IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6802 OF 2015

Sadik Khureshi S/o Babamiya Khureshi,
Age-43 years, Occu-Service,
R/o At Post : Wida, Taluka : Kaij,
Dist.Beed PETITIONER

VERSUS

1. Idda Shikshan Sanstha,
Through its Secretary,
R/o At Post : Wida, Taluka Kaij,
Dist.Beed,

2. The Head Master,
Shri Hanuman Secondary and Higher
Secondary School, Wida,
R/o At Post : Wida,
Taluka : Kaij, Dist. Beed,

3. The Education Officer (Secondary),
Zilla Parishad, Beed. RESPONDENTS

Ms.Sandhya Patil h/f Mr.S.S.Thombre, Advocate for the petitioner.
Mr.R.J.Godbole, Advocate for respondent No.1 and 2.
Mr.V.G.Shelke, AGP for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the impugned order dated

09/03/2015 delivered by the School Tribunal, Aurangabad, by which application Exh.12, seeking an amendment to the memo of the appeal, has been partly allowed.

3. I have considered the submissions of the learned Advocates for the petitioner and the respondents.

4. Appeal No.11/2013 has been filed by the petitioner challenging his oral termination alleged to be dated 05/04/2013. The respondent / Management filed its written statement and took up a specific stand that the petitioner has been actually terminated by an order dated 29/04/2013.

5. Since the petitioner became aware of the written order of termination, he moved an application Exh.12 under Order 6 Rule 17 of the CPC, seeking an amendment to be carried out on the following grounds :-

(a) Educational qualification B.Ed. be replaced by his actual qualification B.P.Ed.
(b) Date of appointment dated 07/10/1999 be replaced with the correct date of appointment 10/07/1999.
(c) Termination date as mentioned 05/04/2013 be replaced by the actual date of termination dated 29/04/013.

(d) Some other amendments were also sought as have been set out below paragraph No.2 of the impugned order.

(e) Prayer clause "A(1)" was sought to be introduced so as to seek quashing of the written order of termination dated 29/04/2013.

6. By the impugned order, the School Tribunal had partly allowed application Exh.12 in the sense that all the proposed amendments have been allowed, except the change in the date of termination. The respondent/Management has not challenged the impugned order to the extent of grant of the amendment application. I am, therefore, not required to go into that portion of the amendment application, which has been allowed.

7. Learned Advocate for the petitioner has canvassed that the date of termination 05/04/2013 was averred in the appeal since the petitioner was of the impression that he has been orally terminated from the said date. As he came to know that the date of termination is 29/04/2013, which is a written order, he sought to seek an amendment so as to prosecute his appeal. Said request has been refused on the ground that the nature of the cause of action would be altered.

8. Mr.Godbole, learned Advocate for the Management has strenuously supported the impugned order. Contention is that once the petitioner has averred a date of termination, notwithstanding that the said date is imaginary, the petitioner cannot be permitted to amend the appeal memo merely because the respondent indicated the actual date of termination. The appeal will have to be dismissed on the ground that there was no oral termination on 05/04/2013. He, therefore, prays that this petition be dismissed with costs.

9. I find that the School Tribunal has adopted a pedantic approach. The petitioner put forth a case of oral termination dated 05/04/2013. Had the respondent / Management contended that there is no termination at all, the Tribunal would have been left with no cause of action to be dealt with. When the Management has taken a specific stand on the basis of a written order of termination dated 29/04/2013 and when the petitioner has sought to amend the appeal by incorporating the said date so as to question his purported unlawful termination, in my view, the cause of action would not have changed. Expecting the petitioner to pursue an appeal on a wrong date of termination, would not meet the ends of justice.

10. In the light of the above, this petition is allowed. The order of

the School Tribunal disallowing the amendment to the extent of incorporating the actual date of termination 29/04/2013, is quashed and set aside. Application Exh.12 is allowed.

11. The petitioner shall carry out the amendment so as to incorporate the date of termination 29/04/2013, as has been prayed for in application Exh.12, within a period of 4 (four) weeks from today. In the event, the respondent / Management desires to submit an additional written statement pursuant to the amendment, it shall be at liberty to do so.

12. However, since the appeal was filed with regard to the oral termination dated 05/04/2013 and as the petitioner desires to prosecute the appeal on the basis of the termination order dated 29/04/2013, the School Tribunal shall deprive the petitioner of monetary benefits for the period 05/04/2013 upto 28/04/2013 in the event the appeal is allowed. This shall however not be construed as a break in service.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)