

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 14043 of 2017

SAJ Food Products Private Limited
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Soumya Majumder Mr. Mainak Ganguly
For the State	:	Mr. Susanta Pal Mr. Prabir Kumar Roy
For the respondent No.3	:	Mr. Suvadip Bhattacharjee Mr. Balaram Patra
Heard on	:	30.01.2023
Judgment on	:	21.04.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the order no.107 dated 15th December, 2016 passed by the First Labour Court, West Bengal, in Case No. 02/2002/10(1B)(d), by which the application for amendment of the written statement filed by the respondent no.3 has been allowed.
2. The respondent no.3, in usual course, was appointed as a Chemist on 10th October, 2000 with the SAJ Industries Private

Limited and was on probation at the relevant point of time. The terms of appointment of respondent no.3 would appear from the letter of appointment dated 8th October, 2000. While on probation, the service of the respondent no.3 was terminated by an order dated 18th April, 2001.

3. Dissatisfied with the order of termination, the respondent no.3 approached the Assistant Labour Commissioner and the conciliation having failed, the respondent no.3 approached the First Labour Court by filing an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) as amended by West Bengal Act 33 of 1989. Since then, on the basis of the direction issued by the First Labour Court, both the respondent no.3 as also the SAJ Industries Private Limited, the predecessor-in-interest of the petitioner, filed their respective written statements. The aforesaid proceeding was ultimately disposed of by an *ex parte* award dated 17th August, 2006.
4. Being aggrieved, the predecessor-in-interest of the petitioner challenged such *ex parte* award before this Hon’ble Court, by filing a writ application which was registered as WP 1661 of 2006. By an order dated 29th November, 2007, a Co-ordinate Bench of this Court, while setting aside the ex-parte award was, *inter alia*, pleased to observe as follows: -

“4.7. It is made clear that I have not gone into the merits of the case and it will be open to the Tribunal to adjudicate on the issues raised before it”.

5. The records would reveal that an application for amendment of pleadings was filed by the respondent no.3 on 4th June, 2008. No objection was filed in connection with such application, by the predecessor-in-interest of the petitioner.
6. Records reveal that pursuant to the order of amalgamation dated 1st March 2011, passed by the Company Court, SAJ Industries Private Limited merged with the writ petitioner. Following such amalgamation, an application for deciding the maintainability of the case under Section 10(1B)(d) of the said Act, as a preliminary issue was filed by the petitioner before the learned First Labour Court. By an order dated 23rd March, 2011, the learned First Labour Court rejected the said application.
7. Being aggrieved by the order of rejection the petitioner filed a writ application before this Court which was registered as WP No.534 of 2011. By an order dated 8th May, 2014, a Co-ordinate Bench of this Court was pleased to dismiss such application.
8. It is only thereafter in the year 2015, that an objection was filed by the petitioner to the application for amendment. By order no.107 dated 15th December, 2016, which is impugned in the

present writ application, the First Labour Court on contest was, *inter alia*, pleased to allow the said application for amendment.

9. Being aggrieved, the present writ application has been filed.
10. Mr. Majumder learned advocate representing the petitioner submits that the amendment application has been filed belatedly after more than 6 years from the date of commencement of the proceedings. He says that the application itself is not maintainable because the same has been filed after closure of evidence. According to Mr. Majumder, the First Labour Court is guided by the provisions of Section 11 of the said Act, which in effect empowers the Tribunal to regulate such procedure, as it may think fit. However, while doing so, the Tribunal/Labour Court is bound by the other portions of the said Act. By referring to Section 11(3) of the said Act, he submits that since the trial had already commenced and progressed, the First Labour Court ought not to have allowed the amendment. The Tribunal is bound to follow the just procedure and in doing so, the Tribunal must exercise its power as envisaged under Section 11(3) of the said Act.
11. By referring to Order VI Rule 17 of the Code of Civil Procedure (in short “the Code”) and the proviso thereof, he submits no amendment of pleadings is permissible after commencement of trial, unless the exceptions provided in the proviso to order VI

rule 17 of the Code are satisfied. By referring to the application for amendment, it is submitted that the respondent no.3 has failed to demonstrate that the respondent no.3 comes within the exceptions, for the said respondent to be entitled to the prayer, for amendment of pleadings. According to Mr. Majumder, Section 11(3) of the said Act, cannot provide uncanalised powers to the First Labour Court, for it to exercise its discretion. The First Labour Court or Tribunal is bound to follow the procedure, as is just and in doing so must be guided by the provisions of Order VI Rule 17 of the Code. The just procedure as is provided under Section 11 of the said Act should be regulated by the Code.

12. It is still further submitted that the respondent no.3 had not discharged his onus to come within the exceptions of the proviso to Order VI Rule 17 of the Code. Notwithstanding the aforesaid, the learned Judge, First Labour Court by ignoring and by not considering the objections raised by the petitioner has proceeded to allow the said application. In support of his aforesaid contention reliance is placed on an unreported judgement delivered by this Hon'ble Court in the case of ***Amrutanjan Health Care Limited v. State of West Bengal & Others.***¹ in WP. 17834 (W) of 2013, on 17th July 2013. The order impugned is perverse to say the least. The learned Judge also acted illegally and with material irregularity in allowing the said application.

This Hon'ble Court has the power and competence to set aside the order impugned and permit the trial to proceed.

13. *Per contra*, Mr. Bhattacharjee, learned advocate representing the respondent no.3 submits that there is no irregularity in the order passed by the First Labour Court. The First Labour Court is not bound by the rigors of the provisions of the Code. The Code strictly is not applicable. By the order dated 29th November, 2007, this Hon'ble Court had remanded back the matter. Once the matter was remanded for hearing afresh, it was open to the First Labour Court, while deciding its own procedure to permit the parties to lead evidence. He says that the trial in the instant case, has not commenced. He says that the judgment delivered by this Court in ***Amrutanjan Health Care Limited*** (supra) is not an authority for the proposition that the Tribunal is bound by the provisions of the Code. The facts of the said case are materially different from the facts of the instant case. In the case of ***Amrutanjan Health Care*** (supra), the Court was concerned whether by introducing an amendment, the admission that the State of West Bengal, was the appropriate Government was sought to be withdrawn. It is in that context that this Hon'ble Court had proceeded to consider the application for amendment and refused to interfere with the order of rejection. He says that in the instant case, the amendment is confined to the question

¹ W.P 17834 (W) of 2013

whether the respondent no.3 is the workman or not. The respondent no.3 has not even been cross-examined. By referring to Rules 20(c) of the Industrial Disputes Rules, 1958, he submits that respondent no.3 is entitled to not only disclose documents which are in his possession but is also entitled to give notice to the other side for disclosing of documents. He says that the documents which the respondent no. 3 seeks to rely on have only been incorporated by way of amendment. The aforesaid documents are already on record, the pleadings thereof are only to be incorporated by way of the amendment. He further reiterates that the Tribunal is not bound by the strict procedures of the Code and in support of his aforesaid contention, he places reliance on a judgment delivered by this Hon'ble Court in the case of **India Cable Company Ltd. v. Fifth Industrial Tribunal & Others.**² He says that the Labour Court or Tribunal is bound to permit and allow the amendment, unless it is satisfied that the party applying for such amendment has acted mala fide or that allowing the amendment, would cause prejudice or injury to the opponent. He submits that in the instant case, the respondent no. 3 do not seek to withdraw any admission. There is no prejudice caused to the petitioner. The petitioner has also been given opportunity to file the additional written statement. In any event there could be no impediment in permitting the respondent no. 3

² (1989) 2 LLN 23

to produce the documents, the pleadings whereof has been introduced through the amendment. The tribunal has the power and competence to direct production of documents. In support of his contention, he places reliance on a judgment delivered by this Hon'ble Court in the case of ***Alstom Ltd. v. Seventh Industrial Tribunal of West Bengal & Ors.***³ The writ application is harassing and the same should be dismissed with costs.

14. I have heard the learned advocates appearing for the respective parties and have considered the materials on record. I find that the respondent no.3 had raised a dispute with regard to his termination from service. A conciliation proceeding was initiated and subsequently the respondent no.3 had approached the First Labour Court under Section 10(1B)(d) of the said Act, *inter alia*, praying for a declaration, that the termination order dated 18th April, 2001, and refusal of employment with effect from 15th March, 2001, are illegal, unjustified, *mala fide*, unfair and in gross violation of Clause 3 of letter of appointment and is an instance of unfair labour practice, and as also for an order of reinstatement in service with full back wages. The said application was contested by the predecessor-in-interest of the petitioner. The same ultimately culminated in *ex parte* award dated 17th August, 2006.

³ (2003) 3 LLN 202

15. Challenging the same, the predecessor-in-interest of the petitioner had moved before this Hon'ble Court by filing a writ application which was registered as W.P. No. 1661 of 2006. By a judgment and order dated 29th November, 2007, this Court, taking an overall view of the ex parte hearing, without going into merits of the case, set aside the same and granted liberty to the Tribunal to adjudicate on the issues raised before it. The respondent no.3 had subsequently filed an application for amendment on 4th June, 2008. In interregnum, pursuant to an order of amalgamation passed by this Court the said M/s. SAJ Industries Private Limited merged with the petitioner, whereupon the petitioner filed an application, *inter alia*, praying for dismissal of the case filed by the respondent no.3 under Section 10(1B)(d) of the said Act. By an order dated 23rd March, 2011, the same was rejected. Challenging such order of rejection a writ application was filed which was registered as W.P. No. 534 of 2011. A Co-ordinate Bench of this Hon'ble Court by a judgment and order dated 8th May, 2014 was, *inter alia*, pleased to dismiss the said writ application without interfering with the order of rejection.

16. It is only thereafter that the petitioner filed an objection to the amendment application, whereupon the application for amendment was finally heard and allowed. The Tribunal while allowing the said application also took note of the fact that although there had been delay in disposal of the proceedings the

same could not be solely attributed to the respondent no.3. The Tribunal held that there had been lack of diligence on the part of the petitioner and that the amendment was necessary for proper adjudication. The petitioner has also been granted liberty to file additional written statement.

17. The said order has been challenged by filing the present writ application.

18. Mr. Majumder learned advocate has strenuously argued by relying on the judgment delivered in the case of ***Amrutanjan Health Care Limited*** (supra), that once a trial has commenced, ordinarily amendment should not be allowed unless it is satisfied that the matter could not be raised despite due diligence by a party seeking amendment. By referring to Section 11(3) of the said Act, he has submitted that since trial has commenced the First Labour Court ought not to have allowed the application. The Tribunal is bound to follow the just procedure and in doing so Tribunal must exercise its powers as envisaged under Section 11(3) of the said Act, with reference to the provisions of Order VI Rule 17 of the Code.

19. I, however, find that although the trial had commenced and an *ex parte* award had been passed, the same was set aside by this Court with a liberty to the Tribunal to adjudicate the issues presented before it. I find that since setting aside of the *ex parte*

award, no further proceedings apart from hearing of the applications had taken place. Trial did not proceed thereafter at all. For years together, i.e. for nearly a decade, the petitioner chose not to take any steps in connection with the application for amendment. It was only in the year 2014 that the petitioner filed its objection to the application for amendment. Records reveal that since the date of passing of the *ex parte* award that is 17th August, 2006, and the date of allowing the amendment application that is 15th December, 2016, effectively there had been no hearing of the main matter. Records, however, further reveal that the petitioner in the year 2011 that is after more than a decade from the date of institution of the proceedings had filed an application seeking dismissal of the proceedings on the ground of maintainability. The said application was rejected by the Tribunal and the question of maintainability was finally set at naught by this Hon'ble Court by an order dated 8th May, 2014. It is, therefore, apparent that for all these years trial did not progress at all.

20. I find from the order impugned that the Tribunal had allowed such application, considering the same to be necessary and for adjudicating whether the applicant is a workman or not. It is therefore clear that the even if such application was not filed, the Tribunal would have been required to adjudicate whether the respondent no.3 was a workman. I have considered the

application for amendment. I have also taken note of the fact that the amendment sought to be introduced would assist the First Labour Court to effectively adjudicate the issues. The amendment does not in any way either change the nature and character of the proceedings or seek to withdraw any admission. The judgment relied on by Mr. Majumder in the case of **Amrutanjan Health Care Limited** (supra) does not come in aid of the petitioner. In the said case, the amendment was challenged on two fold grounds, firstly, that admission made in the written statement could not be withdrawn and secondly, that there was no explanation in the said application for amendment with regard to due diligence, required under proviso to Order VI Rule 17 of the Code.

21. Admittedly, in the present case it does not appear from the records as available before this Court, that subsequent to the setting aside of the *ex parte* award, trial has commenced or had taken place. It would be apparent that the entire argument of the petitioner is based on commencement of trial, prior to passing of the *ex parte* award. Since, the *ex parte* award itself has been set aside with liberty to the Tribunal to adjudicate the issues and since, the delay in hearing of the proceedings cannot be solely attributed to the respondent no.3, in my view, the learned First labour Court has rightly allowed the amendment. Further, this Hon'ble Court in the case of **India Cable Company Ltd.** (supra)

has been, *inter alia*, pleased to observe that the principles governing the allowing of amendment by the Code, cannot strictly apply in the proceedings pending before the Tribunal.

22. This apart, the aforesaid amendment, in my view, does not seek to withdraw any admission. On the contrary, the aforesaid amendment in fact elucidates the real controversy in issue. I do not find the learned First Labour Court committed any irregularity in procedure, far less a jurisdictional error in allowing the amendment. The application, accordingly, fails. Since, the aforesaid matter is pending for more than a decade, it is only expected that the learned First Labour Court may expeditiously dispose of the present proceedings, preferably within a period of 6 months from date of communication of this order, without granting any unnecessary adjournment to any of the parties.

23. With the above observations and/or direction the writ application being WPA 14043 of 2017 is disposed of.

24. There shall be no order as to costs.

25. Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Raja Basu Chowdhury, J.)