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07.03.2022
jb.

W.P.A. 18956 of 2021
(The Assembly of God Church vs. State of West Bengal & Ors.)

Mr. Jayanta Dasgupta
Mr. Balaram Patra
Mr. Ritesh Kr. Maity
... For the Petitioner

Mr. Susanta Pal
Ms. Ananya Neogi
... For the State

Mr. Sourav Chatterjee
... For the Respondent No. 3

The petitioner has challenged the order impugned dated 13th April, 2021 passed by the learned Fourth Industrial Tribunal in Case No. VIII-27/2015, allowing the prayer for amendment of the third respondent. The order of reference issued by the Assistant Secretary to the Government of West Bengal under Section 10 of the Industrial Disputes Act, 1947 framed two issues for consideration by the Tribunal:-

"1. Whether the non-payment of V.D.A. to the non-school workmen of the Management with effect from 01-01-

1997 & violation of Section 9A of the Industrial Disputes Act, 1947 are justified;

2. What relief, the workmen thus affected are entitled to? "

By a corrigendum dated 12th February, 2021 the Deputy Secretary to the Government of West Bengal directed that the date 1st January 1997 as recorded in the first issue of the reference should be read as April 1998. Pursuant to such corrigendum, the third respondent applied before the Tribunal for amendment of the written statement filed before the Tribunal in terms of the said corrigendum. Such prayer was allowed by the Tribunal by order dated 19th February, 2021. The said order was under challenge before this Court and a co-ordinate Bench of this Court, by an order dated 22nd March, 2021 in W.P.A. 7392 of 2021 dismissed the writ petition filed by the petitioner herein. During pendency of the argument before the learned Tribunal, the third respondent filed an application praying for amendment of written statement on 12th March, 2021 wherein the respondent sought to introduce the fact as reproduced below:-

"(ii)

...

'The management have different sources of income like collecting rents from the tenants who run commercial establishments of different kinds at the administrative building situated at prominent location at Park Street where the Church is situated. Beside that collection of huge donation is another kind of sources of income of the Church. In spite of that the age old benefits of variable dearness allowance was denied to the workmen concerned by the management of Church from April, 1998 which also caused the violation of Section 9A of Industrial Disputes Act, 1947. ' "

By the order impugned dated 13th April, 2021, the amendment petition was allowed by the learned Tribunal.

It is submitted on behalf of the petitioner that the learned Tribunal should not have allowed the amendment petition in absence of any explanation given by the third respondent before the Tribunal regarding

delay in seeking such amendment. The facts sought to be incorporated in the written statement are alien to the written statement and allowing the same shall change the nature and character of the case before the Tribunal as a whole. The amendment sought is beyond the scope of the corrigendum and is liable to be dismissed. Referring to Order VI Rule 17 of the Code of Civil Procedure, learned counsel submits that the amendment sought is beyond the scope of the said provision of law which governs the proceedings before the Tribunal.

Amendment with regard to insertion of April 1998 instead of 1st January, 1997 being allowed by the earlier order of the Tribunal has been set at rest. Identical amendment has also been sought in the subsequent petition for amendment. The said prayer already being taken into consideration, has become redundant.

With regard to the second amendment as enumerated in Clause 4(ii) of the amendment petition, the fact sought to be incorporated in the written statement is a new fact which is not in conformity with the averments of

the written statement. It is not the case of the third respondent that this fact was not within the knowledge of the respondent at the time of filing the written statement or could not be incorporated in the written statement despite due diligence. In fact, no explanation has been offered by the respondent as to what prevented it from incorporating the fact in the written statement earlier. Though the order impugned records that the amendment was allowed in terms of the corrigendum issued by the State Authorities on 12th February, 2021, the corrigendum does not say so. The corrigendum deals with change of date from 1st January, 1997 to April, 1998 and is silent with regard to the factual aspect sought to be incorporated in the written statement.

In view of the above, this Court is inclined to hold that allowing the amendment at such belated stage of the proceeding before the Tribunal shall prejudicially affect the petitioner before the Tribunal, who is the writ petitioner herein. As such, there is no scope for allowing such prayer by the Tribunal.

Accordingly, the order impugned dated 13th April, 2021 is set aside/quashed in so far as point No. 4(ii) of the amendment petition is concerned.

W.P.A. 18956 of 2021 is allowed.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)