



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.90 OF 2025

M/S. HIMGIRI CASTINGS PVT. LTD.,
THR. ITS DIRECTOR AND THE
AUTH. REP. ARPIT AGARWAL ... Petitioner.

Versus

GOMANTAK MAZDOOR SANGH
REP. BY THE PRESIDENT
PUTI GAONKAR ... Respondent.

Mr. G.K. Sardessai with Ms. Smrati Bangera, Advocates for the
Petitioner.

Mr. Shivraj Gaonkar with Mr. P. Sirvoicar, Advocates for the
Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 9th April, 2025

ORAL ORDER:

1. This is a petition under Article 227 of the Constitution of India throwing a challenge to an order dated 16.12.2024 passed by the Industrial Tribunal of Goa in reference to No. IT/20/2022, rejecting the Petitioner's application for amendment of Written Statement at Exhibit 35 of the file of the Tribunal. The Petitioner is the employer/Party II in a proceeding before the Tribunal on a reference made by the appropriate Government of a charter of demands raised by the Respondent No.1/Union representing a section of the

workmen of the employer.

2. On the reference order being received by the Tribunal, the Union/workmen filed a Claim Statement dated 08.12.2022 pleading justification for its demands for enhanced wages and allowances stated therein. A Written Statement came to be filed by the Petitioner/employer on 28.02.2023. In this Written Statement, the employer has denied that the enhancement sought in the wages and other allowances was justified. It has pleaded that the current wages and allowances paid to the employees/workmen are adequate. The recording of evidence on behalf of the workmen commenced on 11.10.2024 which was ultimately completed on 21.01.2025. Just prior to the recording of the examination in chief, the Petitioner/employer filed an application for amendment of its Written Statement on 28.10.2024. The amendment sought to the Written Statement seeks to bring on record the fact that the Petitioner/employer has entered into a settlement dated 16.10.2018 under Section 2(p) of the Industrial Disputes Act with a section of the workmen represented by Himcast Workers Union. The amendment further sought to bring on record that the Petitioner had recognized the aforementioned Union as being representative of the majority of the workmen employed with the Petitioner and that subsequent to settlement dated 16.10.2018, it had entered into further settlement under Section 2(p) of the Industrial Disputes Act on 25.11.2019 and thereafter on 20.12.2022. The draft amendment further sought to bring on record the Written

Statement filed that the aforementioned settlements were fair and proper and sought an award to be passed by the Tribunal in terms of the settlement dated 20.12.2022.

3. The Industrial Tribunal has rejected the application for amendment mainly on two grounds. The first being that the facts pleaded in the Schedule to the amendment application were all within the knowledge of the Petitioner as on the date it filed its Written Statement i.e. on 28.02.2023 and that there was absolutely no justification given in the application as to why such amendment was required for a proper decision in the matter. The second ground for rejection of the amendment application was that the settlements referred to in the amendment were prior to the date of reference of the dispute to the Tribunal and these being within the knowledge of the Petitioner, were beyond the scope of the reference.

4. Mr. Sardesai appearing for the Petitioner submits that the amendment would be relevant to the decision of the reference, since if the Tribunal decides that the settlement dated 20.12.2022 was fair and proper, it would pass an award in terms of the settlement and adjudicate upon the reference made. He further submits that notwithstanding the fact that there was no pleading earlier in the Written Statement, even though all the settlements were within the knowledge of the employer, the content of the settlement dated 20.12.2022 would be relevant to the decision on the reference made to the Tribunal. He submits that grave prejudice would be caused to

the employer if the amendments were not allowed.

5. I have considered the submissions of the parties before me and gone through the records. The application for amendment is totally devoid of any statement to show that despite due diligence, the Petitioner was prevented from bringing on record the fact of the existence of three settlements referred to in the Schedule of amendment. It is not in dispute that the Petitioner itself, being the employer, had negotiated the aforementioned three settlements with a section of the workmen represented by a different union and claimed to have entered into the said three settlements which it states are valid and proper. These facts were clearly within the its knowledge, for at least with reference to these statements of 22.02.2014, 16.10.2018 and 25.11.2019, prior to filing its Written Statement. Even the settlement dated 20.12.2022, which the Petitioner claims is extremely relevant to the decision of the reference, was known to the Petitioner prior to filing of its Written Statement.

6. Perusal of the Written Statement would reveal that other than stating that the demands were not justified, not a word has been pleaded or a reference made in all the settlements now sought to be brought on record by way of the amended pleadings and no justification is given for the delay of almost three years from the date of knowledge of the last settlement, in filing the amendment application.

7. The reasons cited by the Tribunal in paragraphs 6 and 7 of the impugned order, are therefore justified and correct and are based upon the settled legal principles. The Petitioner would have to plead at least the jurisdictional facts to enable the Court or Tribunal to decide an application for amendment after the recording of the evidence has commenced and after the issues have been framed. Though the provisions of the Civil Procedure Code may not apply directly to the procedure adopted by the Industrial Tribunal, the broad principles whether a party would be required to show and justify due diligence, would equally apply to the Industrial Tribunal.

8. No case has been made out for interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. I find no infirmity in the passing of the impugned order dated 16.12.2022. The petition is dismissed. No costs.

VALMIKI MENEZES, J.