

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2965 OF 1998

1 Shree Changdeo Sugar Mills Ltd.,
a Public Limited Company incorporated
under the Indian Companies
Act, 1913 and having its registered
office at N.M. Wadia Building,
1st Floor, 123 M.G. Road,
Mumbai - 400 001.

2 Krishnakant Morarka, Adult Indian
Inhabitant residing at Moraraka
House, 29 Nepean Sea Road,
Mumbai - 400 036.

..Petitioners.

Versus

1 Rama Bahurao Gangule
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.

2 Ayub Usman Shaikh
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.

3 Jijiba Bhikaji Kulange
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.

4 Vithal Laxman Thorat
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.

5 Ambadas Ramchandra Kapase
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.

6 Jagnnath Lamxan Dhanawate
R/o. Puntamba,
Tal. Kopargaon, Ahmednagar.

- 7 Bhausaheb Tatya Pinjari
R/o Gondsgaon,
Tal. Shrirampur, Ahmednagar.
- 8 Ashok Baburo Walekar
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.
- 9 Rama Asaram Jadhav
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.
- 10 Narwade Bhaurao Yashwanta
R/o. Changdeonagar,
Tal. Kopargaon, Ahmednagar.
- 11 Subhash Baburao Shinde
At Po. Puntamba
Tal. Kopargaon, Ahmednagar.
- 12 Narendra Namdeo Kene
At Po. Puntamba
Tal. Kopargaon, Ahmednagar.
- 13 Pardeep Waman Mhalas
At Po. Upasni Galli, Sangamner
Tal. Sangamner, Dist. Ahmednagar.
- 14 Ananda Tulsiram Sawant (Dead)
Through L.R. Son i.e.
Dattu Ananda Sawant
At Po : Datta Colony, Shrirampur
Tal. Shrirampur
Dist. Ahmednagar.
- 15 Ajijbhai Babubhai Inamdar
At Po. Changdeonagar,
Tal. Kopargaon, Ahmednagar.
- 16 Nivruti Tukaram Sonawane
At Po. Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 17 Baburao Rajaram Kasar
At Po : Puntamba

- Tal. Kopargaon, Dist. Ahmednagar.
- 18 Sagaji Namdeo Bansode
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 19 Vishwanath Govind Kulkarni
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 20 Shaikh Ramzan Babubhai
At Po : Changdeonagar,
Tal. Kopargaon, Dist, Ahmedangar.
- 21 Ashok Ananda Patil
At Po : Baptere, Tal. Vaijapur
Dist. Aurangabad.
- 22 Gopinath Hiranman Lahire
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 23 Punja Bhaurao Kasabe
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 24 Rambhaji Balaji Mukund
At Po : Baptere, Tal. Vaijapur
Dist. Aurangabad.
- 25 Ambadas Ganpat Sali
At Po : Puntamba
Tal Kopargaon, Dist. Ahmednagar.
- 26 Babu Tulsiram Sawant
At Po : Changdeonagar
Tal. Kopargaon, Dist. Ahmednagar.
- 27 Raghunath Tukaram Sonawane
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 28 Shankar Kashinath Gawali
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.

- 29 Laxman Ramchandra Kshirasagar
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 30 Vasant Bhaurao Kalan
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 31 Sahebrao Vishram Wahadane
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 32 Gitaram Baban Dambale
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 33 Prabhakar Ramnath Koshti
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 34 Dnyaneshwar Chandrabhan Dhanawat
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 35 Kashinath Deoram Chavhan
At Po : Puntamba
Tal. Kopargaon, Dist. Ahmednagar.
- 36 Mininath Bapu Shelar
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 37 Nana Narayan Thorat
At Po : Condegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 38 Rakhama Natha Thorat
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 39 Sikandar Babubhai Sayyed
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.

- 40 Sarangdhar Dagadu Hargude
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 41 Sadanand Yadav Waghmare
At Po : Puntamba. Tal. Kopargaon
Dist. Ahmednagar.
- 42 Vasantao Gopalrao Dhanwate
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 43 Chandrabhagabai Appa Guldagade L.R.
(deceased of Appa Narayan Guldagade)
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 44 Rama Haribapu Shelar
At Po : Gondegaon, Tal. Shrirampur
Dist. Ahmednagar.
- 45 Hon'ble Member Shri B.S. Bhadange
of Industrial Court At Ahmednagar
Dist. Ahmednagar, having his office
at Sheth Surat-Singh Bhavan
1st Floor, Nagar-Sawedi Road
Ahmednagar.
- 46 Ninaidevi Sahakari Sakhar Kharkhana
Kokrud, Tal. Shirala,
Dist. Sangali (Maharashtra).
- 47 Kopargaon Tal. Sakhar Kamgar
Sabha, Kopargaon
Dist. Ahmednagar (Maharashtra)
Through its Secretary
Shri Subhash Kulkarni. ..Respondents.

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Shri Ashok Patil, Shri M.N. Navandar, Advocate for Petitioner.
Shri K.B. Borde, Advocate for Respondent No. 1 to 46.
Shri B.B. Yenge, Advocate for Respondent No. 47.

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WITH
WRIT PETITION NO.2403 OF 1998
WITH CIVIL APPLICATION NO.8984 OF 2003,
CIVIL APPLICATION NO.12615 OF 2004,
CIVIL APPLICATION NO.3750 OF 2005
AND CIVIL APPLICATION NO.7643 OF 2008
(ALL IN WRIT PETITION NO.2403 OF 1998)

- 1 Rama S/o Baburao Gangule,
Age - Major (46 years),
Occu - Nil, R/o : Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 2 Ayyub Osman Shaikh
Through L.R.s.
 - 2-A Shaikh Mukhtar S/o Shaikh Ayub
Age : 35 years, Occ : Nil
R/o. Sillod, Tq. Sillod,
District : Aurangabad.
 - 2-B Shaikh Akhtar S/o Shaikh Ayub
Age : 33 years, Occ : Nil
R/o. Sillod, Tq. Sillod.
District : Aurangabad.
 - 2-C Shaikh Yakub S/o Shaikh Ayub
Age : 31 years, Occ : Nil
R/o. Sillod, Tq. Sillod.
District : Aurangabad.
 - 2-D Shaikh Rafiq S/o Shaikh Ayub
Age : 29 years, Occ : Nil.
R/o. Sillod, Tq. Sillod.
District : Aurangabad.
 - 2-E Shaikh Ashfaq S/o Shaikh Ayub
Age : 27 years, Occ : Nil.
R/o. Sillod, Tq. Sillod.
District : Aurangabad.
 - 2-F Shaikh Shafiq S/o Shaikh Ayub
Age : 24 years, Occ : Nil.
R/o. Sillod, Tq. Sillod.
District : Aurangabad.

- 2-G Shaikh Lukman S/o Shaikh Ayub
Age : 16 years, Occ : Nil.
R/o. Sillod, Tq. Sillod.
District : Aurangabad.
- 3 Jijaba Bhikaji Kulange,
Through L.R.s.
- 3-A Indubai W/o Jijaba Kulange
Age 70 years, Occu : Nil.
R/o Ralegaon (Mhasobache)
Tq. & Dist. Ahmednagar.
- 3-B Murlidhar Jijaba Kulange
Age 44 years, Occu : Service,
R/o. Room No. 31, Samatanagar,
Fulsaundarmala, Ahmednagar,
Dist - Ahmednagar.
- 3-C Asha Dattatraya Shinde
Age 46 years, Occu : Household
R/o Belwandi, Tq. Shrigonda,
District - Ahmednagar.
- 3-D Nanda Jagannath Kharade,
Age 40 years, Occu : Household
R/o Ralegaon Mhasobache,
Tq. & Dist. Ahmednagar.
- 3-E Changdeo Jijaba Kulange
Age 42 years, Occu : Agri.
R/o Ralegaon Mhasobache,
Tq. & Dist. Ahmednagar.
- 4 Vithal S/o Laxman Thorat,
Age 46 years, Occu : Nil.
R/o Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 5 Ambadas S/o Ramchandra Kapase,
Age 47 years, Occu : Nil.
R/o Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.

- 6 Jagannath S/o Laxman Dhanwate,
Age 57 years, Occu : Nil.
R/o Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 7 Bhausahab S/o Tatyba Pinjari,
Age - Major, Occu : Nil.
R/o Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 8 Ashok Baburao Walekar,
Through L.R.s.
 - 8-A Smt. Sanjivani W/o Ashok Walekar
Age 50 years, Occu : Household.
R/o Loni (kh.) Tq. Rahata,
District - Ahmednagar.
 - 8-B Sonali D/o Ashok Walekar
Age : 13 years, miner
R/o Loni (kh.) Tq. Rahata,
District - Ahmednagar.
 - 8-C Monali D/o Ashok Walekar
Age : 12 years, miner
R/o Loni (kh.) Tq. Rahata,
District - Ahmednagar.
- 9 Rama S/o Asaram Jadhav,
Age - Major, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 10 Bhaurao Yeshwanta Narwade,
Age - Major, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 11 Subhash S/o Baburao Shinde,
Age - Major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 12 Narendra S/o Namdeo Kene,
Age - Major, Occu : Nil.

- R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 13 Ananda S/o Tulshiram Sawant
(dead) Through L.R. Son i.e.
Dattu S/o Ananada Sawant,
Age - major, Occu : Nil.
R/o Datta Colony, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
- 14 Ajijbhai Babubhai Inamdar,
Age - major, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 15 Nivrutti Tukaram Sonwane,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 16 Baburao Rajaram Kasar,
Through L.R.s.
- 16-A Smt. Mathurabai W/o Baburao Kolabkar
(Kasar), Age : 65 years, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 16-B Nandu S/o Bapurao Kolabkar
Age : 40 years, Occu. Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 16-C Chhaya D/o Baburao Kolabkar
Age : 35 years, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 17 Sagaji S/o Namdeo Bansode,
Age - major, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.

- 18 Vishwanath S/o Govind Kulkarni,
Age - major, Occu : Nil.
R/o. Changdeonagar,
Tal. Kopargaon, Dist. Ahmednagar.
- 19 Shaikh Ramjan Babubhai
age major, Occ. Nil,
R/o Changdeonagar, Tq. Kopargaon
Distrct Ahmednagar.
- 20 Ashok S/o Anandrao Patil,
Age - major, Occu. Nil,
R/o Babtara, Tq. Vaijapur
District. Aurangabad.
- 21 Gopinath Hiranman Lahire,
Age - major, Occu. Nil,
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 22 Punja S/o Bhaurao Kasabe,
Age - major, Occu : Nil,
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 23 Ambadas S/o Ganpat Sali,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 24 Raghunath S/o Tukaram Sonawane,
Age 55 years, Occu. Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 25 Laxman S/o Ramchandra Kshirsagar,
Age - major, Occu. Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 26 Vasant S/o Bhaurao Kalan,
Age - major, Occu. Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.

- 27 Sahebrao S/o Vishram Wahadane,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 28 Gitaram S/o Baban Dambale,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 29 Prabhakar S/o Ramnath Koshti,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 30 Kashinath S/o Deorao Chavan,
Age - major, Occu : Nil.
R/o. Puntamba,
Tal. Kopargaon, Dist. Ahmednagar.
- 31 Minnath S/o Bapu Shelar,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 32 Nana S/o Narayan Thorat,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 33 Rakhama S/o Natha Thorat,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 34 Sikandar S/o Babubhai Sayyed,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 35 Sarangdhar S/o Dagadu Hargude,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.

- 36 Sadanand S/o Yadav Waghmare,
Age - major, Occu : Nil.
R/o. Puntamba, Tq. Kopargaon,
District - Ahmednagar.
- 37 Chandrabhagabai W/o Appa Guldagar,
Age - major, Occu : Nil.
(L.R. Of Appa Guldagar).
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 38 Vasnatrao S/o Gopalrao Dhanwate,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.
- 39 Ramhari S/o Bapu Shelar,
Age - major, Occu : Nil.
R/o. Gondegaon, Tq. Shrirampur,
District - Ahmednagar.

..Petitioners.

Versus

- 1 Shri. Changdeo Sugar Mills Ltd.
1230, N.M. Vadiya Building. M.G. Road,
Mumbai (Through Shri. K.K. Morarka)
- 2 Shri. Changdeo Sugar Mills Ltd.
Changdeonagar, Taluka Kopargaon
District - Ahmednagar.
(Through Manager)
- 3 Shri. Ninaidevi Sahakari Sakhar
Karkhana Ltd. At Kothrudh,
Taluka Shirala Dist. Sangli.
(Through Promotor Shri.
P. Pardeshi)
- 4 Kopargaon Taluka Sakhar Kamgar
Sabha, Changdeonagar, Taluka -
Kopargaon, Dist - Ahmednagar.

..Respondents.

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Shri K.B. Borde, Advocate for Petitioners,
Petitioner No. 19 - Deleted,
Shri Ashok Patil & Shri M.N. Navandar, Advocates for Respondents 1 & 2,
Shri B. B. Yenge, Advocate for Respondent No. 4,
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 30 & August 01, 2015
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ORAL JUDGMENT :-

1. On 16.7.2015, I had passed the following order :-

“ 1. Shri Shahane, learned Advocate submits that he was appearing on behalf of respondent Nos.1 to 34 in Writ Petition No. 2965 of 1998 and for the petitioners in Writ Petition No.2403 of 1998. Shri K.B.Borde, learned Advocate now appears for the said respondents / petitioners respectively.. He, therefore, prays for discharge. Shri Borde confirms his appearance. As such, the appearance of Shri Shahane is discharged.

2. *Both these petitions have been admitted.*

3. *Shri Patil, learned Advocate along with Shri Navandar has commenced his submissions. During the course of his submissions, he has indicated that the dispute as regards distribution of monetary dues is concerned, the Apex Court by its order dated 21.3.1988 and subsequent orders delivered in Writ Petition No.575 of 1986 with Special Leave Petition No.4712 of 1986 has observed and directed as under:-*

“ In the writ petition there were two prayers: One was for a direction to the Union of India to take over the sugar mills. Alternatively a direction to the State Government to declare the Sugar Mill as a relief undertaking was asked for. Secondly directions regarding payment of wages were asked for. We are told by the Union of India that the Government is not ready to take over sick mills and in the facts and circumstances of the case we are not of the view that this matter should be allowed.

So far as the payment of wages is concerned, by our interim order some relief has been granted and if there would be further funds in the hands of the receiver, the High Court will make the further direction so as to ensure that the dues of the workmen are satisfied.

It is represented on behalf of the Bank that the mills has been closed down. We think it is appropriate for the High Court immediately to look into this aspect, and in case the High Court is satisfied that there is no scope for restructuring the mills, the same should be closed down and the employees should be retrenched with effect from a particular date to be indicated by the High Court in its order. We dispose of this writ petition with that above direction to the High Court.

The other assets of the mills in the hands of the Receiver may be disposed of under orders of the High Court.

The Receiver will have a direction to reimburse the Bank in regard to the amount which Receiver borrows from the Bank for the purposes of paying the dues for Electricity

and Water charges also for the charges of Watchman.

In view of above, no directions are necessary in the connected Special Leave Petition which is dismissed”

4. *Shri Patil has, therefore, submitted that this Court has accordingly, dealt with the said issues and has finally decided the deemed date of retrenchment as 31.10.1988 by its order dated 12.12.1988 passed in Chamber Summons No. 875 of 1988 in Suit No. 1937 of 1985. He further submits that thereafter, the legal dues of all employees, approximately about 600, were distributed totalling an amount of Rs. One Crore and Ten Lakhs and subsequently an additional amount of Rs. Thirteen Lakhs pursuant to the orders of this Court dated 24.2.1999 delivered in Civil Application No.936 of 1999. He further adds that this was an outcome of the settlement dated 2.12.1995, signed between the management and the workers, represented by the recognised Union.*

5. *Shri Patil, therefore, submits that all the workers concerned with Complaint (ULP) No. 98, 102 and 110 of 1996 filed before the Industrial Court, in which the judgment delivered on 30.4.1998 is subject to challenge in this petition, have received their legal dues and yet have filed these complaints.*

6. *Shri Borde, learned Advocate appearing on behalf of the respondent / employees submits that he would prefer to make a statement by taking instructions after a week's time to confirm whether the original complainants before the Industrial Court in the said three complaints, have received their legal dues or not. He, therefore, prays for a week's time so as to be able to make the statement before this Court on the next date in the light of the*

submissions of Shri Patil that after accepting all the legal dues, these complainants have challenged the very same settlement dated 2.12.1995.

7. *S.O. to 23.7.2015 for further consideration.”*

2. At the very outset, Shri Borde, learned Advocate appearing for the employees submits that all the employees have received their benefits under the settlement signed between the recognized Union and the Management on 02/12/1995. Only 3 persons namely Aziz Inamdar (respondent No.15), B.R.Kasar (respondent No.17) and R.B.Shaikh (respondent No.20) have not received their benefits under the said settlement. Shri Navandar, learned Advocate has clarified that these 3 persons had refused to take the benefits and hence the total amount to be paid to these 3 persons, has been deposited in this Court.

3. Shri Borde, learned Advocate for the employees submits that the 39 petitioners are seriously aggrieved by the impugned judgment and order dated 30.4.1998, delivered by the Industrial Court in Complaint (ULP) Nos. 98 of 1996, 102 of 1996 and 110 of 1996.

4. This Court (Coram : R.M.Lodha, J. - as His Lordship then was) had passed an order dated 17.6.1998 in a connected matter i.e. Writ Petition No.2403 of 1998, concerning the same management, which reads as

under:-

" *Rule. Call for record and proceedings. Mr. Kini waives service for respondent nos.1 and 2. Mr. Yenge waives service for respondent no.4.*

Rule on stay returnable on 6.8.98. Mr. Kini waives service for respondent nos.1 and 2. Mr. Yenge waives service for respondent no.4.

The learned counsel appearing for respondent nos.1 and 2 states that till further orders his client shall not sell and/or alienate or dispose of land and building owned by respondent no.2 situated at Puntamba, Ahmednagar without permission of this Court.

At this stage, the learned counsel for the petitioner stated that his clients are also desirous of settling their dispute amicably with the respondent nos.1 and 2 and they would negotiate with respondent nos.1 and 2.

The learned counsel for respondent nos.1 and 2 welcomed the offer for settlement made by the learned counsel for the petitioner and stated that respondent nos.1 and 2 always and even now are ready and willing for mutual settlement and his client would also explore the possibility of settlement with the petitioners.

In this background, the learned counsel for respondent nos.1 and 2 submits that those petitioners who are in occupation of quarters shall not be evicted till their dues are settled and result of

settlement talks."

5. Subsequently, this Court has passed an order on 16.9.1998 in Civil Application No. 4539 of 1998, by which this Court had issued certain directions, which are as follows:-

"13. The petitioners who are occupying the quarters are hereby directed to pay the compensation charges or occupation charges to the respondent Nos.1 and 2 at the rate of Rs.150/- per month and further to pay the electricity and water consumption charges, as would be indicated in the consumption meters. However, that does not mean that the petitioners are at liberty to occupy the quarters for any time they want. The respondents 1 and 2 are at liberty to take appropriate legal action against the petitioners for their eviction from the premises in question through due process of law.

14. It is also directed that the respondent nos.1 and 2 shall deposit the amount of Rs.2,50,000/- in this court, which could be said to be the amount of the sale proceeds of the property sold from Annexures 'A' and 'B'.

15. So far as movable property is concerned, to which a reference is made by the respondent nos. 1 and 2 in their Civil Application no.4720 of 1998, the respondent nos. 1 and 2 shall prepare an inventory of all the movable property and shall submit the same in this court. After such a list is submitted, the respondent nos. 1 and 2 shall and are at liberty to dispose of the said movable property or utilize the same in the manner the respondent nos. 1 and 2 would deem fit. However, if the property is to be disposed of by way of sale, the respondent nos. 1 and 2 are

hereby directed to deposit the complete sale proceeds in this court and the sale shall also be with the prior permission from this court. The petitioners, shall not have any right whatsoever to create any obstruction in the disposal of that property by the respondent nos. 1 and 2. They shall not even obstruct the respondents if the respondents 1 and 2 want to utilize that property for some other venture or business. In case, the property is being developed for any other venture or business, in that case, the respondents shall deposit Rs.5,00,000/- in this Court.”

6. Similarly, in Civil Application No. 936 of 1999 in Writ Petition No. 2965 of 1998, this Court had passed an order on 24.2.1999, which reads as under:-

“6. The earlier sale proceeds are lying in the Court. The sale proceeds are liable to be distributed amongst all the workers therein. There is no point in keeping the sale proceeds idle in the court. Learned Advocate Shri Shahane, representing the defected workers, has raised strong objection for distribution of the sale proceeds lying in the court. The objection appears to be oblique. Learned Advocate Shri Shahane has gone to the extent of challenging the legality of the settlement which was arrived at in between the factory and the union. It is interesting to note that the defected workers have not challenged the legality of the settlement in their U.L.P. complaint which is under challenge. The defected workers have also challenged the retrenchment date which has been fixed by this court in response to the directions of the Supreme Court. The conduct of the defected workers is required to be taken into account. These defected workers kept

silence till bulk of rupees, Rs.1,10,00,000/- were distributed amongst all the workers, including these defected workers. Thereafter these defected workers have approached the Industrial Court by filing U.L.P. Complaint. In the absence of any challenge to the settlement, the defected workers cannot make legitimate grievance about the legality of the settlement. It is not open for them to attack the legality of the settlement and the retrenchment date i.e. 31st of Oct.1988, fixed by this court in response to the directions of the Supreme Court. All the workers, including defected workers, are going to get their legitimate share from the sale proceeds deposited in the court and, therefore, the petitioners are permitted to make payments to all the workers, including defected workers by withdrawing Rs.2,50,000/- which are deposited in the court on 18.1.1999. If the defected workers are not ready to accept the amount of their share, the amount of their share shall be kept in the court.

7. The petitioners want to let out the godowns which are located in the factory premises. The godown is empty. There is no prohibition as such for letting out the godown. The Godown is admittedly owned by the factory. There is no point in keeping the godown empty. According to Mr. Shahane, this is a new venture and, moreover, this is a development of the immovable property. I do not agree with Mr. Shahane letting out a godown is not a new venture or new business and, moreover , it is not a development of the immovable property.

Under the circumstances, the petitioners are allowed to let out the godown located in the factory premises at Puntamba.

Petitioners are allowed to submit inventory of movable property.

Learned Advocate Shri Shahane has no objection to delete

respondent no.20.

Learned Advocate Shri Shahane prays for time for filing additional affidavit. This prayer is motivated for protraction of the hearing. Hence it is rejected.

Petitioner factory shall pay to the workers, including defected workers, remaining amount out of Rs.13,03,947.07 within period of four months from today.”

7. Shri Borde, submits that though the employees have not challenged the settlement dated 2.12.1995 in their Complaints before the Industrial Court, it should be presumed that the settlement is deemed to be challenged. Shri Patil, Shri Yenge and Shri Nawandar, for the management and the recognized Union have vehemently opposed this contention on the ground that there is no deeming fiction in challenging a settlement (more so, a settlement signed with the employees' Union) under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the said Act").

8. I find that the unfair labour practices prescribed under Schedule II and IV are available to be invoked by the Union or an individual worker. A declaration of ULP is an extremely serious aspect of the matter and there cannot be a deeming fiction for challenging a settlement since the respondent management and Union are legally required to face the challenge. The principle of “First plead and then prove” cannot be overlooked or bye-passed. As such, unless there is a specific challenge to

the settlement, the contentions of the employees that the challenge should be presumed to have been posed, is unsustainable.

9. It is trite law that a Complaint of unfair labour practices has to be specific and precise. Rules 60(1), (2) and (3) under Chapter V of the Labour Court (Practice and Procedure) Rules, 1975 mandatorily requires any person filing the Complaint to state the details of the grievance and should put forth a concise statement of the material facts constituting the ULP and the date of occurrence thereof. Rule 60(1) to (3) reads thus:-

“ 60. (a) A complaint regarding any unfair labour practice shall be initiated in Form 16.

(2) In respect of unfair labour practice complained of, a concise statement of the material facts constituting it and the date of the occurrence thereof and the name of the person or persons or union or unions guilty thereof shall be specifically and separately stated in the complaint.

(3) Every person or union who it is alleged is guilty of any unfair labour practice, shall be impleaded in the complaint. The complaint must specifically and separately disclose the unfair labour practice, each such person or union is guilty of, the specific facts constituting that unfair labour practice in regard to that particular person or union and the date of the occurrence of that unfair labour practice.”

10. Similarly, Regulation 100 (1), (2) and (3) under Chapter VI of the Industrial Court Regulations, 1975 provides that the Complaint must, specifically and separately disclose the unfair labour practice committed by any person or Union and must set out the specific facts constituting that ULP. Regulation 100 (1) to (3) reads thus:-

“100.(1) A complaint regarding any unfair labour practice shall be initiated in Form 19.

(2) Regarding each unfair labour practice complained of concise statement of the material facts constituting it and the date of the occurrence thereof and the name of the person or persons guilty thereof shall be specifically and separately stated in the complaint.

(3) Every person or union who it is alleged is guilty of any unfair labour practice shall be impleaded in the complaint. The complaint must specifically and separately disclose the unfair labour practice each such person or union is guilty of, the specific facts constituting that unfair labour practice in regard to the particular person or union and the date of the occurrence of that unfair labour practice.”

11. In the light of the above, I am unable to accept the contention of Shri Borde that the challenge to the settlement shall be deemed to have been raised. It is clear that there was no challenge to the settlement before the Industrial Court and the complaints filed by the employees before the Industrial Court did not contain a prayer that the settlement

dated 2.12.1995 be held to be illegal and unsustainable.

12. Shri Borde has canvassed that the employees had also prayed before the Industrial Court that their retrenchment from 31.10.1998 be declared illegal and the employer be directed to pay the entire backwages with interest. Learned Advocate for the management submits that the said prayer could not be entertained by the Industrial Court as it amounts to calling in question the retrenchment of the employees. Industrial Court is not vested with the jurisdiction to deal with retrenchment or discharge, dismissal, termination or removal from service since the said jurisdiction lies with the Labour Court under item 1 of Schedule IV of the said Act.

13. The jurisdiction of the Labour Court and the Industrial Court is well prescribed by the said Act. Issue of retrenchment could not have, therefore, been entertained by the Industrial Court. Nevertheless, the order delivered by the Apex Court dated 29.3.1988 and subsequent orders referred to herein above indicate that this Court was to decide the issue of deemed date of retrenchment. By order dated 12.12.1988, referred to in the reproduced paragraph No.4 herein above, the deemed date of retrenchment was declared to be 31.10.1988. The employees have not challenged this order before the Apex Court. As such, there can be no argument available to the employees for assailing the order of this Court dated 12.12.1988, which they have indirectly sought to do through their

ULP Complaints before the Industrial Court. The prayer for quashing and setting aside the retrenchment put forth before the Industrial Court was, therefore, unsustainable.

14. Shri Borde has further submitted that the employees have put forth a prayer before the Industrial Court seeking refund of 7% of the contribution, which the Union has acquired from the legal dues payable by the management to the employees. The learned Advocates for the management and the Union have opposed this prayer, contending that when the settlement was not challenged before the Industrial Court, these prayers were rightly turned down by the Industrial Court. So also, these prayers cannot be pressed before this Court in the light of the fact that the settlement has not been called in question before the Industrial Court.

15. This issue is no longer *res integra* in the light of the fact that this Court has already concluded in Mehta Gem Tools Private Limited Vs. Aruna Arvind Parkar [2010 III CLR 459], that few workers, who are a part of the entire lot of employees represented by a Union, have taken their benefits under the settlement, cannot turn around and pray that the settlement was not binding upon some of the individual workmen.

16. In the instant case, there are 39 employees who are before the Court. 22 amongst them have resigned in 1985-86 as has been specifically

pleaded by the management in the second petition below paragraph No.4 on page Nos. 7 and 8 of the petition paper book. These 22 employees having resigned in 1985-86 have questioned their resignation after ten years in 1996. It is informed by the management that their challenge was turned down and their case of alleged forceful resignation, amounting to termination, has been negated. Learned counsel for the employees could not indicate otherwise from the record before the Court. It is, therefore, apparent that only 17 persons could be said to be the complainants and who are before this Court.

17. Shri Borde has drawn my attention to page 61 of the impugned judgment of the Industrial Court, especially issue No.7, which is, *“Does the respondent prove that the settlement dated 2.12.1995 arrived at between the respondent and the Union is legal and valid?”* The Answer of the Industrial Court is in the affirmative. Shri Borde has, therefore, tried to canvass that these conclusions on issue No.7 are unsustainable.

18. I am unable to entertain his submission for the reason that there was no specific prayer set out in the complaints contending that the said settlement dated 12.12.1988 be declared as illegal. Notwithstanding the above, Shri Borde has indicated from paragraph No.55 of the impugned judgment that the Industrial Court had concluded in an interim order dated 18.4.1996 that the settlement is null and void as there is a difference

between the payment of gratuity and the retrenchment compensation amounts and the Union appears to have agreed for lesser amounts.

19. I find that these submissions of Shri Borde are mis-conceived for the reason that a *prima facie* conclusion arrived at by the Industrial Court, at an *interlocutory* stage, would not mandatorily lead to the same conclusion by way of a final judgment. *Prima facie* observations of any Court are at a *prima facie* stage and the final judgment is required to be delivered on considering the totality of the oral and documentary evidence. These observations are found in the same paragraph No.45, wherein the Industrial Court has concluded that the employees had not challenged the settlement in their Complaints, which were filed in 1996.

20. Shri Borde has then drawn my attention to a statement made by one Shri Moghe (now deceased) in his cross-examination. He points out from paragraph Nos. 27 and 28 that the said witness has admitted that the figures shown by the employees in their statement are correct. He, therefore, submits that notwithstanding whether Shri Moghe was in the terminal stage of Cancer, had undergone cross-examination recorded in the hospital and had passed away within a month, the said testimony deserves to be accepted.

21. In the light of the above, it is noteworthy that the management in

Writ Petition No. 2965 of 1998 has pointed out 22 Court proceedings, particulars of which are set out below paragraph No.10 on page Nos.11, 12 and 13 of the petition paper book. Details of the proceedings, dates of judgments and the amounts directed by the respective Courts to be paid by the management to the employees are mentioned. The same read as under:-

Sr.	Particulars of Orders	Decree Date
1	Application (IDA) No.12 of 1989 granting Retrenchment Compensation to 298 workers till 31.10.1988 - Rs. 20,74,182/-	11.10.1993
2	Appl. (PWA) No. 2 of 1985 granting Retention allowance to 354 seasonal workmen for 1984 - Rs. 6,29,025/-	16.5.1985
3	Application (PW) No. 3 of 1986 granting Retention allowance to 347 seasonal workers for 1985 Rs. 6,24,229/-.	22.11.1985
4	Application (PWA) No.11 of 1987 granting Retention allowance to 238 seasonal workers for 1986 - Rs. 4,62,103/-	15.7.1992
5	Ref (IC) No. 16 of 1984 granting Bonus for the year 1982-83 at 8.33 % - Rs. 3,74,602/-	26.2.1987
6	Application (PWA) No. 1 of 1985 for Wages for Nov - Dec 1984 - Rs. 5,50,000/-	16.5.1985
7	Application (PWA) No. 9 of 1985 for wages for January to March 1985 - Rs. 6,68,597/-	17.2.1986
8	Application (PWA) No.14 of 1985 for wages for April and May 1985 - Rs. 5,50,000/-	17.2.1986
9	Application (PWA) No. 17 of 1985 for wages for June and July 1985 - Rs.5,50,000/-	17.2.1986
10	Application (PWA) No. 23 of 1985 for wages for August - Sept. 1985 - Rs.4,50,000/-	28.11.1986
11	Application (PWA) No. 4 of 1986 for wages for Oct. - Dec. 1985 - Rs.5,84,010/-	22.11.1988
12	Application (PWA) No.5 of 1986 for wages for January	22.11.1988

	1986 - Rs. 1,79,416/-	
13	Application (PWA) No.6 of 1986 for wages for Feb. - March 1986 - Rs. 3,01,791/-	22.11.1988
14	Application (PWA) No.17 of 1986 for wages for April, May and June 1986 Rs. 3,59, 915.23/-	7.5.1991
15	Application (PWA) No.1 of 1987 for wages for July, August & September 1986 - Rs. 3,61,315/-	7.5.1991
16	Application (PWA) No. 8 of 1987 for wages for Oct. Nov & Dec. 1986 - Rs. 3,40, 283.03 /-	12.2.1993
17	Application (PWA) No. 5 of 1988 for wages for January to June 1987 - Rs. 6,31,367/-	12.2.1993
18	Application (PWA) No. 6 of 1988 for wages for July to Dec. 1987 - Rs. 3,35,205/-	7.5.1991
19	Application (BIR) No. 1 of 1981 reinstatement of Shri Ashok Baburao Salvi, Compounder with full back wages Rs. 441,137/-	28.2.1985
20	Application (BIR) No.3 of 1979 reinstating Shri Sadashiv Trimbak Dhanawate the Overseer with full back wages Rs. 70, 931/-.	22.4.1992
21	Application (WC) No. 75 of 1992 compensation of Rs.50,000/- awarded to Sri Zumbar Ganpat Borude	22.2.1994
22	Gratuity payment as per Labour Court and Industrial Court order as per various cases and various order - Rs.54,02,337/-	

22. Shri Patil further submits that the Court Receiver appointed by this Court in HC Suit No. 1937 of 1985 in between Bank of Madurai Ltd. Vs. Changdeo Sugar Mills and another, passed an order on 7.6.1986, which is at page No.49 of the second petition, whereby, the management was informed that since the Court Receiver has been appointed to look after the suit property for protection purpose, the management has no right or authority to accept any proceedings, summons etc. on behalf of Changdeo

Sugar Mills Ltd. Similarly, the management was restrained from accepting any summons in any proceedings on behalf of the Sugar Mills as well as on behalf of the Court Receiver.

23. Shri Patil, therefore, submits that the management was precluded from appearing in all these 22 Court proceedings before various Courts, Labour Courts and Industrial Courts. All these employees did not implead the Court Receiver in all these matters for self serving purposes and consequentially all these proceedings were decided against the management and the amounts mentioned above were held payable by the management to the employees. He adds that despite these being *ex parte* judgments, the petitioner management had paid all these dues as assessed by the Courts to all the workmen inclusive of the employees in these petitions. There is no contrary statement being made by the employees on this count.

24. From the above proceedings, I find that payments pertaining to retrenchment compensation, retention allowance, bonus, unpaid wages for particular periods, full backwages payable to two reinstated employees, compensation under the Employees' Compensation Act as well as gratuity, was paid. In this backdrop, the contention of Shri Borde that the testimony of Shri Moghe has not been appreciated by the Industrial Court, is an unsustainable submission.

25. I find from the Complaints filed by these employees in 1996 that there is no whisper of the 22 proceedings referred to by the management herein. Most of the claims of these employees were decided in the above mentioned 22 claims. I, therefore, find that these employees have shrewdly suppressed these facts from the Industrial Court, which were brought to the notice of the Industrial Court by the management in those complaints.

26. Shri Patil has pointed out from the petition preferred by the management that an amount of Rs.32,17,327/- was paid by the Agent of the Court Receiver to the workers towards their wages even though they did not work from 1984. Rs.20,00,000/- as per the Apex Court order dated 24.2.1988, Rs.4,00,000/- as per order of this Court dated 20.3.1989, Rs. 1,25,000/- paid by Bank of Madurai Ltd. on 22.2.1987 and Rs.6,92,327/- as per the minutes of order of this Court, dated 30.4.1991, totalling an amount of Rs. 32,17,327/- was disbursed to the workers.

27. He has then drawn my attention to Clauses (3), (5) and (6) of the Settlement which read as under:-

“(3) The Company will start making payment to the workmen through the Union after receiving Rs.1,10,00,000/- from the said

Ninaldevi Sahakari Sakhar Karkhana Ltd., pursuant to the said two Government Resolution referred to hereinabove.

(5) The amount of Rs.1,0,00,000/- to be paid by the Company shall be distributed in the following manner.

<i>Total Wages</i>	<i>35,00,000.00</i>
<i>Towards Retaining (Seasonal Wages)</i>	<i>10,00,000.00</i>
<i>Towards Gratuity</i>	<i>50,00,000.00</i>
<i>Towards Retrenchment Compensation</i>	<i>15,00,000.00</i>
	<i>-----</i>
	<i>Rs. 1,10,00,000.00</i>
	<i>-----</i>

The shortfall under one head may be adjusted by paying from the excess amount under any other head. No other deduction except Union's contribution of 7% as stipulated hereinafter is permissible.

(6) The Union is entitled to collect legal expenses from each of the workmen as the Union has incurred heavy expenses for various court cases on behalf of the workmen for last 9 years. It is agreed that the Company will deduct 7% of the amount payable to each and every workmen from out of the calculated amount payable to each of workman and pay it over to the Union. Such a deduction and payment to the Union is permissible under the various judgments of High Court and Supreme Court of India. The union will address a letter to the Company to that effect to enable the Company to deduct 7% of the amount and pay it over to the Union."

28. He, therefore, submits that all the dues as required to be paid, have been disbursed to the workers.

29. In response to the submission of Shri Borde that all service benefits under orders of this Court dated 12.12.1988 were paid only in 1996, Shri Patil has indicated from the Government Resolution dated 14.12.1994 that the plant, machinery and spare parts of the Changdeo Sugar Mills Ltd. was permitted to be sold to Shri Ninai Devi Sahakari Sakhar Karkhana. Funds were generated by such sale, which were made available to the Changdeo Sugar Mills Ltd. An amount of Rs. One Crore and Ten Lakhs was allocated towards payment of workers. Similarly, by Government Resolution dated 15.7.1995, an amount of Rs. 231 lakhs was made available from which Rs. 160 lakhs were to be paid to the Bank of Madurai and Rs. 110 lakhs were to be disbursed amongst workers. He, therefore, submits that there was no deliberate delay by the management in clearing the payments of employees.

30. He further submits that the recognized Union represented more than 600 workers. An amount of Rs.1,55,93,499/- was disbursed to the workers, which included bonus, unpaid wages, gratuity etc. Shri Borde makes a statement on instructions that all orders delivered by the various Courts and authorities have been complied with by the management and the employees have received their amounts. Shri Patil submits that Rs.13,00,000/- were deposited in this Court in the light of Clause (3) of the Settlement as the said factory could not be started before 31.10.1997. He,

therefore, submits that the conclusions of the Industrial Court cannot be faulted on any count.

31. In the light of the above, the only issue that remains to be decided in these petitions is whether the recognized Union could have deducted 7% Union Contribution from Gratuity. This dispute is, therefore, restricted only to the extent of 17 employees in these petitions, as 22 employees had resigned in 1985-86 and are not concerned with this Settlement. The connected issue, therefore, is whether the employees can make a grievance of such deduction from the gratuity amount without challenging the Settlement before the Industrial Court.

...

Dated : August 1, 2015

32. Shri Borde submits that the Union should fairly return the gratuity deduction as the amount of gratuity cannot be subjected to any deductions. He relies upon the judgment in the case of G.S.Dharasing Vs. E.K.Thomas and others [AIR 1988 SC 1829]. He is relying upon paragraph No.3 of the said judgment, which reads as under:-

“ We do not find that the petitioner is right in his contentions. Admittedly, the amounts were received by the trade union from the employer concerned towards the gratuity and accident benefit to which the workers were entitled. There was no scheme drawn up by

the trade union regarding the payment of the gratuity amount and the accident benefit fund received on behalf of the Workmen to the workmen concerned. There was no agreement between the trade union and its members that the amount received towards gratuity and accident benefit should form part of funds of the trade union. Any amount received for and on behalf of the members is liable to be refunded to the workmen concerned. In the instant case the amount which had been received on behalf of Respondent Nos. 1 and 2 by the petitioner and Respondent No. 3 had, therefore, to be refunded to them on their resignation from the membership of the trade union. We do not find any tenable defence which the trade union could put forward in the circumstances of the case.

“ In the case before us the petitioner and Respondent No. 3 have not shown that there was any such settlement between the management and the trade union or a scheme prepared by the trade union which was binding on the workmen under which the amounts received towards the gratuity and the accident benefit fund on behalf of the workmen would become a part of the Union fund.”

33. Shri Yenge, on behalf of the Union submits that the Settlement dated 2.12.1995, signed between the parties, was never challenged by the petitioner workers before any Court. The gratuity payable to every employee at the relevant time in 1988 was at the rate of seven days' wages per year of service since the workers were seasonal or seasonal permanent at the relevant time. The Union had espoused the cause of the employees. Hundreds of cases were filed by the Union before various Courts and

authorities for securing benefits to the workers under various Acts. By the intervention of the Union, it succeeded in getting gratuity from the Controlling Authority under the Act, which is the Labour Court at the relevant time. All these judgments are *ex parte*. The management, despite the *ex parte* judgments has paid up the entire gratuity amount as was directed by the various Courts and the management did not challenge the said judgments.

34. He, therefore, submits that these 17 employees before the Court should have fairly acknowledged the efforts put in by the Union which litigated for the workers from the first available Court till the Honourable Supreme Court and succeeded in espousing their cause. It is unfortunate that these 39 workers, out of which only 17 are concerned, have chosen to disregard the efforts of the Union for selfish motives.

35. Shri Yenge, relies upon the judgment of the learned Division Bench of this Court, in the case of Walchandnagar Industries Limited, Satara Vs. Dattusing Lalsing Pardeshi and others [2006 I CLR 810]. He specifically relies upon paragraph No.47, which reads as under:-

“47. It has transpired when the matter was being conducted, since there was some talk of settlement, that the last drawn salary of Mr. Mulani who is respondent in Letters Patent Appeal No. 213 of 2002 was Rs. 1246/-, that of Mr. B.R. Pardeshi was Rs. 1500/-, Mr. V.B.

Jadhav Rs. 1308/-, Mr. V.J. Pawar was Rs. 1174/- Mr. S.R. Mantri was Rs. 1498/-. These figures will show that, had the appellant - employer effected a retrenchment in stead of entering into a settlement, since the valid reasons for retrenchment were in existence, the appellant would have made payment as per Section 25-F(a) and 25-F(b) of the Industrial Disputes Act, 1947, i.e., one month's pay in lieu of notice and the compensation equivalent to 15 days average pay for every year of completed service or any part of it in excess of 6 months which would have been less than the amount payable under the settlement. By this agreement, Section 25-F(a) & (b) of the ID Act stands complied with by Clause 2.10 (b) (A) of the settlement which provides for compensation of 15 days' salary for every completed year of service. As a result of Section 25-F(a), employer is under obligation to pay one month's salary in lieu of notice, that means each of the respondents would have got monthly salary as stated above. However, if we look to the chart of the lump sum payment it will be noticed that the minimum lump sum payment provided in the above referred chart is Rs 4,000/-, and the lesser the service more the lump sum amount is the scheme. However, looked it at from any angle the lump sum payment which has been provided in the settlement is double the salary or more than that. Thereby it will be noticed that the lump sum payment provided under the settlement is more than the amount which is payable under Section 25-F(a). As a result of this, it will be revealed that the recognised union has negotiated in respect of the every amount of the compensation which should be paid by the employer under Section 25-F(a) & (b) of the ID Act and has also negotiated and settled a lump sum payment more than the monthly payment which is payable under Section 25-F(a). This will show that the payments and benefits and the compensation which the employee received is more beneficial and advantageous than

the payment provided under Section 25-F(a) & (b), if the retrenchment is carried out. What is to be looked into is that, only concession has been given to the employer to make such payment by 8th of February 1988 and in any circumstances in between 15th to 29th of February 1988. That means, extended time for payment has been given to the employer, but no monetary loss has been caused to the employees. Thus, looking to this agreement from the point of view of the employees whose services have been brought to an end, it will be revealed that the settlement was more advantageous. Therefore, out of the 492 employees whose services have been brought to an end, none of them have made a grievance about the said settlement except the respondents in these two Letters Patent Appeals. What we find is that, that settlement is just and fair and it does not suffer from any malafide, and the settlement as a whole has to be accepted and it was an error on the part of the learned Single Judge to split up this settlement into two parts and to hold that that part of the settlement by which the services of 492 employees have been brought to an end is invalid one. In fact, as per the above referred apex court judgment, the learned Single Judge was under the obligation to accept or reject the settlement evaluating it as a whole. Since the said settlement has been accepted by the majority of the workmen, we also hold, relying upon the various judgments of the Apex Court referred to above, that the said settlement is valid, just, proper and binding on all the employees including the present respondents.

It is specifically mentioned that the respondents in Letters Patent Appeal No. 212 of 2002, being the members of the recognised union and since the recognised union has signed the said settlement, after having approved it by the general body of the

union, the said settlement is not only binding as against the respondent in Letters Patent Appeal No. 212 of 2002 being signed by union in a representative capacity but it is also binding as against them since they happened to be a party to the said settlement as a result of decision of the general body. The said settlement is equally binding as against the respondents in Letters Patent Appeal No. 213 of 2002, even though he is not a member of the said recognised union, since the said settlement has been entered into by the recognised union and has been accepted by the majority of the employees as demonstrated above."

36. He, therefore, submits that first of all the original complaints should have challenged the Settlement and only then the Industrial Court could have considered as to whether the Settlement is malafide or fair. In the Walchandnagar Industries Case (supra), it is held that the Settlement as a whole has to be accepted or rejected and the said Settlement cannot be split up into different parts to hold that one part of the Settlement is valid and the other part is invalid. He, therefore, submits that no challenge can be entertained by this Court, when the Settlement itself was not challenged.

37. Despite the above, he places on record a chart pertaining to these 17 workers, out of which 1 worker, namely, Pradip Kalman Mhalas is not entitled for gratuity, to indicate the amount of gratuity payable to the 16 employees and the amount of deduction at the rate of 7%, which has been taken by the Union. Based on the said chart, he submits that these

amounts shown in the last column would be returned to these employees as a goodwill gesture without laying down any precedent.

38. The above referred chart, tendered across the Bar today by Shri Yenge is taken on record and marked as Exhibit "X" for identification.

39. In the light of the above, the statement of the Union that the concerned employees at issue will be returned their amounts to the extent of deductions received by the Union, without laying down any precedent, is taken on record. The Union shall, therefore, refund the said amounts mentioned in the last column of Exhibit "X" as expeditiously as possible and preferably within a period of six weeks from today. In so far as the deceased employees (four out of the seventeen) are concerned, the Union shall deposit their shares in this Court.

40. In the petition preferred by the management, the impugned judgment has been assailed only to the extent of the conclusion drawn by the Industrial Court in the third clause of the operative part, whereby the management was directed to recalculate the amount of compensation as like gratuity amount and pay the arrears of retrenchment compensation to the complainants.

41. Shri Patil submits that firstly the management has paid the

retrenchment compensation amount as was decreed by the Court in Application (IDA) No. 12 of 1989. The formula / principle as per the ID Act was considered and the competent Court decided the retrenchment compensation to be paid to 298 workers till 31.10.1988. He clarifies that the rest of the workers had resigned earlier and were not before the Court for the said purpose.

42. It is his contention that once this issue was settled by the Court and which amount was paid by the management, the Industrial Court could not have reopened the entire issue and could not have directed the management to recalculate the retrenchment compensation amount and the gratuity. He submits that the same analogy applies to the gratuity case as well since the management has paid all the gratuity amount as was decided by the controlling authority. He further submits that the Settlement therefore, cannot be split into portions to conclude that one clause or portion is unsustainable while the other portion is sustainable.

43. He further submits that the Industrial Court has failed to consider the distinction in the formula for calculating retrenchment compensation and gratuity. Under Section 25F(b) of the ID Act, the retrenchment compensation has to be calculated at the rate of 15 days' average pay per year of service. Section 2(aaa) defines "*average pay*" to mean "*the average drawn in case of a monthly paid workman by taking three*

complete calendar months in account.”

44. Under the Payment of Gratuity Act, the gratuity is to be computed under Section 4 and which is to be equivalent to the rate of 15 days' wages for each year of service based on the rate of wages last drawn. The wages have to be understood from the definition under Section 2(s) of the Gratuity Act, which means all emoluments earned by an employee, while on duty or on leave and which includes Dearness Allowance, but excludes any Bonus, Commission, House Rent Allowance, Overtime wages and any other allowance. As such, there is bound to be a difference in the amount of gratuity and the amount of retrenchment compensation payable to an employee.

45. Shri Patil submits that the Industrial Court relied upon the judgment delivered in the case of Trade-Wings Vs. Prabhakar [1992 I CLR 480]. By the said judgment this Court has concluded that the monthly wages be divided by 26 days to calculate per day wage for computing retrenchment compensation.

46. Shri Patil further relies upon the judgment of this Court in the case of Mahavir Steel Industries Pvt. Ltd. Pune Vs. Pune Workers' Union and another [2011 II CLR 929]. A similar situation was considered by this Court in the case of Mahavir Steel (supra) and the judgment of this Court in the

case of Trade-Wings (supra) was also considered. In the light of catena of judgments, this Court has concluded in paragraph No.17 and 18, which read as under:-

“17. The first issue which arises is whether the retrenchment compensation offered to the workmen was properly calculated and whether the retrenchment of the workmen on tendering this amount could be considered to be legal. The issue as to how the retrenchment compensation should be calculated is no longer res integra. In the case of Guru Jambheshwar University v. Dharam Pal (supra), the Supreme Court has held that the calculation of one day's average pay for the purposes of payment of retrenchment compensation is not the same as the procedure under the Payment of Gratuity Act. The Court after referring the judgment in the case of Jeewanlal Ltd. v. Appellate Authority, AIR 1984 SC 1842 : (1984) 4 SCC 356 : LNIND 1984 SC 238 : (1985) 1 MLJ 25 : 1984 II LLJ 464, has held thus:

16. The principle laid down in Jeewanlal Ltd. v. Appellate Authority (supra) and Shri Digvijay Woollen Mills Ltd. v. MP. Buck AIR 1980 SC 1944 : (1980) 4 SCC 106 : 1980 II LLJ 252 can have no application for determining the retrenchment compensation under Section 25-F(b) of the Act as the words "average pay" occurring herein has been defined in Section 2(aaa) of the Act. The concept of 26 working days was evolved having regard to the definition of the word "wages" as given in Section 2(s) of the Payment of Gratuity Act, which uses the expression "all emoluments which are

earned by an employee while on duty or on leave". Therefore, there is no warrant or justification for importing the principle of 26 working days for determining the compensation which is payable in terms of Section 25-F(b) of the Act.

17. *There is another important feature which deserves notice. Subsequent to the decision of this Court in Jeewanlal an explanation has been added after second proviso to Section 4(2) of the Payment of Gratuity Act, by Act 22 of 1987, which reads as under : "Explanation. In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen." By adding the explanation, the legislature has brought the statute in line with the principle laid down in Jeewanlal Ltd. v. Appellate Authority (supra) and has given statutory recognition to the principle evolved viz. that in case of monthly-rated employee the fifteen days' wages shall be calculated by dividing the monthly rate of wages by twenty six and multiplying the quotient by fifteen. But, no such amendment has been made in the Industrial Disputes Act. If the legislature wanted that for the purposes of Section 25-F(b) also the average pay had to be determined by dividing the monthly wages by twenty six, a similar amendment could have been made. But the legislature has chosen not to do so. This is an additional reason for holding that the principle of "twenty six working days" is not to be applied for determining the retrenchment compensation under*

Section 25-F(b) of the Act.

18. Admittedly, the short fall in the retrenchment compensation has occurred only because of the calculation based on 30 days and not 26 days. In the light of the observations of the Supreme Court in the case of Guru Jambheshwar University v. Dharam Pal (supra), the retrenchment compensation tendered to the workmen was valid. I need not, therefore, consider the consequences of the shortfall in the tender of the retrenchment compensation or the subsequent deposit of the same before the Industrial Tribunal. Thus there is no violation of the provisions of Section 25-F of the I.D. Act and therefore the retrenchment cannot be said to be invalid on that count.”

47. This Court, therefore, came to a conclusion that in case of the daily rated employees, the principle for computing compensation under Section 25(b) of the ID Act, the calculation could be on the basis of 30 working days principle. In case of monthly rated employees, the principle would be of 26 working days in a month. This Court, therefore, concluded in Mahavir's case (supra), that the amounts payable by way of retrenchment compensation and by way of gratuity to the same employee will naturally be different.

48. Shri Borde, on behalf of the employees, has relied upon the Trade-Wings judgment (supra), and has opposed the petition filed by the management. He contends that the ratio laid down in the Trade-Wings

case (supra), needs to be followed. It secures larger interests of the workers.

49. It is evident that this Court has considered the ratio laid down in the Trade-Wings case (supra), while deciding the Mahavir's case (supra). This Court has considered the definitions available under the ID Act and the Payment of Gratuity Act as have been noted above and, therefore, concluded that the formula is in relation to monthly rated employees vis-a-vis daily rated employees and hence, the gratuity amounts and the compensation amounts payable to same workers would be different as an average pay is to be calculated for paying compensation and in the case of gratuity, it only has to be the basic wages and dearness allowance.

50. As such, I am of the view that the Industrial Court has erroneously issued the directions to the management to recalculate the retrenchment compensation and gratuity amounts and make the payment of the difference between the two.

51. In the light of the above, the first petition filed by the employees i.e. Writ Petition No.2403 of 1998 is partly allowed to the extent of the refund of 7% deduction from gratuity as per the voluntary statement made by the Union in terms of Exhibit "X", as is noted in paragraph No.39 herein above. Rule is made partly absolute accordingly.

52. In the result,

(A) The Second Petition filed by the management i.e. Writ Petition No. 2965 of 1998 is partly allowed.

(B) The third direction of the Industrial Court to recalculate the amounts of retrenchment compensation and gratuity and pay arrears is quashed and set aside. Since an amount of Rs.13,00,000/- deposited by the management in this Court as per orders of this Court, having been withdrawn / disbursed proportionately to all the 600 and odd workers, there shall be no orders to that extent.

(C) The three employees, Aziz Inamdar, B.R.Kasar and R.B.Shaikh are concerned, the name of Shri R.B.Shaikh - respondent No.20 has already been deleted by order dated 24.2.1999 passed by this Court in Civil Application No.936 of 1999 in Writ Petition No. 2965 of 1998.

(D) The two remaining persons, namely, Aziz Inamdar and B.R.Kasar have withdrawn their amounts from the Industrial Court by applications dated 15.7.1999 and 24.9.2003 under orders of the Industrial Court.

(E) An amount of Rs.73,624/- was deposited in this Court will be payable to the 14 persons mentioned in Exhibit "X" except Aziz Inamdar, B.R.Kasar and R.B.Shaikh.

(F) The rest of the amount of Rs. 31,300/- deposited in this Court by D.D.No. 908874 shall be withdrawn by the petitioner management. Interest, if any, accrued on Rs.73,624/- deposit would

also be disbursed to the said 14 persons and the interest accrued on Rs.31,300/- would be paid to the management.

(G) Rule is made partly absolute accordingly.

53. The two quarters belonging to the management and retained by Aziz Inamdar and B.R.Kasar from 1996 onwards with or without payment of rent, electricity and water charges, shall be vacated on/or before 30.9.2015, considering the request of the Advocate for the employees. In the event, they are not vacated by the said date, the management will be at liberty to recover the outstanding rent, electricity and water charges from 1996 onwards, if any, and seek their eviction by following the due procedure of law. They shall then be liable to pay all charges for occupying the quarters till their eviction.

54. At this stage, learned Advocate for the employees prayed for a stay to this judgment for a period of four weeks. Learned Advocates for the management has vehemently opposed the said request on the ground that despite the fact situation as above, the management is litigating for the last 20 years after closure when the employees were deemed to have been discharged on 31.10.1988 which is about 27 years ago.

55. In the light of the above and the facts which have been recorded in this judgment, the request made by the employees is rejected.

56. After the above order was passed, Shri Borde submits on instructions obtained from his clients present in the Court that intermittently they have paid the rent from 2010 onwards and would vacate the premises before 30.9.2015.

57. Shri Borde further submits that all the workers who are occupying the premises shall vacate the same positively on/or before 30.9.2015. Shri Patil, for the management promptly responded by submitting that as a goodwill gesture, the management will not seek recovery of any outstanding rent or electricity or water charges and will waive the same considering the statement made by the concerned workers.

58. Shri Borde, further requests that the payment of amounts as are directed by this Court to be paid to the workers as observed above, be permitted to be withdrawn by the said workers. They would produce proof of identity as like self attested copy of Election Identity card and if possible, in addition, the Aadhar Card. The request is accepted and these employees are permitted to withdraw their respective amounts, with interests, as per the above directions.

59. All earlier interim orders stand vacated forthwith.

60. Pending Civil Applications, if any, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d