



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

WRIT PETITION NO. 8953 OF 2023

Marathwada Sarv Shramik Sanghatana
Through Its Joint Secretary And Others

..Petitioners

VERSUS

State Of Maharashtra
Through Commissioner Of Agriculture
And Others

..Respondents

Mr.Parag Barde, Advocate for petitioners
Mr.B.V.Virdhe, AGP for respondent nos.1 to 5

CORAM : AJIT B. KADETHANKAR, J.
DATE : SEPTEMBER 15, 2026

ORDER :-

Heard learned advocates for the parties. Considering the short issue involved, the petition is heard for final disposal with the consent of learned advocates for the parties.

2. Feeling aggrieved by the judgment and order dated 24.08.2022 passed by learned Labour Court, Jalna in Application (IDA) No.3 of 2021 the petitioners are before this court.

3. Mr.Barde, learned advocate for the petitioners would submit that the petitioners are daily wagers and have sought benefit under Section 33C(2) of the Industrial Disputes Act, 1947 ("the Act", for short) vide the proceeding before the Labour Court. He would submit

that the basis for the benefit sought in the application is the judgment and order dated 19.01.1988 passed by learned Industrial Court, Ahmednagar in Complaint (ULP) No.274 of 1986. He would submit that in the said complaint, the daily wagers were granted benefit at the rate of 1/26th portion of the monthly wages of unskilled workers with effect from 20.11.1986. He would submit that the said order was taken up in challenge by the respondents – Government the High Court vide Writ Petition No.4246 of 1988. After hearing the parties, this court was pleased to dismiss the Writ Petition and as such the findings recorded by the learned Member of Industrial Court, Ahmednagar came to be confirmed.

4. Mr.Barde, learned counsel for the petitioners further submits that based on said order a number of Writ Petitions were filed by other daily wagers seeking the same relief under Section 33C(2) of the Act. He would cite an order dated 08.11.2001 passed in a bunch of Writ Petitions led by **Writ Petition No.2416 of 2021 (The State of Maharashtra and anr. Vs. Smt. Sumanbai Baburao Mogal) decided on 08.11.2001**. He would submit that in the cited case also, the objection was that there was no pre-existing right in favour of the petitioners for which there could be benefit of Section 33C(2) of the Act. It is pointed out that the court

held that from the date on which the Complaint (ULP) No.274 of 2026 was decided, the similarly situated employees like the petitioners earned pre-existing right. The sum and substance of the arguments of Mr.Barde is that the right to be conferred on an employee under Section 33C(2) of the Act, in the peculiar facts, was not an individualisitc right but by recognition to such right by the Industrial Court as well as this Court to the category of the employees. He would cite another judgment and order passed by this court in a bunch of Writ Petitions led by **Writ Petition No.5263 of 2005 (The State of Maharashtra and anr. Vs. Sumanbai Jijabapu Dongare) decided on 14.02.2014**. He would submit that while disposing of that group of Writ Petitions, this court in paragraphs 8 and 9 observed thus:-

8. The learned Single Judge of this Court vide judgment dated 8.11.2001 in Writ Petition No.2416/2001 with other connected writ petitions has also considered the said in respect of similarly situated workers and has affirmed the right of the said workers to claim the amount u/s 33C(2) of the Industrial Disputes Act, 1947. Subsequently, the same has been followed by this Court in a catena of judgments referred supra.

9] It would be seen that even for the delayed period, the Labour Court has not awarded any interest. only in the default of payment, the interest is awarded.

5. Then, citing another **order dated 04.09.2018 passed by this court in a group of Writ Petitions led by Writ Petition No.8315 of 2018 (The Commissioner of Agriculture and others Vs. Marathwada Sarva Shramik Sanghatana and others)**, Mr. Barde, learned counsel for the petitioners submits that consistently this court has taken a view that the daily wagers would be entitled for daily wage at the rate of 1/26th of the salary paid to the regular permanent unskilled workers. Paragraphs 11 of the judgment dated 04.09.2018 reads thus:-

11. Considering the above and in view of the settled position of law that if regularization is not possible, daily wagers would be entitled to a daily wage at the rate of 1/26th of the salary paid to regular permanent employees who performed the same nature of work.

12. In view of the above and considering the crystallized position of law and at the same time, relying upon the judgment of this Court in Sumanbai (supra) and a similar judgment dated 08th November, 2001, delivered by this Court in Writ Petition No. 2416/2001 and group of petitions, I do not find that the Labour Court has committed any error in partly allowing the applications filed by these workers.

Citing these judgments and orders Mr.Barde submits that both counts on which the trial court has rejected petitioner's application, cannot be sustained. He would submit that the

application of the petitioners came to be rejected on two counts: (i) lack of pre-existence of rights and (ii) delay. He submits that the pre-existing right is well defined in the catena of judgments as cited (supra). So far as delay is concerned, he would rely on paragraph 9 of the judgment and order dated 14.02.2014 in the case of **Sumanbai Jijabapu Dongare** (supra). So far as delay is concerned, the court observed that there is no question of grant of any interest for the delayed period.

6. Mr.Virdhe, learned AGP supports the findings rendered by the trial court and would submit that there is no pre-existing right in favour of the petitioners. He would support the findings of the Labour Court on the point of delay. So far as another objection as regards delay caused in filing the application is concerned, the issue is no more *res integra* in the light of the judgment and order passed by Full Bench of this Court in the case of **Maharashtra State Road Transport Corporation and others Vs. Premlal Khatri Gajbhiye and others, 2004(2) Bom. C.R. 338**. Paragraph 18 of the said judgment reads thus:-

18. The next ground of challenge in the matter pertains to bar of limitation for entertaining the complaint at the instance of the respondents. There is no doubt that the complaints were filed almost beyond the period

of three years from the date of commencement of grant of ephemeral time scale to the respondents and from the commencement of denial of benefits to them under Clause 49 of 1956 settlement. The contention of the respondent, however, is that it is a recurring cause of action which entitled them to approach the Industrial Court even beyond the period of three years from the date the petitioners started refusing the benefits under Clause 49 of 1956 settlement and, that the injury continued to be inflicted upon the respondents every month.

7. Mr. Virdhe, learned AGP also cites judgment and order passed by Hon'ble Supreme Court in the case of **Bombay Chemical Industries Vs. Deputy Labour Commissioner and anr., (2022)5 SCC 629**. He submits that the Hon'ble Supreme Court confirmed the law that for the purpose of benefit under Section 33C(2) there must be pre-existing right in favour of the employee. With utmost respect, this court is in full agreement with legal proposition led down by the Hon'ble Supreme Court. There is no reason to disagree with it.

8. As I have already observed, the pre-existing right of the petitioners and similarly employees is defined by this court under a catena of judgments of which litigation i.e. Complaint (ULP) No.274 of 1986 is the basis. Thus, I have held that the petitioners have pre-existing right to claim benefit of Section 33C(2) of the Act.

9. In view of the above, I pass the following order:-

(A) The Writ Petition stands allowed.

(B) The judgment and order dated 24.08.2022 passed by learned Labour Court, Jalna in Application (IDA) No.3 of 2021 is quashed and set aside. The applicaiton Application (IDA) No.3 of 2021 stands allowed. To clarify, the petitioners shall be entitled for the interest from the date of application.

[AJIT B. KADETHANKAR, J.]

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KBP