

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4931 OF 2017

Santosh Y. Gawade

.. Petitioner

Vs.

Phule Education Society & Ors.

.. Respondents

Mr. Laxman S. Deshmukh for the petitioner.

Mr. Anand Shalgaonkar i/b. Rohan V. Karkande for respondent nos.1 & 2.

Ms. Vaishali Nimbalkar, AGP, for respondent nos.3 and 4.

CORAM : A.K. MENON, J.

DATED : 27TH FEBRUARY, 2018.

P.C. :

1. By this writ petition, the petitioner has challenged order dated 16th December, 2016 passed on Exhibit U-34 rejecting an application seeking amendment to the cause title to implead first respondent before the School Tribunal. The main order dated 10th March, 2017 is also under challenge.
2. By the order in the appeal, the School Tribunal framed six questions for determination. It found in favour of the petitioner on point nos.1, 2 and 3 holding that his appointment was legal and valid and by following due process of law. On point no.2, the Tribunal held in favour of the petitioner inasmuch as respondent nos.1 & 2 failed to prove that their resignation had been tendered. On point no.3, while

holding in favour of the petitioner, it was found that the termination of the services of the petitioner was not legal. However, in point no.4 the Tribunal held that the appeal is not maintainable since the management was not impleaded. I may observe here that the relief sought vide Exhibit 34 was impleading of the management. Thus, the Tribunal has proceeded to deny final reliefs to the petitioner on the basis of its own order dated 16th December, 2016 declining impleadment of the first respondent management. The order to the extent it rejects relief on account of non-joinder, in my view, unsustainable.

3. On behalf of the respondent, it is contended that the order dated 16th December, 2016 had not been challenged at the appropriate time and hence the impugned order dated 10th March, 2017 calls for no interference. There is no merit in the submission inasmuch as Exhibit 34 sets out the reasons why the management was not impleaded then. The Tribunal appears to have been constrained by the fact that Exhibit U-34 had been rejected.
4. Having heard the learned counsel for the parties, in my view, the impugned order rejecting relief is unsustainable, the aspect of grant of final relief should be remanded to the Tribunal for a decision in accordance with law. Accordingly, I pass the following order:-
 - (i) Impugned order dated 16th December, 2016 is hereby set aside. The

petitioner is allowed to implead the management in appeal no.39 of 2014 before the School Tribunal, Pune.

(ii) The Tribunal shall permit the amendment to be carried out within a period of two weeks from furnishing an authenticated copy of this order.

(iii) Impugned order dated 10th March, 2017 to the extent it holds that the appeal is not tenable for non-joinder is hereby set aside. The Tribunal shall hear the parties on relief to be granted.

(iv) Let the parties to appear before the Tribunal on 19th March, 2018.

(v) The Tribunal is directed to dispose of the appeal within a period of four weeks from 19th March 2018.

(vi) Petition is disposed of in the above terms.

(A.K. MENON,J.)