the exercise of my writ jurisdiction under Articles 226/227 of the Constitution of India. The writ petition, being meritless, is dismissed with no order as to costs.

9. Consequently, the interim order dated 03.07.2019 stands vacated and the learned Labour Court is directed to proceed expeditiously with the matter.

REKHA PALLI, J

SEPTEMBER 17, 2019

gm