

**BEFORE THE CONTROLLING AUTHORITY UNDER THE PAYMENT
OF GRATUITY ACT & JUDGE, LABOUR COURT, SANGLI**

(Presiding Officer Mr. Saifuddin B. Shaikh)

Application (PGA) No. 334/2021
CNR No. MHLC-1000-0417-2021

Smt.Vaishali Vinod Salunkhe

...Applicant;

Versus

1) Suzlon Global Services Ltd. & another.

...Opponents.

ORDER BELOW EXHIBIT C-5
(Delivered on 12th July 2022)

1) This is an application filed by the opponent No. 1 seeking relief of amendment in its pleadings of written statement.

2) According to opponent No. 1, they have filed their written statement in the present matter. However, certain crucial, relevant and necessary facts, were remained to be pleaded in their pleadings due to oversight. It is further contended that, total 303 applications came to be filed against the opponent company claiming relief of gratuity. The opponent company had tried their level best to place maximum facts before this authority in their written statement.

3) Opponent No. 1 further averred that, due to sheer oversight and bonafide mistake of clerical staff, certain necessary facts remained to be pleaded of written statement, as they failed to carry out the corrections in pleadings in written statement as per instructions. Therefore, now the opponent No. 1 wants to amend its written statement at four places by way of proposed amendment. Thus, by seeking amendment, the opponent No. 1 intends to correct the name of the Act in para number 7(a). He seeks amendment in para number 8 by adding certain portion in respect of proposed CIN and also wanted to add a sub-para number (iv) in para number 9. He wants to add a sentence of certain quantified amount of loss in para number 10(xxii). The opponent No. 1 further averred that the proposed amendment is very much essential and necessary for the just decision of case on merits. If the proposed amendment is allowed to be carry out by the opponent No. 1, then no prejudice would be caused nor any irreparable loss would be caused to the applicant. However, if application is rejected, then heavy prejudice and irreparable loss would be caused to the rights of the opponent No. 1. Thus, he will unable to put-forth necessary facts for the decision of the case on merits. Lastly, he prayed to allow the application.

4) The applicant has strongly resisted the application by filing his say below Exhibit U-7. The present application is filed by the opponent No. 1 without any reason. The matter is pending for cross-examination of applicant. The present matter is time bound, by Hon'ble Bombay High Court. The opponent No. 1 had every knowledge about the facts of the proposed amendment, prior to filing their written statement. However, present application is filed with ulterior motives for creating some benefits. Applicant further contended that, the proposed amendment is fundamentally changes and improves the entire complexion and character of the written statement. Thus, application is liable to be rejected in limine. The present application is filed by the opponent No. 1 without any cogent and just reasons.

5) The opponent No. 1 have every knowledge about their structural aspects of employees. The opponent No. 1 has filed the present application without any merits, deliberately at belated stage to gain the undue advantage and prolong the matter. The present application of opponent No. 1 is nothing but misuse and abuse of the process of law. The applicant further averred that this authority had already decided other certain

applications against the opponent company and this fact also cannot be denied and it is very well within the knowledge of the opponent. Moreover, most of the amendments claimed through present application have already been stand part and parcel of their written statement. Despite that, opponent company has simply filed the present application because some specific sentences are not there and its incorporation is not necessary. The applicant further averred that, if present application is rejected, then no prejudice or loss would be caused to the opponent. Lastly, applicant prayed that the present application may kindly be rejected.

6) In view of rival pleadings of both the parties, the following points arise for my determination and I have record my findings thereon for reasons to follow :-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the proposed amendment sought by the opponent No. 1 is necessary for determining the controversy ?	<u>In the 'negative'.</u>
2)	What order ?	<u>As per final order.</u>

:- REASONS :-

As to point No. 1 :-

7) Heard learned Advocate Shri. S. R. Rane, for the opponent No.1 company and learned Advocate Shri. S. S. Mutalik, for applicant at length. They both are almost reiterated their respective pleadings during the course of their arguments.

8) Learned advocate Shri. Rane, for the opponent No. 1 company vehemently argued that, all the proposed amendments are very much essential and necessary for just decision of the case on merits. Due to proposed amendment, no prejudice or irreparable loss would be caused to the applicant. The opponent No. 1 is not raising any new defence nor come with any inconsistent pleas. The opponent No. 2 has only putting certain additional facts on record, which are necessary to decide the real controversy between the parties. Contending that, learned advocate Shri. Rane placed his reliance upon the decision of Hon'ble Supreme Court in case of **Baldev Singh v. Manohar Singh [2006 LawSuit (SC) 618]**. Lastly, Shri. Rane prayed that, in the interest of justice, application may kindly be allowed.

9) On the other hand, learned advocate Shri. S. S.

Mutalik, for the applicant strenuously argued that the present application is filed by the opponent No. 1 with malafide intention to prolong the matter for its ulterior motives. The employees of opponent No. 1 had every knowledge about the facts of the proposed amendment, therefore, at this belated stage the opponent No. 1 company deliberately filed present application to prolong the matter. The present application is classic example of the misuse and abuse of the process of law. The alleged pleadings in proposed amendment are already part and parcel of the pleadings in written statement of the opponent No. 1. Lastly, Shri. Mutalik prayed to reject the application.

10) Before proceeding further and deal with the merits and demerits of instant application, it will not be out of place here, to go through relevant provisions of the Code of Civil Procedure, which dealt with aspect of amendment i.e. Order VI Rule XVII. It is settled principle of law that the provisions of the C.P.C. are not strictly applicable in proceedings under labour laws, but principally applied. The provision of Order VI Rule XVII reads as under :-

“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 :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

11) Now, in the light of aforesaid legal provision and submissions made by both the sides, I have carefully gone through the present application, its say, main petition, written statement of the opponent No. 1 and entire record and proceeding of the case at hand.

12) At the outset, it worth to be mentioned have that the present matter in respect of claim of the applicant workman under the provisions of the Payment of Gratuity Act, 1972. It is seen from the pleadings of the parties to the proceeding that, since December-2017 till the decision of Hon'ble Bombay High Court in Writ Petition No. 840 of 2021, both parties were fighting outside the court and thus, already 4-5 years period has already been lapsed.

13) It is fact that in the decision of aforesaid writ, more

particularly in para No. 12, the Hon'ble Bombay High Court has pleased to order and direct this court,

12.....

A).....

B) The security personnel claiming dues from the petitioner and respondent No.3 under the provisions of the Payment of Gratuity Act, 1972, shall forthwith move applications for payment of their dues towards gratuity before the said Controlling Authority. On such applications being moved, the Controlling Authority shall dispose of the same within three months of filing of such applications. The petitioner and respondent No.3 shall cooperate with the Controlling Authority for disposal of such applications within the said time frame.

C).....

D).....

E).....

F).....

14) As per the aforesaid decision, this court had taken every endeavor to dispose of the present matter till the end of August-2021, but many reasons caused hurdle and thus, court is unable to decide the same within the time frame given by Hon'ble High Court. Upon completion of the said period, this court has sent request application to the Hon'ble High Court of Bombay for granting extension of time limit of further six months vide outward number 1459/2021, dated 18.08.2021. However, yet further correspondence is awaited.

15) The present matter is pending for cross-examination of applicant and now at this stage by way of proposed amendment application the opponent No. 1 wants to amend its pleadings in four places in all in the written statement. In para number 7(a), the opponent No. 1 wants to correct the name of Act as in the written statement, they inadvertently wrote as a MRTU & PULP Act, but they wanted to correct it as PGAct. In para number 8, the opponent No. 1 wants to mention as, "All the companies listed in the table above have distinct and independent CIN". They further wanted to add sub-para number (iv) in para number 9 with contention of opponent No. 2 was maintaining the attendance and relevant record of his employees including the applicant and contentions in respect of their P.F. contribution etc. The opponent No. 1 further wants to add sentence in sub-para number (xxii) of para number 10, with contentions that the certain quantified amount of losses caused to them to the tune of Rs.15,63,69,370.90/-.

16) If we see all aforesaid proposed amendments are appears to be technical in nature and are not appears to be essential or necessary for deciding the real controversy in the present proceeding. Because, this court can very well take judicial

note of the name of the Act and different CIN numbers of companies etc. It is further evident from the pleadings that the opponent No. 1 company had given certain calculations in respect of entitlement of gratuity amount of applicant based on the record received from the opponent No. 2. Thus, it is crystal clear that the proposed amendment in para number 9 is also not necessary and is already on record in other words / contentions. Likewise, the opponent No. 1 company had also pleaded much more facts about the losses caused to them due to applicant and other similar employees in sub-para numbers (xv), (xvii) and (xxii) of para number 10. Thus, if we see the proposed amendment which the opponent No. 1 wanted to add in sub-para (xxii) is nothing but a quantified loss which requires to be given in evidence.

17) At this stage, I have carefully gone through the decision of **Hon'ble Supreme Court in case of Baldev Singh (supra)** relied by the learned advocate for opponent No. 1. In the said case, the Hon'ble Supreme Court has held that, "That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of

witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.”

18) If we go through the aforesaid case law coupled with the facts of the case at hand, then we find that the facts are not identical in nature. In the case of **Baldev Singh (supra)**, trial was not commenced. In the case at hand, trial was already commenced, being issues were already framed. Therefore, ratio laid down in case of **Baldev Singh (supra)** would be of not helpful to the opponent No. 1.

19) In the present application, the opponent No. 1 company tried to blame his clerical staff about filing present application of amendment, as they were not corrected in their written statement as per instructions. But the said reason is appears to be technical in nature and it does not appear just and reasonable to allow the proposed amendment at this stage.

20) Therefore, in view of the reasons discussed herein above, I am of the firm opinion that, the proposed amendment is not very much essential and necessary for determining the real questions in controversy between the parties to the proceeding. Hence, I answer point No. 1 is in the 'negative' and in the result of answer of point No. 2, I proceed to pass the following order :-

:- ORDER :-

- (a) Application for amendment stands rejected.
- (b) Parties to bear their own costs.
- (c) Parties to take note of this order and co-operate this court to decide the matter within time frame given by Hon'ble High Court of Bombay.

(Pronounced and dictated in open court.)

Sangli.

Date :- 12/07/2022

(Saifuddin B. Shaikh)

Controlling Authority under
the Payment of Gratuity Act
& Judge, Labour Court, Sangli.