

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1629/2019

Shri Kavi Kalidas Shikshan Sanstha & anr.

..VS..

Sharda D/o Laxman Nandeshwar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.A. Gode, Advocate for the petitioner(s)
Shri B.H. Shambharkar, Advocate for the respondent

CORAM : Z.A.HAQ, J.

DATED : 04/03/2019

Heard.

The petitioners (management) have challenged the order passed by the School Tribunal by which the application (Exh. 28) filed by the respondent – employee seeking permission to amend the memorandum of appeal consequent to the amendment made by the petitioners in the written statement, is allowed.

Earlier, the School Tribunal had dismissed the appeal filed by the respondent – employee. The order passed by the School Tribunal was challenged by the respondent – employee before this Court in Writ Petition No. 3428/2004. By the judgment delivered on 21/04/2004, this Court maintained the findings recorded by the School Tribunal on certain issues, however, remanded the matter to the Tribunal for recording its findings on the following two issues:-

- (i) Whether the management proves that service rendered by the respondent was unsatisfactory ?
- (ii) What relief the respondent is entitled to ?

After remand, the petitioners amended their written statement to bring on record the facts and documents to discharge the burden placed on them, of proving that the service rendered by the respondent was unsatisfactory. After the petitioners amended their written statement, the respondent – employee filed the application (Exh. 28) seeking permission to amend the memorandum of appeal.

According to the petitioners, considering the amendment proposed by the respondent – employee as consequential amendment, the respondent – employee can be permitted to incorporate the proposed amendment upto para no. 12-M. According to the petitioners, the amendment proposed by the respondent – employee in para nos. 12-N to 12-T cannot be permitted as the respondent – employee is seeking to bring on record the facts which are not relevant for deciding the two issues framed by this Court and on which the School Tribunal has to record its findings.

After going through the judgment delivered by this Court in Writ Petition No. 3428/2004, the application filed by the petitioners seeking permission to amend the written statement and the application (Exh. 28) filed by the respondent – employee, I find that by the proposed amendment, the respondent – employee is rebutting the claim of the petitioners as made by the petitioners by the

amendment. It cannot be said that the respondent – employee is seeking to bring on record irrelevant and unwarranted facts and material. The Tribunal has rightly appreciated the controversy and has not committed any error of jurisdiction by allowing the application (Exh. 28) filed by the respondent – employee.

I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

While disposing Writ Petition No. 3428/2004, this Court had directed the Tribunal to decide the appeal within 8 months from the date of appearance of the parties.

Considering the facts of the case, the Tribunal is directed to dispose the appeal till 16/04/2019.

JUDGE

Ansari