

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

**REVIEW PETITION NO.189 OF 2013
IN
WRIT PETITION NO.6674 OF 2007
WITH
C.A.NO.2777 OF 2015
C.A.NO.1401 OF 2014**

1. The State of Maharashtra,
through the Superintending
Engineer, Sarvajanik Bandhkam
Mandal, Osmanabad.

2. The Executive Engineer,
Sarvajanik Bandhkam Vibhag,
Latur.

3. The Deputy Engineer,
Sarvajanik Bandhkam Upvibhag,
Ahmedpur.

...Review Petitioners.
(Orig. Petitioners.)

Versus

The General Secretary,
Marathwada Lal Bavta
Kamgar Union, Trade Union
Center, Jalkot Road,
Udgir, Dist.Latur.

... Respondent.

...

**WITH
REVIEW PETITION NO.190 OF 2013
IN
WRIT PETITION NO.6675 OF 2007
WITH
C.A.NO.1402 OF 2014
C.A.NO.2778 OF 2015.**

1. The State of Maharashtra,
through the Superintending
Engineer, Sarvajanik Bandhkam
Mandal, Osmanabad.

2. The Executive Engineer,
Sarvajanik Bandhkam Vibhag,
Latur.

3. The Deputy Engineer,
Sarvajanik Bandhkam Upvibhag,
Ahmedpur.

...
Review Petitioners.
(Orig. Petitioners.)

Versus

The General Secretary,
Marathwada Lal Bavta
Kamgar Union, Trade Union
Center, Jalkot Road,
Udgir, Dist.Latur.

... Respondent.

Mr.V.R.Mundada, Special counsel for Review
Petitioners.

Mr.B.B.Yenge, advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA

Date : 05.05.2015.

PER COURT :

1. Heard.

2. The Review petitioners seek review of the order dated 2.8.2010, passed in W.P.No.6674 and W.P.No.6675 of 2007, thereby dismissing the Writ Petition and confirming the Judgment and order passed by the Industrial Court.

3. Mr.Mundada, learned Special counsel for the State submits that the members of the complainant Union were brought on CRT and were working as regular employees on fixed pay-scale. The attendance register could not be kept as it was not practicable. They were working as a field staff and only on the basis of monthly attendance report submitted by respective road karkoons to the higher authorities, they were paid accordingly in each month as per wage register. Right since 1981 till filing of complaint before the Industrial Court, the members of the complainant Union at no material point of time complained about the non-payment of wages on public holidays. In fact, as no work

was extracted from the members of the complainant Union on public holidays, no question arises of payment for work on the said days. For the first time, grievance is made after the members have joined the complainant Union.

4. Except the representations dated 8.12.2003 and 22.12.2003, no other documents are annexed to substantiate that at any material point of time, grievance was made by the complainant Union about their entitlement for the wages having worked on holidays.

5. The learned counsel submits that the Review Petitioners are not disputing about the benefits applicable to the employees. In case the employees work on public holidays, the employees are entitled for the payment as per the rules and the scheme, however, the petitioners are disputing the entitlement. The judgment in case of **"Superintending Engineer, PWD and others Vs. Kokan Sarvajanik Bandhkam Va Patbandhare Kamgar Sangh"** reported in **2003 I CLR 273**, is misread. The learned counsel submits that the

parties have led their evidence. The witness of the complainant has accepted that they have never made representation in writing except in December 2003 and were making oral requests. The said witness admitted that wages are paid after a month on a pay bill. No specific dates of working and non-payment for the said dates were detailed. It was admitted by the witness that he had not made any complaint regarding withdrawal of alleged benefits and non-payments. He has also admitted that he does not have any documents showing that benefit is not availed. The said witness categorically admitted that he has not submitted attendance register and simply conveyed the working of particular employee on a particular day in his report. This shows that there is no practice in vogue of maintaining attendance register, as such adverse inference drawn is erroneous. As the document itself did not exist, no question arises of producing the said document. It was admitted by the witness that he has not taken into consideration the public holidays falling on weekly off day. The present Review Petitioners had also led the

evidence. It was pointed out that several employees are transferred from Zilla Parishad in 1986. As such maintaining Muster does not arise. The details of such employees are submitted in C.A.No.2777/2015 filed for production of documents. The employees were never instructed to work on 2nd and 4th Saturdays, Sundays and Public holidays. The road karkoon has to submit the report of attendance and it was admitted that he does not know about manner of keeping attendance by road karkoon. The witness of the Review Petitioner has specifically stated that no work is extracted from the complainant on 2nd and 4th Saturdays and Sundays, so also public holidays. The Industrial Court did not consider the totality of the evidence on record.

6. The learned counsel submits that the present Review Petitions deserve to be allowed. The learned counsel relies on the judgment delivered by the Division Bench of this Court in W.P.No.4626/2013.

7. Mr.Yenge, learned counsel submits that

the applicant has issued Government Resolution in respect of the employees of Nilanga Sub-Division, Osmanabad Circle, wherein the Review Applicant has paid the amount as per the order passed by the Industrial Court and confirmed by this Court in Writ Petition. The employees in the present matter are from the same Osmanabad Circle and of Sub-Division, Ahmedpur. Except the change of Sub-Division all the facts are similar. The said judgment has been confirmed by the Apex Court also. The learned counsel further submits that the document sought to be produced along with the Civil Application were never produced before the Industrial Court nor in the Writ Petition and can not be allowed to be produced in the present Review Application. The learned counsel relies on the judgment of the Single Judge of this Court in the case of **"Superintending Engineer, P.W.D. And Others Vs. Kokan Sarvajanik Bandhkam Va Patbandhare Kamgar Sangh"** reported in **2003 I CLR 273**. According to the learned counsel, the employer is in possession of all the evidence and as the Review Applicant did not produce the Muster, adverse inference is rightly drawn

against the Review Applicant.

8. According to the learned counsel, the judgment of the Industrial Court is based on facts, the same has been considered by this Court.

9. I have considered the submissions canvassed by learned counsel for respective parties.

10. The jurisdiction of this Court in entertaining the Review Application is in a narrow compass. The Review can not be treated as an appeal in disguise.

11. The Industrial Court upon appreciation of evidence had drawn adverse inference against the present Review Applicant for non-production of the documents. Whether the employee has worked on a particular day or not, the record would be with the employer. In spite of the orders, the Review Applicant did not produce any record, as such the Industrial Court has drawn

adverse inference. It is submitted that the Muster Register was not maintained and as per the wage register, the wages were paid.

12. The Muster/Attendance Register is required to be maintained as per the rules.

13. Be that as it may, while disposing of Writ Petition, the Court relied upon the judgment delivered by this Court in W.P.No.2599/2009 along with W.P.No.8060/2009. The employees in the present matter are similarly situated. The judgment of this Court in the said Writ Petition has been confirmed by the Apex Court. It is also brought to the notice that the State of Maharashtra has issued Government Resolution, thereby has made the payment in respect of the employees of Nilanga Division of Osmanabad Circle. The present employees are also from Osmanabad Circle, Sub-Division Ahmedpur. As the Industrial Court has taken a plausible view, the same was not interfered in the Writ Petition.

14. Considering the above, the Review

Petitions are disposed of. No costs.

15. In view of disposal of Review Petitions, the Civil Applications are also disposed of.

(S.V.GANGAPURWALA, J.)

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