

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 11 OF 2016

IN

WRIT PETITION NO. 759 OF 2014

MRS.KAVITHA NAIR.

... Applicant

Versus

STATE OF GOA, THROUGH THE
SECRETARY (EDUCATION) GOVT. OF GOA
AND 2 ORS.,

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the applicant.

Mr. P. Faldessai, Additional Govt. Advocate for the respondent No.1.

Mr. D. Pangam, Advocate for the respondent No.3.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 21st January, 2016

P.C.:

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the applicant, Mr. P. Faldessai, learned Additional Govt. Advocate appearing for the respondent No.1 and Mr. D. Pangam, learned Counsel appearing for the respondent No.3. This is an application for amendment of the writ petition, inter alia, to incorporate some additional grounds to challenge the selection of the respondent No.3.

2. At the outset, Mr. Pangam, learned Counsel appearing for the respondent No.3 raises an objection to the manner in which the draft

amendment has been proposed as, according to him, in case such an amendment is granted it will not facilitate a proper reply by the respondent No.3 as the paragraphs therein have not been appropriately numbered. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the applicant submits that the applicant/petitioner shall accordingly give appropriate numbers to the paragraphs in the draft amendment petition, with copies thereof to the learned Counsel appearing for the respondents.

3. Mr. D. Pangam, learned Counsel appearing for the respondent No.3 raises a strong objection to the proposed amendment on the ground that the proposed amendment would change the nature of the petition and allow the petitioner to raise the additional grounds which are not even in the original petition. The learned Counsel further points out that the petitioner is seeking to incorporate the pleadings in the petition that Konkani was not an essential requirement for the said selection process. The learned Counsel further submits that this was not the case of the petitioner in the original petition and according to him, it would change the nature of the petition. The next objection pointed out by Mr. Pangam to the proposed amendment is that the petitioner is now seeking to challenge the equivalence certificate issued by the University which, according to the respondent No.3, is not in accordance with law. The learned Counsel points out that these aspects were not raised by the petitioner in the original petition.

4. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the applicant/original petitioner, however, points out that in the rejoinder which was filed by the petitioner to the affidavit-in-reply filed by the respondent No.3, all such contentions were raised by the petitioner. The learned Senior Counsel further points out that the petitioner has filed the above amendment application out of abundant caution as, according to her, there was a technical objection raised by the respondent No.3 that such averments were not found in the original petition. The learned Senior Counsel further points out that the subject-appointment order was issued in June, 2015 during the pendency of the petition.

5. We have considered the rival contentions and we have also gone through the record. On perusal of the averments, namely the averments at paragraph 19(C) of the petition, we find that the allegations sought to be raised are not inconsistent with the petition, with regard to the knowledge of Konkani. As far as the contention of Mr. Pangam, that the next ground sought to be raised by the petitioner is hopelessly delayed which would cause prejudice to the respondent No.3 in case such an amendment is incorporated, we find that this aspect can be kept open to be examined on its own merits after the respondent No.3 files an additional reply to the amended petition. However, on perusal of the relief sought by the petitioner which, inter alia, includes a challenge to the appointment of the

respondent No.3 in the selection process, we find that the allegations sought to be incorporated, prima facie, appear to be in the nature of additional grounds in support of such a relief.

6. In such circumstances, in any event, whilst granting leave to amend the petition, the veracity or otherwise of such allegations cannot be examined by this Court at this stage of granting leave to amend. By keeping open all such contentions, we find it appropriate, in the interest of justice, to grant leave to amend the petition as prayed for.

7. Hence, the application is allowed. The amendment to be carried out within one week, with copies thereof to the learned Counsel appearing for the respondents. The respondents are at liberty to file an additional reply, if any, within two weeks thereafter, with copies thereof to the learned Counsel appearing for the petitioner. The application stands disposed of accordingly.

Place the writ petition for final hearing after the pleadings are complete.

K. L. WADANE, J.

F. M. REIS, J.

ssm.