

ID NO. 119/2021

12.01.2023

Present:- Shri Udit Gupta, Ld. A/R for the claimant with the claimant.
Shri Akhil Anand and Sh. Himanshu, Ld. A/Rs for the management.

The matter stands posted today for tendering and cross examination of the management witness. The claimant is present with her A/R. Two separate affidavits supported by documents have been filed by respondent No.1 and respondent No.2 on the inquiry issue. Today when the matter was called upon for examination of the witnesses on behalf of respondent No.1 i.e Deutsche Lufthansa A G (Lufthansa German Airline), the Ld. A/R representing the said management filed an application for amendment of its written statement which is supported by an affidavit alongwith the amended WS. The Ld. A/R for the management No.1 submitted that the copy of the petition alongwith the amended WS has already been supplied to the Ld. A/R for the claimant who agreed to the same.

The application filed by the management No.1 was taken up for hearing. The Ld. A/R for M1 submitted that the claim has been filed by the claimant seeking relief against Deutsche Lufthansa A G, Shared Services International India Pvt. Ltd. having office at Novotel Pullman Hotel, Commercial Block Aerocity New Delhi. But the said Deutsche Lufthansa A G, shared Services International India Pvt. Ltd. is not the employer of the complainant. **Deutsche Lufthansa A G also known as Lufthansa German Airline and Shared services international India Pvt. Ltd.** are two separate and distinct legal entities. Thus, there is a controversy with regard to the identity of the employer and this fact need to be specifically pleaded by the respondent No.1 in the WS. Unless the identity of the employer is clearly described and established by the claimant no effective adjudication/Award/decreed can be passed by a court of law. The Ld. A/R during course of argument submitted that this defect could be noticed while preparing the case for examination of the management witness. The delay as it may be cannot stand on the way of the amendment to bring in the correct identity of a

party. To support the stand the management has relied upon the case of **Madanpal Singh vs. State of U P and others reported in AIR 2000SC537** wherein the Hon'ble Supreme Court have observed that whenever it comes to the notice that the name of the workman is not correctly mentioned the same should be corrected on equitable consideration even though there is delay for the said reason. Thus, the Ld. A/R for the management submitted that incorrect description of the employer need to be corrected by the claimant. But as an abundant caution the respondent No.1 wants to incorporate this fact in the WS.

The Ld. A/R for the claimant while expressing grave concern on the delay occurring in the proceeding submitted that the respondent is trying to delay the matter by adopting this procedure when the claimant is a jobless person and suffering a lot for the delay as the proceeding is pending since 2021. He further submitted that the identity of R1 described in the complaint petition is correct and Deutsche Lufthansa A G, shared Services International India Pvt. Ltd. and Deutsche Lufthansa A G (Lufthansa German Airline) is the same entity and the claimant is ready to undertake the risk of proceeding without correction of the name in the cause title of the complaint petition. He further argued that under the Industrial Dispute Act there is not provision permitting amendment of the pleading. Though, the provisions of CPC are borrowed in 11(3) of the Id Act the same is for a limited purpose. He also submitted that the amendment if allowed at this stage would oppose the Principles of Natural Justice since the proceeding has proceeded a lot and the evidence of the claimant has already been concluded. Moreover, a similar petition was filed before the CGIT-I Delhi by the management few months back. A similar petition could have been filed in this proceeding well ahead of the date fixed for examination of the management witness. The petition filed today is designed to delay the proceeding only. He thereby insisted for rejection of the petition.

In the case of **Army Public School vs. Ramdhan Sharma** decided by the Hon'ble High Court of Madhya Pradesh Bench at Gwalior in WP No. 4753 of 2012 and relied by M1, it has been

observed that section 11(3) of the Id Act makes it clear that provisions of CPC are borrowed to a limited extent. Thus, provisions of O6R17 of CPC cannot be made applicable to Industrial Adjudication. But the amendment need to be considered as per broad Principles. It is to be seen whether amendment is necessary for lawful adjudication of the matter and whether it will cause any prejudice to the other side if allowed.

In this case the amendment is with regard to dispute qua identity of the management No.1 which has a direct and serious bearing on the adjudication. But at the same time it cannot be lost sight of that the amendment has been proposed at a very belated stage which is prejudicial to the claimant who is challenging the order of termination and her counsel/A/R travelling all the way from Bombay to Delhi to conduct the proceeding on each and every date. Thus, keeping the circumstances in view the petition for amendment found necessary for effective adjudication of the matter is allowed but subject to payment of cost of Rs. 15000/- to the claimant. The management No.1 since has already filed the amended WS and copy of the same has already been supplied to the claimant the matter shall be listed on 09/02/2023 for tendering and cross examination of the management witness subject to the payment of cost before that. The management No.1 if wishes to make any change in the affidavit of his witness already placed on record, it shall carry out the change/correction and supply the said corrected affidavit to the claimant well ahead of the date fixed today so that the witness shall be examined and cross examined on that day.

Presiding Officer
12.01.2023