

(2009) 05 DEL CK 0270

In the Delhi High Court

Case No : LPA No. 243 of 2009 and C.M. No's. 7655 and 7871 of 2009

Satish Sachiv Baba Beldar

APPELLANT

Vs

The Management of All India Central PWD (M.R.D.)

RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 8 RCR(Civil) 1922

Hon'ble Judges : Dipak Misra, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Deepali Gupta, for the Appellant; Sewa Ram, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant is aggrieved by the impugned order dated 30.3.2009. It is the case of the appellant (original petitioner in the writ petition) that an amendment to the statement of claim was wrongly rejected by the Labour Court. As per the appellant/workman, he was actually appointed in the year 1980 and, therefore, wanted to amend his statement of claim so as to give the date of appointment as 23.9.1980. While in the statement of claim he had stated that his date of confirmation is 30.3.1991. The Labour Court rejected the petitioner's application for amendment of his statement of claim. Consequently, a writ petition was filed challenging the said rejection.

2. The learned single judge vide the impugned order has upheld the order of the Labour Court primarily on the ground that the appellant was unable to show that the factum of his being aware of his date of appointment being 23.9.1980 was not known to him. As per the learned single judge if this fact was known to the appellant he ought to have pleaded it in his statement of claim which he had failed to do. Since the appellant had put a specific date of 30.3.1991 when he was appointed, therefore, as per the learned single judge permitting the appellant at this late stage to retract from his admission was not permissible and would mean violation of statutory provisions of Order VI Rule 17 of Code of Civil

Procedure.

3. We are unable to agree with this finding of the learned single judge. As held by the Supreme Court of India in *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, , the purpose and object of Order VI Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of the guidelines laid down by the various High Courts and Supreme Court. It is true that amendment cannot be claimed as a matter of right and under all circumstances but it is equally true that the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule. Technicalities of law should not be permitted to hamper the courts in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

4. It is also pertinent to refer to the observations of the Supreme Court in *Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.*, that court should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In view of the provisions made under Order VI Rule 17 CPC, it cannot be doubted that wide power and discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper. The Supreme Court in *Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others*, observed that from a bare perusal of Order VI Rule 17 CPC, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendment of the pleadings if it is of the view that such amendment may be necessary for determining the real question in controversy between the parties. The courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one.

5. In the present case, we fail to understand how the amendment which is sought by the appellant, if allowed, would cause irreparable loss or serious injustice to the respondent. Further, this is not a case where the prayer for amendment was not a bona fide one. All that the appellant is seeking is to amend his statement of claim so as to give his date of appointment as 23.9.1980 while in the statement of claim he has stated that his date of confirmation was 30.3.1991.

6. The appellant joined the respondent on muster roll as Beldar. The services of the appellant were terminated and the appellant accordingly raised an industrial dispute. As per the appellant it was only on 15.10.2008 that the appellant came to know that the date of actual joining on muster roll with the respondent had not been specified in the statement of claim and neither the documents relied on as supplied to his earlier AR have been placed on record. The said fact and

documents being relevant for a proper determination of the actual controversy between the parties and consequential grant of relief as sought, the appellant moved an application for amendment of his statement of claim.

7. We see no reason why the said application ought not to have been allowed. Accordingly, we set aside the order of the learned single judge and permit the amendment of the statement of claim as prayed for by the appellant in his application before the Labour Court. We may also record that the counsel for the respondent in all fairness submitted that the said amendment may be allowed subject to the respondent being permitted to raise whatever legal objections were available to him to the same on merits of the matter. Needless to say that it is always open to the respondent to raise whatever objections and contentions he wishes to on the merits of the matter in accordance with law.

8. Accordingly, the appeal is allowed. The order of the learned single judge is set aside. The appellant is permitted to carry out the amendment to the statement of claim as prayed for. The pending applications stand disposed of as well. It is ordered accordingly.