

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

936. CIVIL APPLICATION NO.2348 OF 2021
IN WP/1686/2016
WITH CA/3025/2021 IN WP/1686/2016
WITH CA/7560/2018 IN WP/1686/2016

TUKARAM DEVRAO GARJE
VERSUS
THE EDUCATION OFFICER SECONDARY
ZILLA PARISHAD BEED AND OTHERS

Mr R.I. Wakade, Advocate for applicant
Mr. R.D. Sanap, Asstt. Govt. Pleader for respondent No.1
Mr. B.V. Thombre, Advocate for respondents No.2 & 3

CORAM : N.J. JAMADAR, J.

DATE : 17th March, 2021

PER COURT :

Heard the learned Counsel for the parties.

2. The learned Counsel for respondents No.2 & 3 has tendered an affidavit-in-reply. The affidavit in reply is taken on record. Copy is served on the Counsel for the applicant.

3. This application is preferred by the petitioner seeking permission to incorporate amendment in the writ petition by adding paragraphs No. 10-A to 10-F and also to annex certain relevant documents.

4. The petitioner has assailed the judgment and order dated 29th September 2015 passed by the School Tribunal, Aurangabad in Appeal No. 34 of 2011 preferred by the petitioner, challenging his termination from employment with effect from 17th July 2011, whereby the appeal came to be dismissed.

5. On 5th October 2016 this Court issued Rule and directed that the services of respondent No.4, who was allegedly appointed after verbally disengaging services of the petitioner, shall be subject to the result of the writ petition and shall not be regularized without the leave of this Court or till the disposal of the writ petition.

6. In the application, it is asserted that during the pendency of the instant petition, subsequent developments have occurred and, therefore, it is necessary to bring those facts on record. The petitioner further asserts that the petitioner has obtained certain documents by invoking the provisions contained in the Right to Information Act and those documents bear upon the controversy at hand.

7. An affidavit-in-reply is filed on behalf of the respondents No.2 & 3. The respondents No.2 & 3 have resisted the application for amendment on the ground that the petitioner is seeking to

substitute a new case as the petitioner had already amended the appeal memo before the School Tribunal. The application suffers from delay and latches. Moreover, the documents, which are sought to be annexed to the petition by way of amendment, are false.

8. Heard the learned Counsel for the applicant and the learned Counsel for respondents No.2 & 3.

9. A perusal of the proposed amendment indicates that the petitioner intends to bring on record certain circumstance, which petitioner became aware of, after obtaining copies of documents from the authorities under the Right to Information Act.

10. The submission on behalf of the respondents No.2 & 3 that there is delay in seeking amendment, even after obtaining the copies of those documents, may carry some substance. However, that cannot be the overriding consideration while appreciating the justness of prayer for amendment. The respondents can demonstrate unreliability, or for that matter, the falsity of the documents, which the petitioner proposes to rely upon.

11. At this juncture, the Court does not find any justifiable reason to decline the prayer for amendment in the petition. The

respondents will have full opportunity to meet the case which the petitioner asserts by way of amendment on factual as well as legal premise.

12. Hence the following order.

O R D E R

- (I) The application stands allowed in terms of prayer clause (B).
- (II) The petitioner shall carry out necessary amendment within a period of four weeks and serve copy of amended petition on all the respondents.
- (III) The respondents are at liberty to file an affidavit-in-reply *qua* the amended petition, within a period of four weeks thereafter.
- (IV) List the matter on 9th June 2021.

(N.J. JAMADAR)
JUDGE