


MHSS270000032018 	Appeal No. 12/2018 Bansilal Madhukar Rathod - Vs - Samat Dada Shikshan Sanstha, Taluka Mangrul Pir and others
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ORDER PASSED BELOW EXH. 43

(Passed on 11.03.2026)

- 1] This is an application for amendment of appeal memo.
- 2] Perused the application (Exh. 43) and reply (Exh. 50) of the respondent No. 1 and 2. Perused the judgment of the Hon'ble High Court of Bombay, Bench at Nagpur dated 16.10.2025 passed in Writ Petition No.4043/2022.
- 3] Heard learned counsel Ku. Darshana S. Chawande and Ku. Krishna L. Patel for the appellant and learned counsel Shri Prashant S. Raut for the respondent No. 1 and 2.
- 4] The appellant had preferred this appeal being aggrieved by the his alleged oral termination from service on 29.09.2018. This Tribunal, by judgment and order dated 20.12.2021 allowed the appeal and directed the respondents to reinstate the appellant with continuity and 100% backwages.

5] The respondent Management challenged the said order before the Hon'ble High Court by preferring writ petition No. 4043/2022. By judgment dated 16.10.2025, the Hon'ble High Court was pleased to partly allow the petition. While upholding the reinstatement and continuity of service, the Hon'ble High Court quashed the award of backwages and remanded the matter to this Tribunal "to decide the issue of backwages afresh in accordance with law" the operative portion of the Hon'ble High Court's contained in paragraph 15(i), read as under :

Writ Petition is partly allowed. The judgment and order dated 20.12.2021 passed by the learned Presiding Officer, School Tribunal, Amravati Division, Amravati in Appeal STA No. 12/2018 is maintained to the extent the termination of respondent No. 1 is set aside by the learned Tribunal and directions for reinstatement in service with continuity are issued. The order is quashed with respect to award of back wages. The matter is remanded to the learned School Tribunal to decide the issue of back wages afresh in accordance with law.

6] Pursuant to the said remand, the appellant has filed the present application seeking to amend the appeal memo by inserting paragraph 12A and a new prayer clause (iii-A). Through the proposed amendment, the appellant seeks :-

- Para 12A : To plead that during the entire pendency of proceedings before this Tribunal (from 2018) and before the High Court (from 2022 to 2025), he was not at all gainfully employed and therefore, while considering the issue of back wages afresh, he is entitled to 100% back wages.

- Prayer Clause (iii-A) : To seek a direction to the Management to grant all consequential pecuniary benefits with due back wages, as if his services were never terminated.

7] Learned counsel Kum. Darshna Chawande submitted that :

- The original appeal memo inadvertently did not contain a specific pleading regarding gainful employment and a separate prayer for back wages.
- Since the Hon'ble has remanded the matter specifically on the issue of back wages, it is necessary to clarify the pleadings so that the Tribunal can adjudicate the issue effectively.
- The appellant ought to be given an opportunity to plead and prove that he was not gainfully employed.

8] Per contra, learned Advocate Shri Prashant Raut fo the respondent No. 1 and 2 vehemently opposed the application by making following submissions:

- The original prayer clause (ii) already seeks “all benefits and back wages in service on the post of Assistant Teacher”. The proposed amendment is nothing but a repetition and the appellant is trying to suppress this fact and mislead the Tribunal.
- The assertion that the appellant was not gainfully

employed is absolutely false. The respondents specifically allege that the appellant was gainfully employed in other institutions during the pendency of the appeal from 2018 to 2022 and also during the pendency of writ petition from 2022 to 2025.

- The appellant had suppressed the material facts of gainful employment earlier and thereby obtained an order of backwages from this Tribunal, which was rightly set aside by the Hon'ble High Court.
- The Hon'ble High Court has directed to this Tribunal to decide the issue of back wages afresh. There is not liberty granted to the appellant to amend the pleading. Expanding the pleading at this belated stage is impermissible. The proposed amendment will change the nature of pleading.
- The appeal is of the year 2018 and seeking amendment at this stage after remand, is a deliberate attempt to delay the proceeding.

9] Following points arose for my determination and I have given my finding with reasons as under :-

Sr. No.	Points	Findings
1.	Whether the proposed amendment is beyond the scope of remand ?	...In the negative.
2.	Whether the amendment is necessary to decide the remanded issue?	...In the affirmative.

3.	What order ?	... As per final order.
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: REASONS :

As to point No.1 :-

10] At the outset, it is necessary to understand the scope of remand ordered by the Hon'ble High Court. The High Court has:

- Confirmed the reinstatement and continuity of service granted by this Tribunal.
- Quashed the award of backwages.
- Remanded the matter only on the issue of back wages to be decided a fresh.

11] The expression "decide the issue of back wages afresh in accordance with law" implies that this Tribunal must reconsider the question of entitlement to backwages and the quantum thereof, if any, by applying correct legal principles. This would necessary involve (a) determining whether appellant is entitled to back wages at all, (b) if entitled, the quantum (full or partial) and (c) considering the aspect of gainful employment during he relevant period.

12] The respondents contend that the amendment is beyond the scope of remand as the High Court did not grant any liberty to amend. This contention, though attractive, is without substance. The Hon'ble High Court has remanded the matter for fresh adjudication, the power of this Tribunal to regulate it own

procedure and to permit amendments to pleading, especially when the matter is remanded, is well recognized. The amendment is sought to assist the Tribunal in deciding the real controversy between the parties, i.e., whether the appellant is entitled to back wages.

13] Moreover, Order VII Rule 17 of the Code of Civil Procedure (applicable to the proceedings before this Tribunal) permits amendments at any stage of the proceedings if they are necessary for determining the real question in controversy. The present amendment squarely falls within this principle.

14] For the above reasons, I have reached to the conclusion that the proposed amendment do not come beyond the scope of remand. Even after the remand of the matter from the Hon'ble High Court, this Tribunal has a right to entertain the amendment application. Hence, I have answered the point No.1 in negative.

As to point No. 2 :-

15] The respondents have raised a valid objection that the original appeal already contains a prayer for "all benefits and back wages". However, a perusal of the original appeal memo indicates that while the prayer was included, there was not specific pleading regarding the appellant's employment status post-termination.

16] The Hon'ble Supreme Court in many cases of back wages, has consistently held that an employee claiming back

wages must first plead and prove that he/she was not gainfully employed during the relevant period. Thereafter, the burden shifts to the employer to rebut the same. In absence of such pleading, the question of backwages cannot be properly adjudicated.

17] Since the matter has been remanded for fresh adjudication of back wages, it is but appropriate that the appellant is permitted to introduce a specific pleading regarding gainful employment. The proposed paragraph 12A precisely seeks to do that. It does not introduce a new case or change the nature of the appeal; it merely elaborates on the aspect that is now the subject matter of remand.

18] The respondents have not shown any irreparable prejudice that would be caused to them if the amendment is allowed. The respondent will be entitled to do consequential amendment in their written statement, if they so desire, specifically dealing with the aspect of gainful employment. Allowing the amendment would ensure that the real controversy regarding back wages is adjudicated fully and finally.

19] The respondents have raised a serious allegation that the appellant was gainfully employed and that the statement in the proposed amendment is false. This is a disputed question of fact. If the amendment is allowed the appellant will have to prove his claim of not being gainfully employed. The respondents will have full and fair opportunity to establish that the appellant was, in fact,

gainfully employed and the respondents have opportunity to file documentary evidence in this regard to prove such positive fact. At this stage the Tribunal cannot prejudge the truth or falsity of the statement. That is the matter for inquiry.

20] For all above reasons, I have reached to the conclusion that the proposed amendment is necessary to decide the remanded issue. Hence, I have answered point No. 2 in the affirmative.

As to point No. 3 :-

21] Considering the reasons and analysis on point Nos. 1 and 2, in answer to point No.3, I proceed to pass the following order: -

: ORDER :

- 1) The application is allowed.
- 2) The appellant is directed to carry out the necessary amendment and to file amended copy of appeal memo within 07 days from today.

Amravati
Date :11.03.2026

(Anand Y. Borkar)
Presiding Officer,
School Tribunal, Amravati