



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 448 of 2025

[Mahatma Jyotiba Phule Magasvargiya Mandal, Mindala through its Secretary
Shri A. A. Khandale and anr. **..vs..** Vishnu Laxman Kasare and anr.]

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

Court's or Judge's orders

Mr. A. A. Dhawas, Advocate for the petitioners
Mr. A. D. Mohgaonkar, Advocate for respondent no. 1
Mr. S. B. Bissa, AGP for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 25-03-2025

Heard.

2. In paragraph no. 5 of order dated 4-3-2025, the term 'supports' be replaced by 'speaks'.

3. Necessary corrections be carried out forthwith and corrected copy of order be uploaded.

4. On 4-3-2025, following order was passed.

"1. Heard.

2. The request made by the petitioners – original respondent Nos.1 and 2 to amend the written statement has been rejected on the count that the aspect of gainful employment is of subsidiary in nature and could be brought on record through documents and evidence.

3. Counsel for petitioners submits that this finding is contrary to the settled principles of law that the employee has to not only plead, but also to prove that during the period from termination of service till reinstatement and/or till filing petition or written statement, he was not in gainful employment.

*4. Learned counsel for petitioners relied upon the Judgment of Supreme Court in the case of **Allahabad Bank and ors. Vs. Avtar Bhushan Bhartiya, (2022) 13 SCC 202**, wherein the Supreme Court has held as under :-*

“36. The reliance placed upon the decision in Pawan Kumar Agarwala v. SBI (2015) 15 SCC 184, may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase (2007) 2 SCC 433. This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.”

5. Thus, the employee is under obligation to plead that he is/was not gainfully employed. The order impugned however, speaks otherwise.

6. Issue notice to the respondents, returnable on 25/03/2025.

7. Shri S. B. Bissa, learned AGP waives service of notice for respondent No.2-State.

8. In the meantime, there shall be ad-interim ex-parte stay to the proceedings pending before the School Tribunal, Chandrapur being S.T.C. No.33/2017.

8. In addition to usual mode of service, the petitioners shall serve the respondents through all permissible modes including Speed Post as well as service through the counsel appearing before the School Tribunal.”

5. Learned counsel for respondent no. 1 does not dispute, as cannot, the law laid down by the Hon’ble Supreme Court in the case of **Allahabad Bank and ors. Vs. Avtar Bhushan Bhartiya, (2022) 13 SCC 202**. In other words, the employee will have to plead that he was not gainfully employed during the intervening period. In fact the employee has pleaded so.

6. The case of petitioners – employer is that pending appeal before the School Tribunal, Chandrapur, the petitioners came to know that the respondent – employee was gainfully

employed in Government Secondary Ashram School, which is a fact vital to decide the issue of back wages, if any, that may arise, if the School Tribunal comes to the conclusion that employee has been wrongfully terminated. That being so, amendment sought by the petitioners, being necessary to decide the issue, the School Tribunal ought to have allowed the application. The School Tribunal, however, rejected the same on the count that this question would come only after order of termination is set aside. This approach is not sustainable in as much as the issue whether during the period from the date of termination of service of an employee till filing petition or till the time the order of reinstatement is passed is something that would be tested during the course of appeal and in a given case, the parties will be required to lead evidence. In other words, the aspect of leading evidence cannot be postponed for the contingency of findings as regards termination of the services.

7. The order impugned, therefore, is liable to be quashed and set aside. Order dated 29-11-2024 passed below application for amendment in STC No. 33/2017 by the School Tribunal, Chandrapur is accordingly quashed and set aside. The application seeking amendment in written statement filed by the petitioners is allowed. Amendment be carried out within one week from today. Amended copy be served on other side.

8. Writ petition is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)