

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.925/2019

Smt. Varsha W/o Pravin Madne
(Erstwhile Varsha Tupkar),
aged about 54 Yrs., Occ. Service,
R/o Priyadarshani Colony,
Near RTO, Nagpur.

... Petitioner

- Versus -

1. Lokmat Media Pvt. Ltd.,
Lokmat Bhawan, Wardha Road, Nagpur,
through its General Manager.

2. HR Head, Lokmat Media Pvt. Ltd.,
Lokmat Bhawan, Wardha Road,
Nagpur.

3. Assistant Vice-President (HR),
Lokmat Media Pvt. Ltd., Lokmat Bhawan,
Jalna Road, Aurangabad.

... Respondents

Mr. P.D. Meghe, Advocate for the Petitioner.

Mr. S.S. Ghate, Advocate for the Respondents.

CORAM: MRS. VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 23.2.2023

DATE OF PRONOUNCING THE JUDGMENT: 3.3.2023.

JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has challenged the order passed by the learned Industrial Court, Nagpur dated 23.1.2019. The Industrial Court partly allowed the amendment application filed by the petitioner and rejected the amendment in respect of proposed para Nos.3-A and 15-C and prayer clause 2(A).

3. The respondent No.1 issued an order transferring the petitioner from Nagpur to Aurangabad vide order dated 25.6.2016, which is challenged by the

petitioner on medical ground contending that it amounts to victimization due to her trade union activities. She has filed ULP Complaint No.269/2016 before the Industrial Court. The ad interim stay was granted and it was confirmed after hearing the respondents. At the time of hearing of interim relief, the respondents filed a pursis thereby adopting the reply dated 12.8.2016 as their written statement.

4. The respondents have filed review petition before the Industrial Court challenging the stay order and said review petition was allowed and the Court has rejected the interim relief. Therefore, the petitioner has filed Writ Petition No.7101/2018 before this Court in which by order dated 20.12.2018 the order of review was stayed and petition was disposed of with direction to decide the complaint till 15.2.2019.

5. The respondents after the order passed by this Court filed the application on 8.1.2019 for filing additional written statement on record. Though the said application was opposed by the petitioner, it was allowed and thereafter the petitioner has filed the application to amend the complaint in view of subsequent developments. The Industrial Court partly allowed the amendment application and rejected the other proposed amendment stating that it changes the nature of the complaint and it is not the subsequent events. Therefore, the petitioner has challenged the said order before this Court by filing the present petition.

6. The learned counsel for the petitioner urged that while filing the additional written statement, the additional pleadings regarding nature of work was pleaded by the respondents and, therefore, the petitioner

had made specific pleadings in her complaint and gave specific reasons which necessitate the amendment of complaint. The issue whether the present petitioner is a workman is also required to be decided and, therefore, said amendment was necessary but it was not considered by the trial Court.

7. The petitioner has further argued that as per the provisions of Order VI Rule 17 of the Code of Civil Procedure the issue to be seen while considering the amendment application is as to whether the parties were diligent in bringing the pleadings on record. As the respondents, for the first time, brought on record duties of the petitioner on 8.1.2019 by way of detailed pleadings as well as para-wise reply was also filed by the respondents, not allowing the present petitioner to reply the said

pleadings or to explain her case regarding nature of work and not to allow her to bring on record the subsequent events shows misconception on the part of the Industrial Court regarding the law of pleadings and, therefore, learned counsel for the petitioner has prayed to set aside the order passed by the trial Court by allowing this petition.

8. Learned counsel for the respondents has stated that the respondents had filed the pursis and informed the Court to treat the reply given by them to the complaint as the written statement but after considering the pleadings the respondents had requested for grant of permission to file the para-wise reply and the permission was granted. The petitioner has already pleaded in her complaint that she is an employee and the relationship is of employer and employee therefore, there is no need to bring on

record all her duties and her designation. She wants to bring on record the pleadings]regarding the departmental enquiry. The petitioner has challenged her transfer from Nagpur to Aurangabad and is enjoying the stay order since 2016. The departmental enquiry is totally different cause of action. It changes the nature of the complaint hence the trial Court has rightly rejected the said proposed portion of the amendment application.

9. Heard both counsel.

10. The petitioner has filed application to amend the complaint as the respondents have filed the written statement afterwords. She wanted to bring on record her duties and designation. She has already pleaded in her complaint that the relation between the petitioner and the respondents is of employer and employee. She is a

workman as per the definition. As the pleadings are there she can argue it in detail at the time of argument.

11. Another portion of amendment which the trial Court has rejected is about the departmental enquiry. The trial Court has rightly observed that it will change the nature of complaint. The proposed amendment has no relevance with the present complaint and, therefore, the trial Court has rightly rejected the application. The interference at the hands of this Court is not required. The petition stands dismissed. Rule discharged. No orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)