

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.247 OF 2015

GAHININATH SEVA MANDAL THROUGH ITS
PRESIDENT VIJAYKUMAR KARBHARI GHOLHAR

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

RESPONDENTS

Mr.V.M.Chate, Advocate for the petitioner.
Mr.D.J.Choudhari, Advocate for the respondents.
Mr.D.R.Korde, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/01/2015

PER COURT :

1. Grievance of the petitioner is that respondent/appellant in Appeal No.24/2012 has sought to alter a date to suit certain fabricated documents created by him. In the appeal memo, the respondents had mentioned 23/06/2012 to be the date from which he was disallowed under oral orders from signing the muster roll. The petitioner has produced the record of the Institution to indicate that the said employee had performed his duties only till the end of the academic year 2012 and was never in employment and had not signed the muster roll from 01/06/2012.

2. The approval from the Education Department, approving the services of the respondent employee till the academic year 2012, is also placed on record. After written notes of argument were filed by the petitioner, the said employee has sought to alter the date (of refusal from signing the muster roll) from 23-25/06/2012 till 31/07/2012, through an amendment application.

3. Application Exh.21 filed by the said employee has been allowed by the Tribunal on 19/11/2014, which order is impugned in this petition.

4. The petitioner contends that the concerned employee has placed on record a copy of a fabricated muster register to support his contention that he was disallowed from signing the muster roll from 30/06/2012 till 31/07/2012. Permitting the said amendment would affect the case of the petitioner. So also, the amendment is allowed at the fag end of the proceedings, in opposition to the ratio laid down by the Apex Court in the case of Vidyabai and others Vs. Padmalatha and another, AIR 2009 SC 1433.

5. Contention is that after the trial has commenced, an amendment should not be allowed. It is, therefore, prayed that the

impugned order be quashed and set aside.

6. Learned Advocate Mr.Chaudhari, appearing on caveat for the contesting respondent No.3, submits that the Tribunal will have to consider the genuineness and the probative value of the muster roll produced by the petitioner/Management as against the documents produced by him. His consistent contention is that he was orally terminated on 31/07/2012. Per contra, the contention of the petitioner that respondent No.3 was not in employment after the conclusion of the academic year 2012, is to be looked into. The date as mentioned in the appeal 23/06/2012, as regards refusal by the petitioner to permit respondent from signing the muster roll, may not be as vital as are the respective contentions of the petitioner and respondent No.3 in relation to the actual date of oral termination in order to assess whether the appeal is time barred. The fact that respondent No.3 is not in employment, is not in dispute.

7. Having heard the learned Advocates for the respective sides, I do not find that any alteration of the date 23/06/2012 or 25/06/2012 or 30/06/2012 would be very much vital or significant since the appeal has been filed on 30/08/2012. Limitation period is of 30 days. In the event of any delay, the same can be considered for

condonation subject to the justification.

8. As such, I do not find that the date of alleged cause of action from the point of view of respondent No.3 as well as from the contentions of the petitioner could be materially affected by the impugned order.

9. Needless to state, the petitioner is at liberty to file an additional written statement pursuant to the amendment, if felt necessary. It is, in these circumstances, that the judgment of the Apex Court in the case of Vidyabai (supra), under Order 6 Rule 17 of the CPC would not be applicable to the case of the petitioner.

10. For the above stated reasons, the petition is dismissed.

(RAVINDRA V. GHUGE, J.)