



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

WRIT PETITION NO. 6421 OF 2025

1. Vasantryao Naik Samaj Sudharak Mandal, Pusad,
Dist. Yavatmal, Through its Secretary Kausar Khan
Akhtar Khan, Aged 70 years, Occ: Agriculturist,
R/o Gadi Ward, Pusad, Tah. Pusad, Dist.Yavatmal.
2. Dr.N.P Hirani Marathi Primary School, Pimpalgaon
(Kanha), Tq. Mahagaon, Dist. Yavatmal, Through
Its Head Master Shaikh Salim Shaikh Rashid.

PETITIONERS

VERSUS

1. P.O. School Tribunal, Amravati. (Deleted)
2. The Education Officer (Primary), Z.P. Yavatmal,
Taluka and District Yavatmal.
3. Sheikh Munaf Sheikh Gaffar, Aged 38 years,
Occ: Service, R/o Mastan Nagar, Ansing,
Taluka and District Washim.

RESPONDENTS

Shri J.T. Gilda, Senior Advocate with Shri Anup J. Gilda, counsel for the petitioners.
Ms Radhika Bajaj, counsel for the respondent no.3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : MARCH 06, 2026

DATE ON WHICH JUDGMENT IS PRONOUNCED : APRIL 06, 2026

JUDGMENT

RULE. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners have assailed the order dated 02.09.2025 passed by the School Tribunal, Amravati (for short, 'the Tribunal') by which the application for amendment of the memorandum of appeal is allowed.

3. The instant petition is filed by the petitioner no.1-Management and the petitioner no.2-School assailing the order passed by the School

Tribunal, Amravati in appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service), 1977 (for short, 'the Act of 1977') which was filed by the respondent no.3 challenging his resignation and seeking relief of reinstatement with consequential benefits.

4. The controversy arises in the backdrop of following facts which are put in nutshell as under:-

The respondent no.3 was appointed on 01.04.2013 on the post of Assistant Teacher in the school run by the petitioner no.1-Management. The appointment of the respondent no.3 was approved by order dated 23.06.2013 and on completion of his probation period on 31.03.2015, he got the approval as confirmed teacher by order dated 21.10.2015. After rendering few years of service, the services of the respondent no.3 were put to an end on the basis of his notice of resignation dated 11.07.2019 and further resignation dated 28.09.2019 which was given effect from 13.10.2019. However, these actions were challenged by the respondent no.3 by filing an appeal under Section 9 of the Act of 1977 before the School Tribunal. The Management appeared in the appeal and filed its written statement.

At the stage of final arguments of the appeal, the respondent no.3 filed an application for amendment to the memorandum of appeal seeking to submit clarifications to his averments to bring the case in tune with its pleadings, and the application came to be allowed by order dated

02.09.2025. The petitioners have filed the instant petition challenging the order dated 02.09.2025 passed by the School Tribunal, Amravati.

5. Shri J.T. Gilda, learned Senior Advocate for the petitioners vehemently submitted that the amendment application deserved to be rejected particularly considering the stage at which the application was filed. He submitted that in a purported attempt to clarify the stand, the respondent no.3 wants to incorporate major changes to its case thereby changing entirely the nature of pleadings. He strenuously submitted that the amendment application filed by the respondent no.3 without demonstrating any due diligence at the stage when final hearing was concluded deserved to be rejected. By relying on the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code'), he submitted that without demonstrating due diligence by the respondent no.3, the Tribunal had no jurisdiction to entertain the application. In support of his submissions, he invited attention to the order-sheet of the Tribunal which shows the stage of the proceedings as completion of arguments, at which the application for amendment is filed. In support of his submissions, he placed reliance on following case laws:-

- i. *Ganga Bai Versus Vijay Kumar & Others* [1974 Mh.L.J. 602].
- ii. *Sau.Anita Anant Kaidalwar Versus Suhas Manoharrao Umathe & Others* [2024 SCC OnLine Bom 797].
- iii. *Himgiri Castings Pvt.Ltd. Versus Gomantak Mazdoor Sangh* [2025 SCC OnLine Bom 1352].
- iv. *Mohinder Kumar Mehra Versus Roop Rani Mehra & Others* [AIR 2017 SC 5822].

- v. ***Smt.Shashikala Sriram Shetty Versus Jagannath Honnaya Shetty (deceased) & Others*** [Writ Petition No.18933 of 2024].
- vi. ***Walchandnagar Industries Ltd. Mumbai Versus Indraprastha Developers, Pune & Others*** [2015(3) Mh.L.J. 786].
- vii. ***Arjun Singh Versus Mohindra Kumar & Others*** [AIR 1964 SC 993].

6. By relying upon the position of law as laid down in the above mentioned judgments, he submitted that in absence of due diligence being established, the Tribunal did not get jurisdiction to entertain the application for amendment. By referring to the position of law in ***Sau.Anita Anant Kaidalwar*** (supra), he submitted that the respondent no.3 was duty bound to plead and prove that the proposed amendment could not have been placed in the original pleadings without any reasons beyond his control and in absence of any clear justification in that regard, the Court was not empowered to allow the amendment application. By relying on the exposition of law by the judgment of the Principal Seat in ***Smt.Shashikala Sriram Shetty*** (supra), he submitted that considering the stage of the proceedings, the element of due diligence became very vital and it being a jurisdictional condition to permit the amendment in pleadings, no liberal approach in allowing the amendment was warranted. For highlighting his submissions, he placed reliance on the observations in this judgment as recorded in paragraph 22 which mentions that unless the jurisdictional fact, as envisaged by the proviso to Order VI Rule 17 of the Code is satisfied, the Court will have no jurisdiction at all to allow the amendment in the pleadings, post the commencement of trial.

Further, by inviting attention to the legal position on the issue of 'due diligence', he referred to the judgment of the Principal Seat in ***Walchandnagar Industries Ltd. Mumbai*** (supra) and submitted that due diligence has to be separated from ignorance and 'due diligence' must be shown on the basis of careful and persistent application and effort. By relying upon the judgment of the Hon'ble Supreme Court in ***Arjun Singh*** (supra), he submitted that the application for amendment at the stage of judgment deserved to be rejected since after conclusion of the final arguments, there was no stage at which the Tribunal could have entertained any such application.

7. Per contra, Ms Radhika Bajaj, learned counsel for the respondent strenuously opposed the petition and submitted that the impugned order allowing the application for amendment depicts positive exercise of discretion, based on sound reasoning warranting no interference on any count. She submitted that the Tribunal was empowered to consider the application for amendment, although filed after conclusion of the final arguments, by mainly focusing on necessity of the proposed amendment to decide the entire controversy. By inviting attention to the proposed amendment, she submitted that the respondent no.3 intended to clarify his stand about the document dated 11.07.2019 which on the face of it is a notice of resignation about which there is no dispute. She therefore submitted that the amendment is purely clarificatory in nature which was found necessary by the Tribunal, for complete adjudication of the controversy involved in the appeal. She further submitted that there are

no finding by the Appellate Tribunal that the respondent no.3 failed to establish due diligence and in view of the nature of the proposed amendment showing no prejudice to the other side, the application is rightly allowed.

8. To buttress her submissions, she placed reliance on the judgment of the Hon'ble Supreme Court in (1) *Dinesh Goyal @ Pappu Versus Suman Agarwal (Bindal) & Others* [Arising out of Special Leave Petition (Civil) No.30324/2019], (2) *Surendra Singh & Others Versus State of Uttar Pradesh* [(1953) 2 SCC 468] and (3) the judgment of this Court in *Baburao Sahebrao Deshmukh Versus Maharashtra Insecticides Limited, Akola & Others* [2004(2) Mh.L.J. 717].

By inviting attention to the observations of the Hon'ble Supreme Court in *Dinesh Goyal @ Pappu* (supra), she submitted that the Hon'ble Supreme Court has upheld the order of amendment of the plaint in absence of due diligence being shown, considering the broader aspects of avoiding multiplicity of litigation and true purport of the proviso to Order VI Rule 17 of the Code. She submitted that the position of law is settled that the amendments can be allowed at any stage of the proceedings and considering the nature of amendment in the instant case, adoption of hypertechnical approach is unwarranted.

9. To controvert the contentions of the learned Senior Advocate for the petitioners, she placed heavy reliance on the judgment of this Court in *Baburao Sahebrao Deshmukh* (supra) and submitted that the application for amendment is rightly entertained and the provisions of Order VI Rule

17 of the Code can be invoked 'at any stage of the proceedings'. She invited attention to the observations of this Court as recorded therein while distinguishing the judgment of the Hon'ble Supreme Court in *Arjun Singh* (supra) in paragraph 8 of the said judgment and submitted that the stage of the proceedings cannot outweigh the broader concept of necessity of amendment for complete adjudication of the controversy involved in the suit.

10. Rival contentions thus fall for my consideration.

11. It has to be noted that the respondent no.3 herein has filed the application for amendment of memorandum of appeal to clarify his stand about resignation dated 11.07.2019 by stating by way of proposed amendment that there was infact 'a notice of resignation dated 11.07.2019 and resignation dated 28.08.2019 with effect from 13.10.2019'. In the unamended memorandum of appeal, the notice dated 11.07.2019 was mentioned as 'resignation letter dated 11.07.2019. Pertinent to note, the documents of notice of resignation dated 11.07.2019 and resignation dated 28.09.2019 are already placed on record of the Appeal and are not in dispute. By way of proposed amendment, the respondent no.3 intends to clarify its contentions about the nature of document of resignation in tune with the other pleadings in the appeal. Thus, although the application is filed after conclusion of the final arguments, it has to be noted that the respondent no.3 has not introduced any new facts, documents, actions or new story thereby taking any new

stand in support of his case. The substitution of words 'resignation dated 11.07.2019' by the words 'a notice of resignation dated 11.07.2019 and resignation dated 28.09.2019 with effect from 13.10.2019' is clearly clarificatory in nature. So also, the proposed amendment to prayer clause is restricted to this aspect, wherein the nature of document is clarified as notice dated 11.07.2019 and resignation letter dated 28.09.2019. Thus, it can be seen that the respondents before the Tribunal were well aware about these documents and therefore the respondent no.3 herein is entitled to put forward his contentions based on the contents of the said documents. As such, the proposed amendment is not in the nature of introducing any new case to the extent of changing the nature of the controversy and causing prejudice to the other side.

12. Indeed, the issue of due diligence is also crucial while considering the application for amendment filed after commencement of trial and the contentions canvassed on behalf of the petitioners also need due consideration. It has to be noted that the application for amendment filed by the respondent no.3 does not elaborately show due diligence however it focuses on the aspect of adjudication of the issues being necessary for complete adjudication of the controversy. Pertinently, there are no findings of the Tribunal to the effect that the appellant has shown due diligence. Thus, the contentions canvassed on behalf of the petitioners that the issue of due diligence being jurisdictional issue acted as an embargo on the powers of the Appellate Court in entertaining the application for amendment, needs some consideration.

13. It has to be noted that the provisions of Order VI Rule 17 of the Code empower the Courts to allow the amendments at any stage. Further, the proviso to Order VI Rule 17 of the Code necessitates establishing due diligence before entertaining any application for amendment. In this context, the factors about necessity of amendment for final adjudication of the controversy *vis-à-vis* requirement to establish due diligence thus assumes importance. The position of law is firmly settled by catena of judgments including the judgments relied upon by the learned Senior Advocate for the petitioners that due diligence is a jurisdictional issue and in absence of due diligence, the Courts are not required to entertain the application for amendment. However, by considering the peculiar nature of amendment sought to be incorporated by the respondent no.3 in the instant case, which is clearly clarificatory in nature, the necessity of amendment as found by the Tribunal for final and complete adjudication of the controversy assumes much significance. In this regard, it is beneficial to refer to the judgment of the Hon'ble Supreme Court in ***Dinesh Goyal @ Pappu*** (supra) in which the Hon'ble Supreme Court has upheld the order allowing amendment in absence of due diligence being shown by the party therein. By referring to several judgments of the Hon'ble Supreme Court, it has been observed that the overarching rule is that of a liberal approach in entertaining the amendment applications. Reference need to be made to paragraphs 14 and 17 of the aforesaid judgment, which are reproduced below:-

“14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also: Sanjeev Builders (supra); Rakesh Kumar Agarwal v. Rajmala Exports Pvt.Ltd., Usha Balasaheb Swami & Ors. V. Kiran Appaso Swami & Ors., B.K. Narayana Pillai v. Parmeswaran Pillai & Anr.].

17. Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained. If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.”

14. The contentions of the petitioners about the stage of entertaining the application also needs due consideration. Although the counsel for the petitioners has relied on the judgment of the Hon’ble Supreme Court in **Arjun Singh** (supra), it is beneficial to refer to the judgment of this Court in **Baburao Sahebrao Deshmukh** (supra), which has distinguished the judgment in **Arjun Singh** (supra) and concluded that the amendment to pleadings can be allowed at any stage of the proceedings including the case when the case is reserved for judgment. It is fruitful to refer to the observations in paragraphs 10, 12 and 15 of the said judgment, which are reproduced below:-

“10. On the basis of aforesaid ruling the learned counsel contended that once the matter is closed for judgment, there is nothing more to be heard in the suit and therefore, phrase in Order VI to amend the plaint "at any stage of the proceeding" must be construed to limit the power of the Court to amend the plaint only till the hearing of the suit continues and not after this hearing is concluded and matter is reserved for judgment.

12. It is true as pointed out by the learned counsel that the Single Judge of this Court while deciding Wasudeo's case cited supra while construing the Order XVIII, Rule 2 of the Code construed the similar words which enable the Court to direct the parties to examine any witness "at any stage" to mean only till the stage of the hearing of the suit. That in my view was because the learned Single Judge was considered the question of examination of witnesses which is obviously a part of the hearing of the suit. Moreover, the words, "at any stage" appearing in Order 18, Rule 2 simply stop at that. **The words in Order VI, Rule 17 specifically use the phrase "at any stage of the proceedings", in my view therefore, the judgment of the Supreme Court and of the learned Single Judge of this Court is rendered under a different provision of law which is worded differently. The additional words "of the proceedings" require regard to be had to the proceeding as a whole, might from institution of the suit to its determination by a judgment.** In fact, while considering the Order VI, Rule 16 of the Code fell for consideration of the Madhya Pradesh High Court in *Badri Prasad Soni, vs. S. Kripal Singh* reported in AIR 1981 M. P. page 228, the learned Single Judge took the view after referring to the several meanings of the word "proceeding" came to the following conclusion:-

"The suit is commenced on the presentation of plaint as is obtainable from O.4, R.1 Civil Procedure Code instituted as "Suit to be commenced by plaint" and is disposed of so far as the trial Court is concerned, on the pronouncement of judgment under O. 20, R. 3 of the Civil Procedure Code. This being the position regarding the commencement of the suit and its termination in the trial Court, in the light of the discussion contained in the preceding paragraph of this order, the irresistible conclusion is that delivery of judgment by the trial Court is a stage in the proceeding. In this view of the matter, it can safely be held that because of expression "at any stage of the proceedings" employed in O.6, R.17 of the Civil Procedure Code, the Court is competent to allow either party to alter or amend his pleading any time before the judgment is pronounced, as till then the Judge has the seisin over the case and is not functus officio."

15. I am therefore, of the view that the pleadings can be allowed to be amended in accordance with law at any stage of proceedings, including when the case is reserved for judgment. Indeed, there are several situations in which such an amendment might become necessary such as addition due to the death of a party which requires averments to be added in respect of the status of the legal representative or some other relevant subsequent events which has taken place subsequent to the closing of the case for judgment. Indeed the law provides for such amendments, in appropriate cases even at the appellate stage.”

15. While considering the issue about entitlement of the parties for amendment of pleadings, the provisions of Order VI Rule 17 of the Code with its proviso and several other facts assume great importance. Undisputedly, the amendment application filed after commencement of trial are required to be entertained, only after demonstrating due diligence on the part of the parties, however, considering the peculiar nature of amendment, being purely clarificatory in tune with the pleadings already on record and causing no prejudice at all to the other side, would outweigh the insistence of demonstrating due diligence. Considering the primary object of the provision of amendment and use of words ‘at any stage of the proceedings’ in Order VI Rule 17 of the Code, the insistence of establishing due diligence through the application would amount to a hypertechnical approach. As such, although due diligence is a relevant factor, in my considered opinion, the broader powers of the Court to entertain the application at any stage of the proceedings will not be obliterated. Therefore, in a situation like this, in which the amendment is purely clarificatory in nature, which is in tune with the pleadings already on record and necessary to minimise the litigation, mere absence of

elaborate contentions about due diligence will not disentitle the respondent no.3 herein to seek amendment of memorandum of appeal.

16. In this regard, it is profitable to refer and rely upon the enunciation of law as made by the Hon'ble Supreme Court while dealing with similar controversy, in ***Rajesh Kumar Aggarwal & Others Versus K.K. Modi & Others*** [(2006) 4 SCC 385]. After referring to the proviso to Order VI Rule 17 of the Code, the Hon'ble Supreme Court has commented upon the purport of the provisions empowering the Courts to allow amendment at any stage of the proceedings, the relevant paragraphs are reproduced below:-

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

Apart from this, while dealing with these provisions, the Hon'ble Supreme Court has reiterated this position in ***Abdul Rehman & Another Versus Mohd.Ruldu & Others*** [(2012) 11 SCC 341].

17. In view of the exposition of law as laid down by the Hon'ble Supreme Court, it has to be noted that the 'real controversy test' is the basic rule or the cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. Thus, an amendment application filed for providing details of existing pleadings such as clarifying the details of suit property necessary to identify the property or to clarify the nature of document, has to be considered with the test of real necessity for deciding the actual controversy. Merely because the amendment is sought after commencement of trial, the Courts cannot be said to be powerless and lacking jurisdiction even to consider the application for amendment. Pertinently, even the Appellate Court is also entitled to allow an amendment if it is found necessary for deciding the real controversy and therefore the necessity of amendment for deciding the controversy, in certain cases, would outweigh the requirement of showing due diligence. As such, the arguments canvassed on behalf of the petitioners that in absence of due diligence being shown the Courts cannot at all consider such an application for amendment, are not acceptable.

18. In the wake of above mentioned factual and legal aspects involved in the instant case, after testing the legality of the impugned order, I am of the considered opinion that the inferences drawn by the Tribunal about necessity of the amendment for complete adjudication of the controversy are based on sound reasoning. Pertinent to note, the Tribunal has found the amendment to be necessary and has entertained the application even at the stage of judgment. The approach adopted by the Tribunal does not

appear to be perverse to the extent of taking away the rights of the opponent.

19. As such, I do not find any need to interfere with the impugned order. The view taken by the Tribunal in allowing the amendment application is not found to be palpably wrong warranting interference under Article 227 of the Constitution of India. Hence, the writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE

At this stage, a request is made for continuation of the interim relief, which was operating during the pendency of the instant petition.

Although the prayer is opposed, considering the fact that the interim relief was operating during the pendency of the instant petition, the same shall continue to operate for a period of four weeks from today.

(PRAFULLA S. KHUBALKAR, J.)

APTE