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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.719 OF 2018

The President,

Shri Shivaji Maratha Society and Anr.

.. Petitioners

Vs.

Sou. Sulbha Surendranath Modhe

.. Respondent

Mr. Prathamesh B. Bhargude for the petitioners.

Mr. Satyaajeet A. Rajeshirke for the respondent.

CORAM : A. K. MENON, J.

DATED : 28th MARCH, 2018.

JUDGMENT:-

1. By this writ petition, the petitioner society being aggrieved by an order dated 9th November, 2017 rejecting an application filed by the respondent for producing additional documents has approached this Court under Article 227 of the Constitution of India, inter alia, seeking that the impugned order be quashed and set aside and for interim stay of the proceedings in Appeal no.33 of 2017 pending before the School Tribunal, Pune.
2. Considering the narrow controversy, the petition being is disposed of finally. The facts in brief are as follows:-

The petitioner is the society registered under the Societies Registration Act and it runs a School and Junior College. Respondent was appointed as an Assistant Teacher with effect from 11th December, 1982. She was a permanent employee. From 8th June, 1993, she was appointed as Assistant Head Master in L.R. Shinde High School, Aranyeshwar. She was then promoted to the post of Head Master with effect from 1st May, 1999 and transferred to the petitioners school.

3. On 12th December, 2012 a show cause notice was issued to the respondent since she had failed to recover the fees for the 12th Standard unaided commerce division for a continuous period from 2009-2010 to 2012-2013 allegedly causing loss of about 10,84,000/- to the petitioners because the entire batch of students had passed out the School without their fees not being collected. In relation thereto, respondent issued a letter dated 1st October, 2012 in which the respondent admitted that for academic year 2009-2010 for 12th Standard unaided commerce division, fees had remained to be collected and which was to be collected. Thereafter a charge-sheet was issued, an enquiry conducted and the report prepared. After seeking explanations from the respondent a termination order came to be issued on or about 23rd September, 2014 leading to the appeal before the School Tribunal.

4. The petitioner reportedly filed a detailed reply to the appeal and during the course of the final arguments, the respondent is believed to have taken up a contention that she was not liable to collect the fees from the students of unaided division of 12th Standard in absence of specific fee fixation by the petitioners. In view of this new plea taken up, the petitioner sought to introduce additional documents by filing application Exhibit U-52 in an attempt to establish that the matter of collection of fees was known to the respondent. The Tribunal, however, rejected the application on the basis that the petitioners application did not meet the requirement of Order 41 Rule 27. Mr. Bhargude, the learned counsel for the petitioner contended that additional evidence was permissible since it was necessary for effective adjudication of the appeal though the appeal is described as such under the MEPS Act, it is permissible for the parties to file additional evidence if required. He therefore submitted that the impugned order be set aside.
5. On behalf of the respondent, Mr. Rajeshirke, the learned counsel for the respondent submitted that the application Exhibit U-52 was one more attempt to delay the proceedings. According to him, the documents now sought to be introduced were always available to the petitioners and ought to have been introduced at the time of the enquiry which they did not do. He submitted that these documents were entirely within the

control of the petitioners and there was no reason for the appellant-petitioner not to produce the same at the relevant time. He made a grievance to the effect that the petitioners had the benefit the respondents submissions at the final hearing of the appeal in April 2016 and had thereafter proceeded to make their submissions over 17-18 dates, yet, the application for producing the additional document was made only on 8th September, 2017. He submitted that this is the only a delaying tactic and it is incorrect to state that the argument about fees not having been pleaded was taken up only during arguments. He further submitted that there is no occasion to interfere with the impugned order and the petition requires to be rejected.

6. I have heard the learned counsel for the parties and I have perused the impugned order and relevant annexures. The application Exhibit 52 appears at Exhibit J and seeks permission to produce on record the admission form and prospectus for the centralized admission for 11th Standard issued by the Deputy Director of Education and the receipt books for the year 2009-2013 for 11th Standard unaided commerce division. The application was supported by an affidavit made by the Principal of the School in which it is stated that the appeal was filed initially for setting aside the order of termination but on account of superannuation, the appeal memo was amended to seek only back wages

upto the age of superannuation. Reference is made to the letter of 1st October, 2012 whereby she admitted that fees in respect of the unaided commerce division of 12th Standard remained to be collected and that it was contended during arguments that the fee was not fixed and that in the absence of fixation of fees she was not liable to be collect such fees.

7. In view of these allegations it was contended that the receipt books and other documents in the unaided division may be permitted to be produced because these records have been recently traced out by the newly appointed Head Master and the staff and that no prejudice will be caused to the petitioner if these documents are permitted to be produced. It is also contended that since the respondent was Headmistress of the School at the relevant time, she is familiar with these documents and it is material for the adjudication of the appeal. Copy of these documents were also served upon the respondent in their reply application Exhibit U-52. The maintainability of the application is questioned on the basis that this is not the proper stage for production of documents and that this is a case of termination after enquiry and it is not permissible. It was contended that the documents were always in the custody of management and ought to have been produced earlier and now the petitioner was seeking to fill up lacuna in their case.
8. In my view, the additional documents ought to have been permitted in

the facts of the present case because the contention taken up contradicts the stand of the respondent in her letter dated 1st October, 2012 inasmuch as in her letter she admitted that these remained to be collected. It was not her case that the fees were not collected since fees were not fixed. The contention that the fees had not been fixed and therefore she did not collect the fees has been taken up for the first time in her submissions. It is necessary in my view to ascertain the true facts unless there was any serious prejudice was being caused to the respondent to permit the additional documents to be brought on record. In the facts of the present case, the application exhibit U-52 ought to have been allowed. No doubt, the document in question have been in the custody of the School and could have been produced earlier if such statement had been anticipated in view of the fact that letter dated 1st October, 2012 it did not specify that the fees were not collected for want of fees fixation. Opposition to Exh U-52 is only on the ground that the application has made belatedly since all these documents getting back in 2009-2010 were in the custody of the School and ought to have been filed before the enquiry proceedings.

9. In my view it is appropriate that the application be allowed so as to enable the School Tribunal to consider the rival contentions across the entire factual background. It is pertinent to note that the respondent has

not contested the application on the basis that the documents are forged or fabricated or they did not exist and it was not appropriate in the facts of the case to shut out vital evidence. No doubt, this admission of these documents may cause some further delay in the disposal of the appeal but that by itself is not reason enough to deny an opportunity to the petitioner to make out a case. In the circumstances, the impugned order requires to be set aside. I therefore pass the following order:—

- (i) Subject to payment of costs of Rs.10,000/- to the respondent within a period of three weeks from today, the impugned order is set aside and application Exhibit U-52 is allowed
- (ii) If costs are not paid, this order will stand vacated, the impugned order will stand restored and the petition will stand dismissed.
- (iii) The petition is disposed of in the above terms.

(A. K. MENON, J.)