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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1700 OF 2024 (F)

Dr. Satyavan D. Naik, son of Dattaram Naik, 55 years of age, Former Principal of Shree Kamaxidevi Homeopathic Medical College and Hospital, Shivshail, Shiroda-Goa r/o H. No. 458, Pequeno, Neura, Neura, Tiswadi, Goa.

... PETITIONER

Versus

1. Shree Kamaxidevi Homeopathic Medical College and Hospital, Through its Managing Committee, Represented by its Chairman/ Secretary having office at Shivshail, Shiroda, Goa – 403 103.
2. Shivgram Education Society, Through its Chairman, having office at Shivshail, Shiroda, Goa – 403 103.
3. The Goa University, Through its Registrar, having office at Taleigao Plateau, Goa, 403 206.
4. The Director, Directorate of Higher Education, Government of Goa, SCERT Building, Alto Porvorim, Goa.
5. The State of Goa, Through its Chief Secretary, Secretariat, Porvorim, Goa. ... RESPONDENTS

Mr. Nigel Costa Frias with Ms. Barbara Andrade, Advocates for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny, Advocate for Respondent No. 1.

Ms. A. Agni, Senior Advocate with Ms. Afrin Harihar Khanm, Advocate for Respondent No. 3.

Ms. Sulekha Kamat, Additional Govt. Advocate for Respondent Nos. 4 and 5.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 19th SEPTEMBER 2024

ORAL JUDGMENT:

1. Heard Mr. Nigel Costa Frias for the Petitioner, the learned Senior Counsel Mr. Lotlikar appearing with Ms. Kenny for Respondent No. 1, Ms. Agni, the learned Senior Counsel appearing with Ms. Harihar for Respondent No. 3 and the learned Additional Government Advocate for Respondent Nos. 4 and 5.
2. Rule. Rule made returnable forthwith.
3. The matter is taken up for final disposal at the admission stage with the consent of the parties.
4. The legality or otherwise of the order passed by the College Tribunal is challenged in the present proceedings. By the impugned order dated 24.06.2024 the Tribunal rejected the Application for amendment of the memo of appeal filed by the Petitioner.

5. Mr. Costa Frias submits that though the matter was partly argued, it was not closed for orders. At the stage of rejoinder to the arguments advanced by the Respondents, an Application was filed for amendment of the memo of appeal thereby seeking to add certain facts and grounds challenging the impugned order.

6. Mr. Costa Frias would submit that the only ground on which the amendment Application is rejected is that the same is filed at a belated stage after part arguments were advanced.

7. Mr. Lotlikar appearing for Respondent No. 1 would submit that the Appeal was filed only with one ground and at the time of final arguments, a copy of the judgment of the Apex Court was produced which clearly observes that such ground was not available to the Petitioner. He submits that to counter such argument, the Petitioner now filed an amendment Application thereby bringing many facts as well as grounds, which have been rightly rejected by the Tribunal.

8. Ms. Agni appearing for Respondent No. 3 would submit that the ground of Appeal could be allowed at any stage of the proceedings and in this regard, she placed reliance on the decision of the Apex Court in the case of **State of Maharashtra Vs.**

Hindustan Construction Company Limited, (2010) 4 SCC 518.

9. It is no doubt true that the amendment Application was filed at the time of advancing final arguments in the matter. It is also true that the amendment consists of several paragraphs containing certain facts as well as grounds, which the Petitioner is now desirous of adding in the memo of appeal. However, the learned Tribunal in its order simply rejected such Application on the ground that it was filed at the time of advancing final arguments and that too, at the stage of rejoinder of arguments. The Tribunal also rejected it on the ground that inadvertence cannot be considered as a ground for considering the amendment Application.

10. It is clear from the impugned order that the Tribunal has failed to consider the settled proposition of law laid down by various Courts with regard to the amendment Application and more particularly, in considering the grounds in the Appeal. The rejection of the Application should be on sufficient grounds and not only because part arguments were advanced. It is clear from the record that the Application was rejected basically on the ground that it was filed at the stage of final arguments and even

part arguments were advanced. Such ground is clearly against the settled proposition of law. The Tribunal ought to have considered the amendment Application on merits in order to find out whether such amendment is necessary to decide the Appeal effectively.

11. The option is only to remand the matter to the Tribunal by quashing the impugned order so that the Application for amendment could be considered on its own merits.

12. It is made clear that this Court has not gone into the proposed amendment and whether the same is required for deciding the Appeal effectively. The learned Tribunal shall consider the amendment Application after hearing the parties afresh and decide it in accordance with law. Accordingly, the impugned order is quashed and set aside. The amendment Application is restored to the file of the Tribunal with a direction to hear the parties afresh and decide such Application on its own merits. All contentions of all parties are left open.

13. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.