
(2003) 02 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition. 3395 of 2001

The Superintending Engineer, Gossekhurd Project, The
Executive Engineer, Gossekhurd Dam Division and The
Assistant Engineer, Gossekhurd Dam Sub Division

APPELLANT

Vs

The Member, Industrial Court, Murlidhar Chandrabhanji
Nagulwar and The Chief Engineer, Irrigation Department

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Citation : (2004) 1 BomCR 327

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : J.T. Gilda, for the Appellant; A.M. Deshpande, A.G.P. for the Resp.
No. 1 and 3 and P.L. Kaore, for the Respondent

Judgement

R.G. Deshpande, J.—Rule returnable forthwith. Taken up for final hearing with the consent of the parties.

2. The Respondent No. 2 - Murlidhar Nagulwar, moved an application u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, in Complaint ULP Case No. 1128 of 1990, alleging unfair labour practice on the part of the present petitioners. This application was filed on October 30, 1990. During the pendency of the main Complaint, an application was moved on September 8, 1998 at the instance of the respondent No. 2/employee, seeking certain amendments, which was allowed by the learned Member of the Industrial Court. However, subsequent application for amendment, which was moved on April 3, 2001, that was at the stage of evidence, appears to have been rejected by the learned Member of the Industrial Court.

3. The evidence in the matter was recorded and it was over and the matter was closed for judgment on April 30, 2001. On the date when the Judgment was supposed to come out, the Respondent No. 2/employee moved an application on

the same day, again seeking an amendment as prayed for in the said application, as is clear from the record, which is definitely material and substantial, to which the learned Member of the Industrial Court has referred to in para No. 1 of his order, which is under challenge.

4. The learned Member of the Industrial Court, in spite of opposition by the petitioners, allowed the amendment application, observing that: if the amendment was not allowed, it would have resulted in multifariousness of the proceedings. The learned Member of the Industrial Court further observed that: Amendment, in ordinary course, should not be disallowed only on the ground of delay. He further observed that in the interest of justice, amendment could be allowed at any stage and, therefore, allowing the amendment at the stage of judgment or order could not be said to be wrong. The learned Member has referred to certain judgments cited before him for reaching to the conclusion.

5. So far as regards proposition that amendment could be allowed at any stage is concerned, cannot be disputed. However, that would not mean that any type of amendment can be allowed at any stage. The presumption is that, if an amendment has a direct nexus with the result of the case, then in that case, it could be said that the amendment could be allowed at any stage. However, taking into consideration the present dispute, it is absolutely clear that the reliefs under Item 9 of Schedule IV of the MRTU and PULP Act, were not asked for in the original Complaint. If the precise amendment is read, it would show that amended portion is in prayer clause 1, which is to the effect that: " allow the complaint under Item 9 Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, as per Kalelkars Settlement Award,". Besides this, clause 5 is sought to be added by way of amendment, which reads as under:

"The petitioner be converted as Karkoon with effect from 1.5.1987 and difference of salary be kindly allowed since 1.5.1987 onwards."

In the opinion of this Court, these are the precise amendments, as sought for by the respondent/employee, which definitely need a particular type of evidence to be adduced by the parties, particularly when the original prayer clause of the Complaint did not contain these prayers, and further if the prayer clause is minutely read, it would clearly show that but for seeking promotion as Karkoon in a particular scale from lower scale and that too from 23 April, 1990, is only asked for with difference in emoluments. In the opinion of this Court, amendment to clause 1 of the prayer clause, as also amendment to prayer clause 5, definitely would change the whole tenor of the dispute itself and such amendments at the belated stage of proceedings i.e. virtually at the time of pronouncement of the judgment, should not have been allowed.

6. It is well established principles of law that the present type of application could have been entertained during the course of hearing of the matter. However, when the matter having been closed for judgment, after adducing evidence by

the parties concerned, and particularly, when the nature of the reliefs is being either added or changed, for which there was no evidence adduced by the parties, should not have been allowed by the learned Member of the Industrial Court.

7. In the circumstances, I see considerable substance in this petition. The impugned order passed by the learned Member of the Industrial Court, allowing the amendment application, cannot be sustained in the eye of law. In the opinion of this Court, it virtually amounted to allowing the Complainant to fill in the lacunas which were already there in the original Complaint, that too which is prejudicial to the interest of the present petitioners.

8. In this view of the matter, the impugned order of the learned Member of the Industrial Court is hereby quashed and set aside. The learned Member of the Industrial Court shall proceed with the matter forgetting the amendments.

9. Rule is made absolute in the above said terms with no order as to costs.