

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1096 OF 2015

RURAL DEVELOPMENT FOR YOUTH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Thombre Bhagwan V.
AGP for Respondents: Shri Shelke V.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 10, 2015

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PER COURT :-

1. I have heard the learned Advocate for the petitioner for quite sometime.
2. The petitioner takes an exception to the amendment granted by the School Tribunal in Appeal No.34 of 2011 by an order dated 12.9.2014, passed below Exhibit 20.
3. Grievance of the petitioner is that the application seeking amendment does not make out a case which would justify the contention of the respondent that he could not amend his appeal memo despite due diligence. The proposed amendment which has been considered by the Tribunal and allowed is unnecessary and in support of certain irrelevant documents which the appellant desires to produce on record.
4. It is further submitted that the date of appointment which is earlier

pleaded as 16.6.2009 is now sought to be changed to 16.6.2008 on the ground that it is a typographical error. It is also submitted that some of the portions of the proposed amendment are explanatory in nature and cannot be a part of the pleadings.

5. Reliance is placed on the judgments of the Apex Court as well as this Court to support the contention that a belated amendment ought not to be allowed. The said judgments relied upon by the petitioners are as under:-

- (1) Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuk and others - 2013 (4) Bom.C.R. 109 - SC
- (2) Ramniklal Mohanlal Chawda Vs. Sharad Vasant Kotak & others - 1997 (2) Mh.L.J. 731
- (3) Sasa Detergent Division Vs. Damodar S. Mudliyar and others - 2012 (2) Bom. C.R. 267
- (4) Sai Shradha Developers and others Vs. Ravindra Ganpatrao Bharitkar and others - 2013 (3) Bom. C.R.150
- (5) Vera Lelisa Viegas Pereira Vs. Agnelo Caetano Colaco and others - 2014 (1) Mh.L.J. 170
- (6) Kishor Raghunath Pande and another Vs. Narendra Durlabhji Shah - 2012 (3) Mh. L.J. 279
- (7) Union of India Vs. B.C.Biyani - 2010 (1) Mh.L.J. 615
- (8) Anil Vishwanath Jadhav Vs. Pankaj Indrajeet Bassi - 2010 (2) Mh. L.J. 220
- (9) Chhabubai Haribhau Badakh Vs. S.H.Khatod and Sons and another - 2009 (6) Mh.L.J. 760
- (10) Salma Asgarali Makati and others Vs. Raj Bucket Factory and others - 2013 (2) Mh.L.J. 690 and
- (11) Damu Maruti Dadhe and another Vs. Limba Maruti Dadhe and others - 2012 (2) Bom. C.R. 432.

6. I have considered the submissions of the learned Advocate for the petitioners. The amendment has been allowed by the impugned order on 12.9.2014. The proposed paragraphs which have been permitted to be inserted, pertain to the caste / category to which the respondent belongs to, the reservation for the said caste and the refusal of the employer to permit him to sign the muster roll, resulting in "Otherwise termination".

7. The appeal has been instituted in the year 2011. The application for amendment has been filed on 24.8.2012. The said application was pending and was finally decided practically after two years by the impugned order dated 12.9.2014. It is, therefore, apparent that the application for amendment was filed in promptitude within one year from the date of institution of the appeal. I, therefore, do not find that the said application has been either made belatedly or suffers from inordinate delay.

8. The application for amendment filed within one year of the institution of the appeal is aimed at correcting certain dates which are said to be typographical errors. For example, the appointment order, dated 16.6.2008, was wrongly typed as 16.6.2009. Nevertheless, the date of appointment as is evident from the records would prevail. The other paragraphs inserted by way of an amendment are no doubt in the form of an explanation. However, I do not find that the said contents could be termed as changing the nature of the cause of action.

9. The learned Advocate for the petitioners who has placed reliance upon the judgments referred above, contends that the facts emerging from the judgments indicate that the amendments sought belatedly, in some cases three years and in some cases six to seven years, were not entertained as there was an inordinate delay in making a request for an amendment. I do not find that the said judgments would be of assistance to the petitioners, since in the instant case, neither the nature of the cause of action has been altered, nor could it be said that the amendment is sought after an inordinate delay.

10. Though I am not inclined to entertain this petition, it needs mention that post amendment to the appeal, the petitioner / employer would be at liberty to file an additional written statement so as to refute the amended portion of the appeal.

11. As such, this petition is dismissed.

(RAVINDRA V. GHUGE, J.)

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