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C.R.P.No.4068 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-01-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CRP No.4068 of 2022

And

CMP No.21136 of 2022

M.Kannan

... Petitioner

vs.

Tech Mahindra Limited,
Represented by Managing Director,
SEZ Unit, ELCOT SEZ Survey No.602/3,
138 Sholinganallur Village,
Tambaram Taluk,
Kancheepuram District,
Chennai – 600 119.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 01.11.2022 passed by the learned Additional District Munsiff, Alandur dismissing IA No.277 of 2019 in OS No.8 of 2018 filed by the petitioner seeking to amend the plaint under Order VI, Rule 17 of the Code of Civil Procedure.



For Petitioner : Mr.P.B.Balaji

For Respondent : Mr.Srinath Sridevan

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 01.11.2022 passed by the learned Additional District Munsiff, Alandur dismissing IA No.277 of 2019 in OS No.8 of 2018 filed by the revision petitioner seeking to amend the plaint under Order VI, Rule 17 of the Code of Civil Procedure.

2. The revision petitioner, who is the plaintiff, instituted a suit for declaration to declare that the proposed action of the defendant in invoking “the Exit and Retirement Policy dated 24.03.2017 and effective 01.04.2017” to retire the plaintiff upon completing the age of 55 years is illegal unlawful, arbitrary, discriminative, capricious and also not in accordance with the principles of natural justice. The consequential relief of permanent injunction is also sought for by the revision petitioner-plaintiff.



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3. The suit was instituted in the year 2018 and during the pendency of the suit, the revision petitioner-plaintiff was terminated from service. Due to implementation of the policy, which is under challenge in the suit. Since the revision petitioner-plaintiff was terminated from service, IA No.277 of 2019 was filed under Order VI, Rule 17 of the Code of Civil Procedure to amend the plaint, so as to seek the relief of compensation in lieu of the left out services in the event of succeeding in the suit by the revision petitioner-plaintiff.

4. The said Interlocutory Application was dismissed by the Trial Court mainly on the ground that the application seeking amendment of relief in the plaint was sought for after commencement of trial and therefore, the revision petitioner-plaintiff has not filed Interlocutory Application before framing of issues.

5. The Trial Court made a finding that the pre-conditions contemplated under Order VI, Rule 17 of the Code of Civil Procedure, have not been satisfied and therefore, there is no reason to consider the relief sought for to amend the relief in the plaint.



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6. The learned counsel for the revision petitioner-plaintiff mainly contended that the suit was instituted challenging the policy regarding retirement and during the pendency of the suit, the revision petitioner-plaintiff was terminated from service, which necessitated him to file an amendment petition to incorporate the relief of compensation.

7. Therefore, there was no lapse on the part of the revision petitioner-plaintiff and he exercised his right with due diligence and thus the application filed under Order VI, Rule 17 of the Code of Civil Procedure, is maintainable and the Trial Court has committed an error in rejecting the application.

8. The learned counsel for the respondent-defendant objected the said contention raised on behalf of the revision petitioner-plaintiff by stating that the issues were framed in the suit and the trial completed. While-so, the Trial Court has rightly rejected the Interlocutory Application by recording the fact that the trial was completed. Thus, the present Civil Revision Petition is to be rejected.



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9. Order VI, Rule 17 of the Code of Civil Procedure contemplates that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the Proviso Clause stipulates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of trial.

10. The question arises whether the pre-conditions stipulated in the Proviso Clause have been complied with in the present case or not ?

11. The suit was instituted challenging the retirement age fixed by the respondent-employer. The policy regarding retirement is under challenge in the suit. During the pendency of the suit, the revision petitioner-plaintiff was terminated from service. Therefore, the compensation is the only remedy to be sought for. Since in the event of succeeding in the suit, the



revision petitioner-plaintiff cannot be allowed to continue in service, since he had already reached the age of superannuation.

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12. In view of the fact that the revision petitioner-plaintiff will be attaining the age of superannuation during the pendency of the suit and in the event of succeeding in the suit, the only relief, which can be sought for is to pay compensation for the period during which the plaintiff was not allowed to serve in the respondent-Establishment.

13. Thus the relief of compensation is just and necessary in view of the fact that the revision petitioner-plaintiff will be attaining the age of superannuation shortly. By including the relief, the respondent-defendant would not be prejudiced, since the issue relating to the policy of retirement has to be decided on merits and in accordance with law. Only in the event of succeeding in the suit, the revision petitioner-plaintiff would be getting the relief of compensation, but not otherwise.



14. Contrarily, if the revision petitioner-plaintiff is not allowed to amend the relief in this regard, then he will be prejudiced because the suit will become infructuous, since he will be attaining the age of superannuation during the pendency of the suit. Thus balance of convenience is in favour of the plaintiff in respect of the Interlocutory Application to amend the relief by adding the relief of compensation.

15. It is made clear that the consequential relief sought for by the revision petitioner-plaintiff to grant compensation must be considered after the date of retirement of the revision petitioner-plaintiff from service. The compensation sought for in the amended relief is for grant of Rs.50 lakhs. Therefore, the plaint is to be returned for presenting the same before the proper Court.

16. In view of the fact that the revision petitioner-plaintiff was allowed to retire from service on attaining the age of superannuation on 10.01.2018, the amendment of relief for grant of compensation sought for by him is to be considered, failing which the suit will become infructuous. It is needless to state that the parties are at liberty to raise their grounds and



adjudicate the same. Thus this Court is inclined to consider the present Civil Revision Petition.

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17. Accordingly, the order dated 01.11.2022 passed by the learned Additional District Munsiff, Alandur dismissing IA No.277 of 2019 in OS No.8 of 2018 filed by the petitioner seeking to amend the plaint under Order VI, Rule 17 of the Code of Civil Procedure, is set aside and consequently, the present Civil Revision Petition stands allowed. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

10-01-2023

Svn
Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To



The Additional District Munsiff,
Alandur.

WEB COPY

C.R.P.No.4068 of 2



S.M.SUBRAMANIAM, J.



WEB COPY

C.R.P.No.4068 of 2



Svn

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