

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.311 OF 2017**

Indian Education Society	...Petitioner
Versus	
Subhash Atmaram Parab & Anr.	...Respondents

WITH**WRIT PETITION NO.321 OF 2007**

Subhash Atmaram Parab	...Petitioner
Versus	
Indian Education Society & Ors.	...Respondents

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Mr.Kiran Bapat i/b Nandini G.Menon for Petitioner in Writ
Petition No.311 of 2017 for Respondent No.1 in Writ
Petition No.321 of 2017 Mr.S.N.Deshpande a/w Ms. Nivedita
S.Deshpande and S.P.Munshi for Petitioner in Writ Petition
No.321 of 2017 for Respondent No.1 in Writ Petition
No.311/2017

CORAM : SMT. ANUJA PRABHUDESSAI, J.**DATED: 21st JUNE, 2017.****P.C.:-**

1. Heard the learned Counsel for the Petitioner and Respondent in respective Petitions. The Petitioners in the respective Petitions have challenged the order dated 25/10/2016. By the impugned order dated 25/10/2016, the learned Presiding Officer, of Industrial Tribunal, Mumbai partly allowed the application for amendment and permitted

the Petitioner in Writ Petition No.311 of 2017 to amend the Written Statement, except clauses a', 'b', 'pp', 'qq','rr' and 'ss' of the Schedule of the application. The Petitioner in Writ Petition No.311 of 2017 has challenged the part of the order whereby the learned Judge has declined leave to incorporate the averments in the above stated clauses, whereas, the Petitioner in Writ Petition No.321 of 2017, has challenged grant of the amendment application.

2. A plain perusal of the impugned order reveals that the learned Judge, has rejected the amendment incorporated in scheduled clauses a, b, pp, qq, rr and ss mainly on the ground that the averements sought to be incorporated under these clauses are legal submissions which are vague and not relevant. Needless to state that the Court has vast powers to allow amendment of the pleadings even at belated stage, if such amendment is necessary to resolve the real controversy between the parties. In the instant case, the Respondent/Complainant was permitted to produce additional documents. The said documents were merely produced to mainly draw the parity with the employees of the school. A perusal of the amendment application clearly indicates that in answer to the parity sought to be drawn by the Respondent/complainant, the petitioner had by the said amendment sought to bring on record relevant facts so as to draw a distinction

between the school employee vis-a-vis the serviced rendered by the Respondent, who was stated to have been appointed as a watchman in a charitable trust. In this context, the averments sought to be incorporate were relevant to decide the controversy.

3. The grounds on the maintainability of the complaint, could not have been raised without effecting amendment of the Written Statement. Even otherwise, no prejudice would be caused to the Respondent/Complainant since the cross-examination of the witness was not concluded and the Respondent would have ample opportunity to refute the same by filing an additional affidavit and also cross-examining the witness on the said issue. Hence, the learned judge was not justified in declining the amendment of the written statement as proposed in clauses a, b, pp, qq, rr and ss of the schedule.

4. The Petitioner in Writ Petition No.311 of 2017 had also sought leave to amend the affidavit. Suffice to say that it is not permissible to amend the affidavit. Nevertheless the Petitioner is at liberty to file an additional affidavit as regards the amended pleadings.

5 As regards the Petition No.321 of 207, as stated earlier the amendment was necessitated in view of the production of additional

documents and also in view of attempt made by the Petitioner in this Petition to draw a parity with the school employees. In view of above, the Writ Petition No.321 of 2017 has no merits.

6. In the light of the above, Writ Petition No.311 of 2017 is allowed. The Petitioner in this Petition is permitted to carry out the amendment as proposed in Clauses a, b, pp, qq, rr and ss of the schedule. The Petitioner is also permitted to file an additional affidavit.

7. All the points and contentions of the parties on merits of the amendment are kept open. The parties will be entitled to lead such additional evidence as well as rebuttal evidence in connection with the amendment to the written statement. The Petitioner in Writ Petition No 311 of 2017 shall pay costs to the Respondent quantified at Rs.15,000/- within a period of two weeks from the date of the order.

8. Writ Petition No.321 of 2017 stands dismissed.

(ANUJA PRABHUDESSAI, J.)