MANU/MH/1770/2009

Equivalent Citation: [2009(123)FLR808]

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 3428 of 2009

Decided On: 26.08.2009

Appellants: **B.V. Waghmare**
Vs.
Respondent: **Lancer Travels and others**

Hon'ble Judges/Coram:
Mrs. V.K. Tahilramani, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Mrs. Anjali S. Ranade

For Respondents/Defendant: C.R. Naidu & Co. Counsel for the Respondent No. 1

JUDGMENT

Mrs. V.K. Tahilramani, J.

1 . Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

Rule. By consent rule is made returnable forthwith and the matter is heard finally.

2. The case of the petitioner is that he was appointed by respondent No. 1 as a peon in the year 1992. His case is that he came to be terminated, hence he raised a dispute which came to be referred to the III Labour Court, Pune. It was numbered as Reference (IDA) 223 of 1999. The statement of claim came to be filed on 23rd March, 2000. Written statement came to be filed by the respondents on 14th August, 2000. The petitioner preferred an application on 23rd November, 2005 to the Labour Court to amend paragraph 4 of the statement of claim regarding the date of termination. According to the petitioner, the date of termination was not 1st January, 1998 but it was 1st September, 1998. The Labour Court directed the petitioner to approach the Government. Hence, the application was preferred by the petitioner before the Government on 17th October, 2006 for a change in the date of termination from 1st January, 1998 to 1st September, 1998 claiming that it was a typographical mistake. The application came to be rejected by order dated 23rd November, 2006 stating therein that it is alleged by the advocate that due to the typing mistake date of termination is mentioned 1.1.1998 but it should have been 1.9.1998, but after verification and after hearing the arguments of worker's advocate cannot be proved there is a typing mistake, therefore, it is not changed. This order has not been challenged by the petitioner.

3 . Thereafter, the petitioner carried on with the reference without challenging the order dated 23rd November, 2006. Thereafter, by order dated 12th February, 2008, common order came to be passed by the III Labour Court wherein it was observed that the reference before the Court became infructuous and hence, it came to be disposed of. The learned Judge held so on the basis of the fact that when the

corrigendum regarding change of date was rejected on 23rd November, 2006 by the Labour Commissioner and it was not challenged, the date of termination would have to be taken as 1st January, 1998 and hence, the reference is infructuous as the material shows that even thereafter, the petitioner was working with the respondent. Hence, there is no case of termination. It is the award dated 12th February, 2008 passed pursuant to these orders whereby reference was dismissed on the ground that it had become infructuous which has been challenged in the present petition.

4. It is seen that when the dispute was first raised, it was in respect of date of termination which was given by the petitioner as 1st January, 1998. Thereafter, the Government of Maharashtra vide its order No. ADJ/2-A/67/99 referred the matter to the Labour Court for adjudication. In the order of reference and even in the statement of claim which was filed on 23rd March, 2000, the date of termination is mentioned by the petitioner as 1st January, 1998. Thereafter, written statement came to be filed by the respondent on 14th August, 2000 wherein it was mentioned that the petitioner was not terminated and he continued to work with the respondent even after 1st January, 1998 and he continued to draw his salary and was even given bonus and hence, it was stated that the reference was not maintainable as there was no question of any industrial dispute as the petitioner had not been terminated as claimed by him. Thereafter, on 14th August, 2000 documents were also filed by the respondent in support of the written statement which show that the petitioner was attending even after 1st January, 1998 and salary was paid to the petitioner and bonus was also paid to the petitioner. Thereafter, issues came to be framed by the Labour Court on 28th September, 2004.

5. It is seen that thereafter for the first time, an application came to be made by the petitioner on 23rd November, 2005 to amend paragraph 4 of his statement of claim regarding his date of termination. As stated earlier, the Labour Court directed the petitioner to approach the Government. After approaching the Government, the order came to be passed on 23rd November, 2006 whereby the request for amendment in the date of termination came to be rejected. It is an admitted fact that the order dated 23rd November, 2006 was not challenged and in fact, the petitioner continued with the reference before the Labour Court.

6. The learned Counsel for the petitioner submitted that the correction is of typographical nature and hence, permission ought to have been given to amend the date of termination. In support of her contention, she has placed reliance on the decision in case of Madan Pal Singh v. State of U.P and others 2000 (84) FLR FAZ (SC). In the said case, the name of appellant therein was written as Madan Lai in the reference order and he wrote to the Government for correction of said mistake. This was objected by the employer. However, Labour Court after hearing the parties, concluded that instead of Madan Pal, the name of Madan Lai had been mentioned and that there was no dispute between Madan Lai and the management. It was observed that in spite of time having been given to the appellant to get the reference amended and mistake rectified, nothing was done till the date of the Award. It was therefore, held that there was no relationship between Madan Lai and the management and there was no industrial dispute existing between them. That being so there was no question of terminating the services of Madan Lai and that due to all these reasons, the reference was bad. The learned Counsel for the petitioner submitted that this order came to be set aside by the Supreme Court. On perusal of the decision, it is seen that the said order came to be set aside by the Supreme Court observing that the management did not raise the preliminary objection about the validity of the reference on the ground that no workman by the name Madan Lai was in its

employment and so the reference was bad. The Supreme Court observed that during the course of adjudication proceedings no one was in doubt about the identity of the workman that it was Madan Pal Singh. The Supreme Court further observed that evidence had been led before the Labour Court and it is only at the fag end of the proceedings that it was stated by the management that there was no Madan Lai in its employment. Observing! thus, the Supreme Court set aside the order of the Labour Court as well as the High Court.

7. However, in the present case, it is seen that the management has in fact on 14th August, 2000 itself has raised objection and stated that the petitioner was not terminated on 1st January, 1998 as claimed by him which is seen from the fact that even thereafter he has continued to work with the respondent and continued receiving salary and even bonus. They also filed documents in support of their written statement to show that even after 1st January, 1998, the petitioner was in their employment and he received salary and bonus. Thus, at the beginning itself, the case of the respondent is that the petitioner was not terminated on 1st January, 1998 as claimed by the petitioner and hence, there was no question of any industrial dispute relating to said termination. In fact, in the present case, it is at the fag end of the proceeding, that the application was preferred by the petitioner to amend the date of termination. Hence, this decision would be of no help to the petitioner. Moreover, in the present case, it is pertinent to note that in the dispute which was raised by the petitioner pursuant to which reference was made, therein also the petitioner claimed that his date of termination was 1st January, 1998.

8. On the other hand, the learned Counsel for the respondent submitted that the cardinal principle to determine, whether an amendment amounts to a correction of clerical error or introduction of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. If the same relief can be granted, the mistake may be considered as clerical which can be corrected by amendment. But if the same relief cannot be granted, then it means that the original notification has been cancelled or withdrawn. Thus, it is seen that references can be amended by way of addition or modification in order to correct obvious mistake of typographical error which was inadvertently crept in reference already made so long as amendment does not have the effect of withdrawing or superseding earlier reference.

9. In the present case, it is seen that it is only as an afterthought at an extremely belated stage that the petitioner has preferred the application for amendment of the date of termination in his statement of claim. From the beginning, the case of the petitioner was that he was terminated on 1st January, 1998. The reference was also made referring to the date of termination as 1st January, 1998. His statement of claim which was filed on 23rd March, 2000 also gives the same date. However, after perusal of the written statement filed on 14th August, 2000 and other documents filed by the respondent, it appears that the petitioner belatedly preferred this application to amend the date in his statement of claim. On going through the record, it cannot be said that on account of typographical mistake the date of termination is mentioned as 1st January, 2008 and not as 1st September, 2008. Hence, no case is made out for interference.

Writ petition is dismissed.