

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

937 CIVIL APPLICATION NO. 1340 OF 2021
IN WP NO. 3625 OF 2011

JAWAHAR EDUCATION SOCIETY THR. SEC. DATTATRAYA
GANPATAPPA ITAKE AND ANR
VERSUS

GURUDATTA TUKARAM KARAD AND ANOTHER

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Advocate for Petitioners : Mr V. V. BhavthankaR
Advocate for Respondent no.1 : Mr. S. M. Kulkarni

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CORAM : AVINASH G. GHAROTE, J.

DATED : 3rd AUGUST, 2021.

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PER COURT :

1. The matter has been listed today for final hearing at which point of time, Mr. Bhavthankar, learned counsel for the petitioner has pressed Civil Application No. 13040 of 2021, in to service. By the present application an amendment is sought to be made in the petition, by inserting averments, that the initial appointment of the respondent no.1, was subject to the approval of the Joint Director, Higher Education, there was no approval and also, the appointment order dated 03/09/2001 as Library Clerk of the respondent no.1 was for a period of one year on non-grant basis and there were only two sanctioned posts of library clerks which were already filled up and therefore, the third post claimed by the respondent no.1 was not sanctioned.

2. It is material to note that the present petition, arises out of the punishment imposed upon the respondent no.1, in departmental inquiry proceedings held against the respondent no.1 on account of in subordination and due to which the petitioner was recommended for dismissal by the inquiry report dated 09/06/2008 and was terminated by the order dated 30/09/2008. It is this order of termination, which is based upon the inquiry report dated 09/06/2008, which has been challenged before the College Tribunal by way of an appeal in which, by judgment dated 08/02/2011, reinstatement without back wages has been directed. The management has challenged the judgment relating to reinstatement, whereas the respondent no.1 has challenged the judgment refusing back wages. This is how the matter is before this court.

3. The above position clearly indicates that the issue about the legality or validity of the appointment of respondent no.1, was never the subject matter of the departmental inquiry nor was the termination on that count. So also this was never an issue before the College Tribunal. That being so, the same cannot be permitted to be raised for the first time in this petition and the impugned judgment of the College Tribunal tested on such amended averments.

4. Mr. Bhavthankar, learned counsel for the petitioner places his reliance on ***C.C. Pvt. Ltd., Vs. Manohar-Lal, 2017 (5) Mh.L.J. 195***, in

which, it has been held that the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at first and second appellate stage with leave of the court provided amendment proposed is *bonafide*, relevant and necessary for deciding rights of parties involved in lis. There cannot be any quarrel with the proposition laid down, however, when in the instant matter, the amendment sought to be raised was never the subject matter of the inquiry, nor the termination or the challenge before the College Tribunal, the same is clearly *de'hors* the subject matter of the proceedings.

5. The application therefore, in my considered view is clearly not tenable and is rejected.

(AVINASH G. GHAROTE, J.)

vsm/-