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

**CWP-2305-2014 (O&M)
Date of Decision: 23.05.2022**

Benetton India Private Limited

..... Petitioner

Versus

Presiding Officer, Labour Court and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Ashwani Bakshi, Advocate,
for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the order dated 09.09.2013 (Annexure P-1) passed by respondent No.1, whereby amendment in the demand notice has been illegally allowed.

The sole issue raised in the petition and as argued by the learned counsel for the petitioner-employer is that the respondent-workman had submitted a demand notice dated 09.12.2002, wherein, it was stated that the service of the respondent-workman was terminated, vide letter dated 21.11.2002. The petitioner-employer had filed reply to the demand notice in which it was specifically pleaded that the dismissal order was passed on 21.11.2002 and the same was also dispatched on 21.11.2002. However, due to clerical mistake, no date was mentioned on the head of the letter. Thereafter, the respondent-workman had filed claim statement before the

Labour Court. In the said claim statement, the respondent-workman had stated the date of termination to be 13.11.2002. The petitioner-employer filed written statement to the claim statement as well. In the written statement, the petitioner-employer had again asserted that there was no termination order/letter dated 13.11.2002 and that the dismissal order was issued to the respondent-workman only on 21.11.2002. On completion of the pleadings, the Labour Court had proceeded to determine the preliminary issue qua the validity of the inquiry. On that issue, even the evidence had been taken. It is at this stage that the respondent-workman filed an application for amendment of the demand notice alleging that the date of termination; as written in the demand notice; was wrongly written and that the same be corrected from 21.11.2002 to 13.11.2002. The said application has wrongly been allowed by the Labour Court. The Labour Court had no jurisdiction to permit amendment of the document which was outside the proceedings pending before the Labour Court. Moreover, by amending the demand notice the respondent-workman is withdrawing an admission, which is not permissible.

On the other hand, learned counsel for the respondent-workman has submitted that the date as mentioned in the demand notice was only a clerical mistake. Since the letter dated 13.11.2002 was mentioned as dispatched through a registered letter dated 21.11.2002, therefore, by inadvertent mistake, instead of mentioning the date of the letter, the date of dispatch of the same by the petitioner-employer was wrongly mentioned in the demand notice. However, since the respondent-workman was having the

copy of the termination order dated 13.11.2002, therefore, the date was rightly mentioned as 13.11.2002 in the claim statement, rejoinder and in the affidavit as well. Hence, the Labour Court has not committed any mistake in allowing the amendment as such.

Having heard the learned counsel for the parties and having perused the case file, this Court does not find any force in the arguments raised by the learned counsel for the petitioner-employer. It is not even in dispute that the reference made by the appropriate Government to the Labour Court is as to the validity of the termination of service of the respondent-workman. The said matter has to be decided by the Labour Court with reference to the evidence which is to be brought before it by the respective parties, coupled with the pleadings raised in the claim statement and the reply to the same filed by the opposite side. In the present case, undisputedly, the date of termination of service of the respondent-workman has already been mentioned as 13.11.2002 in the claim statement. Although, the petitioner-employer has disputed the same by filing specific reply that there was no termination order dated 13.11.2002 and that the termination order is dated 21.11.2002; which was dispatched to the respondent-workman on the same date, however, further pleading is also made by the petitioner-employer itself that the letters/orders sent by them did not contain any date on the head of the letter/order of termination of service of the respondent-workman.

This Court has perused both the letters, one which is claimed by the respondent-workman and the other claimed by the petitioner-employer.

A perusal of the said letters show that the content of both these letters are same and it is only the date of the order, as such, which is in dispute. On the letter which is claimed by the petitioner-employer, there is a date written as 21.11.2002, whereas, there is no date mentioned under the signatures of the authority passing the same. On the other hand, in the letter which is claimed by the respondent-workman, the date of the letter is mentioned as 13.11.2002 and the same date is also mentioned under the signatures of the authority passing the same. In view of this situation, the date of passing of the order becomes a question of fact which shall be required to be determined by the Labour Court after taking into consideration the evidence led by both the parties. Hence, mere amendment of the demand notice as such is not even a fact of a legal relevance as such.

Although, the learned counsel for the petitioner-employer has submitted that the amendment of the demand notice acquires significance in view of the fact that the respondent-workman has withdrawn the admission made in the demand notice by changing the date of the order from 21.11.2002 to 13.11.2002, however, this argument raised by the learned counsel for the petitioner-employer does not find favour with this Court. The concept of withdrawal of the admission, if any, is a concept exclusively relatable to the proceedings before the Civil Court and applicable to the pleadings filed before the Court as per the provisions of CPC. The provisions of CPC requires the parties to disclose all the material facts relating to plaint. The other side is required to specifically admit or deny the facts pleaded by the first party, failing which the facts pleaded by the first

party are to be taken as correct. It is in this compulsive law of pleading that admission once made in the pleadings is not permitted to be withdrawn. The position is drastically different in the proceedings before the Labour Court. No strict rules of pleadings are applicable. Moreover, since, the demand notice does not form the part of the pleadings before the Court, as such, and the claim statement which is the initiation on the proceedings before the Labour Court already mentions the date as 13.11.2002, therefore, any withdrawal of the admission of any fact is not involved in the case; at all. However, mere fact that withdrawal of admission is not involved in this case, would not stop even the petitioner-employer from disputing the fact which the respondent-workman has pleaded in the claim statement, during the proceedings before Labour Court, nor shall the same confer any additional sanctity to the claim of the respondent-workman with reference to the date as claimed in the claim statement.

In view of the above, the present petition is dismissed. The order passed by the Labour Court is upheld. However, it is clarified that mere dismissal of the present petition would not be taken as adverse qua rights of the petitioner-employer to dispute the date of termination of service of the respondent-workman; and to prove the same by producing the relevant records.

(RAJBIR SEHRAWAT)
JUDGE

23.05.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No