

Law Today Live Doc. Id. 15188

PUNJAB AND HARYANA HIGH COURT

Before: Anil Kshetarpal, J.

CWP-9204-2020 (O&M)

Decided on: 16.07.2020

Freudenberg Nok Plant 1 & 2 Workers Union

Petitioner

Versus

State of Punjab and others

Respondents

Present:

Mr. Rajesh Punj, Advocate for the petitioner.

A. Constitution of India, Article 226 -- Writ jurisdiction (Punjab and Haryana) Rules 1976, Rule 20, 32 -- Code of Civil Procedure, 1908 (V of 1908), Section 11 Explanation IV, 141, Order 2 Rule 2 -- Two writ petition for same cause of action -- Maintainability of -- Writ petitioner failed to explain why the prayer made in the second writ petition could not be incorporated or added in the previous petition and also failed to disclose what is the difference in the cause of action of both the writ petitions -- Order 2 Rule 2 of the CPC, is applicable particularly when in the 1976 Rules, there is no provision inconsistent with the provisions of Order 2 Rule 2 of the CPC -- Explanation IV of Section 11 of the CPC, also provides that any matter which might and ought to have been made a ground of defence or attack in such former suit or petition under Article 226, shall be deemed to have been a matter directly or substantially in issue in such suit or proceedings -- Second writ petition not entertained and disposed of with a liberty to the petitioner to file application for amendment of the pleadings in the previously instituted writ petition.

(Para 14-18)

B. Constitution of India, Article 226 -- Writ jurisdiction (Punjab and Haryana) Rules 1976, Rule 20, 32 -- Writ petition -- Such or similar writ petition -- Pendency of -- Procedure of -- Petitioner is required to make a disclosure in the Index and the relevant para, if such or similar petition is pending or decided -- Also required to disclose the difference in the cause of action, if any, in both the writ petitions, if any -- Writ petitioner shall disclose the reasons why the relief claimed in the subsequent petition could not be claimed or included in the previously instituted petition -- Filing of the multiple petitions is neither in the interest of justice nor in the interest of Judicial Institution -- Institution has been setup to make a sincere endeavour to give justice to all the litigants -- For achieving that goal, it is necessary that unnecessary filing of any kind of petitions should be discouraged -- Second writ petition is disposed of with a liberty to the petitioner to file application for amendment of the pleadings in the previously instituted writ petition.

(Para 17,18)

Cases referred:

1. Udyami Evam Khadi Gramodyog Welfare Sanstha and another Vs. State of U.P. And others, (2008) 1 SCC 560.

2. State Bank of India Vs. K.C. Tharakan and others, (2005) 8 SCC 428.

ANIL KSHETARPAL, J. –

1. The petitioner-Workers' Union has filed the present writ petition under Article 226/227 of the Constitution of India with the following substantive prayers:-

- “i) a writ, order or direction especially in the nature of mandamus directing the respondent Nos.1 to 3 to decide the demand notice dated 06.12.2019 Annexure P-11 and the complaint dated 03.02.2020 Annexure P-12 within a stipulated period and to take action against the Directors responsible for violation of the provisions of Section 25(T), 25(U), 33, 33A of the Industrial Disputes Act and Sections 23, 24 and 25 of the Contract Labour (Regulation & Abolition) Act, 1970, within a stipulated period.*
- ii) It is further prayed that during the pendency of present petition and the Conciliation Proceedings, the respondents Nos.4 and 5 be restrained from removing the machinery from the plant in Mohali and Basma Village.*
- iii) Any other relief which this Hon'ble Court may deem fit and proper may also be granted in favour of the petitioner.”*

2. At the outset, it is significant to note that the writ petitioner has filed a previous Civil Writ Petition No.8533 of 2020, which after notice of motion issued on 24.06.2020, is pending for 20.07.2020. The parties to the previous writ petition as well as the present writ petition are exactly the same. The memo of parties of the present writ petition reads as under:-

“Freudenberg Nok Plant 1 & 2 Workers Union registered with Registration No.PB608/267/398350 dated 3.12.2019 at Village Basma, Tehsil Banur, District SAS Nagar through its President Manoj Kumar s/o Sham Singh aged about 32 years.

...Petitioner

Versus

- 1. State of Punjab through Principal Secretary, Department of Labour, Punjab Civil Secretariat-2, Sector 9, Chandigarh.*
- 2. Labour Commissioner, Sector 17, Punjab, Chandigarh.*
- 3. Assistant Labour Commissioner-cum-Conciliation Officer, Labour Department, Government of Punjab, Sector 76, SAS Nagar, District SAS Nagar.*
- 4. M/s Freudenberg Nok Pvt. Ltd., Main Plant No.1, Village Basma, Tehsil Banur, District SAS Nagar through its Managing Director.*
- 5. Ashok Kumar son of not known, General Manager (HR), M/s Freudenberg Nok Pvt. Ltd., Plot No.2, B-70, Industrial Area, Phase 7, Sector 73, SAS Nagar, District SAS Nagar.*

...Respondents”

3. This Court has also compared the pleadings of the petitioner in the previous writ petition i.e. CWP No.8533 of 2020 as well as the present writ

petition i.e. CWP No.9204 of 2020. Apart from the addition of one sentence in para 12, the pleadings in both the writ petitions are the same. In para 12, only addition is as under:-

“The petitioner has filed CWP No.8533 of 2020 wherein notice of issued on 24.6.2020 for 20.7.2020.”

4. Even para with regard to the questions of law, is exactly the same as is in the previously filed writ petition. It may be noted here that apart from prayer (i), even the remaining prayers in the writ petition are to the same effect. Even the documents attached as Annexures in both the writ petitions are exactly the same.

5. While filing the present writ petition, the petitioner in para 20 of the petition, has stated as under:-

“20. That the petitioner has not filed any other petition in this Hon'ble Court or any other court or the Hon'ble Supreme Court of India on such or similar points.”

6. The only difference, according to this Court, is with regard to the caption of the petition as well as prayer (i) of the petition.

7. At this stage, it is important to note that the previous writ petition i.e. CWP No.8533 of 2020 was drafted on 15.06.2020, whereas the present writ petition was drafted on 17.06.2020.

8. This Court, for regulating the filing of the writ petitions, has notified the writ jurisdiction (Punjab and Haryana) Rules, 1976 (hereinafter to be referred as “the 1976 Rules”). Rule 20 requires as under:-

“20. Contents of petition- (1) Every petition shall consist of paragraphs numbered consecutively and shall contain,—

- (i) the name, description sufficient for identification and place of residence or business of each person joined as a petitioner or a respondent;
- (ii) a concise Statement of relevant facts in chronological order alongwith dates;
- (iii) particulars of the defect in the exercise of jurisdiction or the grounds on which the legality or validity of an order, act or default of the state or other authority is impugned, and any final or interim relief sought;
- (iv) in concise and precise form in a separate paragraph immediately following the one in which the grounds are specified, the points of law canvassed in the petition ;
- (v) a statement about any alternative remedy, which was available to the petitioner and whether such remedy was availed of, and if not, the reasons therefore, and if availed with what results;
- (vi) a statement whether a similar petition has been made to the Supreme Court or previously in the Court or in any other Court in respect of the same matter, and if made, with what result; and

(vii) *detailed particulars and adequate reasons for the delay, in case the petition is prima facie belated.*

(viii) *The prayer for interim relief and for dispensing with the filing of the certified copies of the documents annexed with the petition shall be incorporated in the main petition and no separate application is required to be filed for this purpose. However, the prayer for interim relief, if any, made after filing of the writ petition shall be made by way of a separate application duly supported by an affidavit.]*

(2) *In a petition where an interim relief is claimed, the petitioner shall ordinarily furnish to the party against whom such petition is filed copies of such petition and of all documents in support of the plea for such interim relief and the petition shall contain a statement to that effect.*

[Provided that where an interim relief is granted by the Court and the petitioner has not already furnished to the party/parties against whom such petition is filed a copy/copies of such petition alongwith all documents in support of the plea for such interim relief, he shall, forthwith on the date of the grant of such relief supply copy/copies of the petition alongwith all documents in support of the plea for such interim relief with shall accompany the stay order to be served, unless the Court directs otherwise.]

[3. Every petition shall be supported by a short affidavit duly verified in the manner prescribed under Order 19 Rule 3, of the Code of Civil Procedure, 1908.]

9. As per the format issued, in the Index of the petition, there is a requirement of disclosing whether there is any other similar case or not.

10. Rule 32 of the 1976 Rules, reads as under:-

“32. Application of CPC- *In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure 1908, shall apply mutatis mutandis, in so far as they are not inconsistent with these rules.”*

11. Question which this Court is called upon to answer is “Whether multiple writ petitions with regard to same or similar cause of action between the same parties, should be permitted to be filed or not?”

12. As noted above, previous writ petition bearing CWP No.8533 of 2020, was drafted on 15.06.2020, whereas the present writ petition was drafted on 17.06.2020. The writ petitioner has failed to explain why the prayer made in the present writ petition could not be incorporated or added in the previous petition. The writ petitioner has also failed to disclose what is the difference in the cause of action of both the writ petitions. Still further, there is non-disclosure of the pendency of the previous writ petition in the Index as well as relevant para of the writ petition, although, pendency of the writ petition has been disclosed in para 12 as noted above.

13. As per Rule 32 of the 1976 Rules, the provisions of the Code of Civil Procedure (hereinafter to be referred as “the CPC”), unless inconsistent with these Rules, shall apply mutatis mutandis.

14. Order 2 Rule 2 of the CPC, is thus applicable particularly when in the 1976 Rules, there is no provision inconsistent with the provisions of Order 2

Rule 2 of the CPC. Section 141 of the CPC deals with the miscellaneous proceedings. Explanation added thereto, provide that the expression "proceedings" would not include any proceedings under Article 226 of the Constitution. However, in view of the specific provision made in the 1976 Rules, the procedure prescribed in the CPC has been made applicable unless such provision is inconsistent with the 1976 Rules.

15. Order 2 Rule 2 of the CPC, prescribes that while filing a petition or a suit, whole of the claim, which the plaintiff or the petitioner is entitled to make in respect of a cause of action, shall be required to be added failing which he shall not afterwards be entitled to sue in respect of the portions so omitted or relinquished. Similarly, Explanation IV of Section 11 of the CPC, also provides that any matter which might and ought to have been made a ground of defence or attack in such former suit or petition under Article 226, shall be deemed to have been a matter directly or substantially in issue in such suit or proceedings.

16. The Hon'ble Supreme Court has also, on more than one occasion deprecated the practice of filing multiple writ petitions on same or similar cause of action. Reference in this regard can be made to the judgments in the case of **Udyami Evam Khadi Gramodyog Welfare Sanstha and another Vs. State of U.P. And others, (2008) 1 SCC 560** and **State Bank of India Vs. K.C. Tharakan and others, (2005) 8 SCC 428**. Now question is "Whether this Court should entertain second petition particularly in view of the defects pointed out above?". The answer to the aforesaid question, in the considered view of this Court, has to be negative.

17. At this stage, it may be noticed that while filing the writ petitions, the petitioner is required to make a disclosure in the Index and the relevant para, if such or similar petition is pending or decided. The writ petitioner is also required to disclose the difference in the cause of action, if any, in both the writ petitions, if any. Still further, the writ petitioner shall disclose the reasons why the relief claimed in the subsequent petition could not be claimed or included in the previously instituted petition. These observations/guidelines are being issued because filing of the multiple writ petitions should be avoided. The dockets of the Courts are already over flowing. The filing of the multiple petitions is neither in the interest of justice nor in the interest of Judicial Institution. It results in wastage of valuable time of the Institution to which Bar and Bench are equal participants. This Institution has been setup to make a sincere endeavour to give justice to all the litigants. For achieving that goal, it is necessary that unnecessary filing of any kind of petitions should be discouraged. It is for this reason only, the Rules have been notified.

18. Keeping in view the fact that since the present writ petition has been filed by the Workers' Union, this Court does not wish to pass any harsh orders. However, the present writ petition is disposed of with a liberty to the petitioner to file application for amendment of the pleadings in the previously instituted writ petition, if maintainable, so as to include the relief sought in the present writ petition. With these directions, the writ petition is disposed of.

19. All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

Order accordingly.
