

IN THE INDUSTRIAL TRIBUNAL, MAHARASHTRA AT MUMBAI

REFERENCE (IT) NO. 14 OF 2017

Municipal Corporation of Greater Mumbai ...First Party

AND

Its Workmen represented by
Mahapalika Aagogyia Seva Karmachari
Sanghatana, Mumbai. ...Second Party

CORAM: M.R. KUMBHAR, PRESIDING OFFICER

Appearances: Shri. B.D. Birajdar, Advocate for the first party
Smt. Vidula Patil, Advocate for the *second party*

ORDER BELOW EXH.U-6
(Declared on:29.09.2021)

1) Read application filed by second party at Exh.U-6 supported with affidavit. Perused say of first party filed at Exh.C-8. Heard both the parties at length. By this application, second party prays that to allow the amendments in the statement of claim as stated in the Annexure alongwith the application.

2) Smt. Vidula Patil, the Ld. Advocate for second party union invited my attention towards her application at Exh.U-6 and submitted that the present application is filed for amendment in statement of claim filed by second party. She further submitted that this tribunal may be allowed the application for amendment as stated in the Annexure in the interest of justice and fair play. She further submitted that the facts remain to be incorporated in the statement of claim are

relates to rules framed by the Govt. of Maharashtra for implementation of sixth pay commission. Therefore, amendment will be useful for proper decision on issues involved in the reference and therefore no prejudice will be caused to the first party if the amendments are allowed. Vice-versa grave prejudice will be caused to the second party union and its members if amendments are not allowed and prayed to allow his amendment application.

3) On the contrary, Shri. B.D. Birajdar, the Ld. Advocate for first party invited my attention towards the detailed affidavit in reply to the application for amendment filed at Exh.C-8 and submitted that the application for amendment to the statement of claim is not tenable at law on various grounds as the statement of claim has been signed by the General Secretary of second party union who is also an advocate having knowledge about facts and law and the proposed amendment was within knowledge of the second party union and the signatory of statement of claim. He further strongly submitted that the amendment application and affidavit in support of it has not been signed by any office bearer of second party union. Therefore, the person who has signed the application and affidavit is not competent to sign the application and therefore application is not maintainable. He lastly submitted that the second party union has not given any reason much less the reasons as to why the proposed amendment could not be incorporated in the statement of claim. So also the reasons why amendment could not be sought prior to the commencement of the trial. According to first party the trial commenced from 16.08.2018 when the issues were framed by this tribunal below Exh.O-5 and

thereafter on 22.10.2018 when affidavit in lieu of examination in chief filed by the witness of the second party union and matter adjourned for cross-examination. Therefore, after commencement of trial second party is not entitled to seek amendment as prayed for. Hence, the prayer made by the second party for amendment may kindly be rejected. He relied upon the observations of Hon'ble Supreme Court between Vidyabai and Ors. Vs. Padmalatha and Ors. reported in AIR 2009 SUPREME COURT 1433 and invited my attention towards head notes which reads as under:-

“Civil Procedure Code, Order 6, Rules 17 Proviso – amendment in pleadings – Bar after trial has commenced – Trial commenced on date issues are framed – amendment of written statement sought after plaintiff has filed affidavit in lieu of examination in chief – grant of leave by High Court to amend written statement – liable to be set aside – more over trial courts order refusing amendment neither support from judicial error nor any error of law – interference with order any writ jurisdiction – improper.

4) He further relief upon the observations of Hon'ble High Court between Foundation Brake Kamgar Sanghatna, through it's General Secretary, Jalgaon Vs. Foundation Brake Manufacturing Pvt. Ltd., Jalgaon through its General Manager reported in 2017 III CLR Page 630 and strongly submitted that the observation relied by the first party are perfectly helpful to the case of first party and prayed for reject the amendment cited by the second party.

5) Having heard the submissions of both the Ld. Advocates and after considering the caselaws on the point of amendment and pleadings of the parties, I find that second party union filed its statement of claim at Exh.U-3 which is signed by Smt. Vidula Patil, General Secretary of second party union. Thereafter first party filed its written statement in details on 03.04.2018 at Exh.C-5. After completing the pleadings of the parties, my Ld. Predecessor framed issues at Exh.O-5 on 16.08.2018 and matter was proceeded for evidence of second party union. Record further reveals that one Smt. Gracy Quadros filed affidavit in lieu of examination in chief at Exh.U-4 dated 22.10.2018 and thereafter matter was posted for cross-examination. During the course of argument, when I asked Smt. Vidula Patil, the Ld. Advocate for second party why the witness of second party union is not present after filing the affidavit in chief since 22.10.2018 to February 2019, she is unable to express the reasons behind absence of the witness. Thereafter it appears second party filed the present application at Exh.U-6 for amendment. The application is signed by one Smt. Gracy Quadros alongwith supporting affidavit at Exh.U-7. When I asked Smt. Vidula Patil whether signing authority of the application at Exh.U-6 is the member of the execution committee of second party union , she replied that no, signing authority is the member of the union. Further perusing the record, I do not find any copy of resolution passed by second party for giving authority to Smt. Gracy Quadros to file amendment application before the court. In absence of the same, appropriate inference can be drawn.

6) It is needless to mention here that it is settled law that an amendment to the plaint or complaint may be equated with amendment to the written statement. The latter has to be entertained more liberally is a well settled law and it is basic fundamental principles that before passing any order, may be administrative, judicial or quasi judicial order, both sides be allowed to place their cases and heard if required in the facts and issues arisen in that matter. It is further needless to mention here that from bare perusal of the schedule annexed alongwith the reference order dated 25.04.2017 which is at Exh.O-1, O-2, the schedule in which demand no. 2 reads as:-

“all the staff nurses be given fixation in the Fifth Pay Commission from 01.01.1996 on the basis of the basic pay drawn by them as on 31.12.1995 with regular annual increments till 31.12.2005 and be fixed in the Sixth Pay Commission as on 01.01.2006 on the Basic Pay arrived at as on 31.12.2005 and be given all consequential benefits.”

and the amendment which is prayed by the second party union in the Annexure is in respect of Sixth Pay Commission. Therefore, if I allow the amendment application it will not change the nature of dispute between the parties. Even allowing the application, then both parties will get ample opportunity to put forth their case before this tribunal and to prove their respective sides. Taking into consideration the Labour Law is social legislation and both parties should be heard in view of principles of natural justice by giving adequate opportunity to put forth their case, therefore I came to the conclusion that by seeking amendment in the main reference and

: 6 :

Reference (IT)No.14/2017 (O)
CNR No.MHIC01-000318-2017

demand therein will not change nature of reference. Therefore, application filed by second party for seeking amendment is liable to be allowed. With this I proceed to pass the following order.

ORDER

- 1) Application for amendment is allowed.
- 2) Second party to amend his statement of claim as per rule.
- 3) No order as to costs.

Date: 29.09.2021.

Sd/-
(M. R. Kumbhar)
Presiding Officer
Industrial Court, Mumbai

ams/-