

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

WRIT PETITION NO.3183 OF 1999
WITH
CIVIL APPLICATION NO. 12305 OF 2016
IN WP/3183/1999

Navnath s/o Krishnaji Borade,
Age : Major, Occupation : Service,
R/o At Post Sayargaon, Via Bhoom,
Taluka Paranda,
District Osmanabad.

...PETITIONER

-VERSUS-

- 1 Superintending Engineer,
Public Works (Board) Osmanabad,
Division Osmanabad.
- 2 Executive Engineer,
American Relief Fund
(Construction Gat),
C/o Public Works Board,
Osmanabad.
(WP is dismissed against Respondent No.2
as per Registrar Court's order dated 07.06.2004).
- 3 Presiding Officer,
Labour Court, Solapur.

...RESPONDENTS

...
Advocate for Petitioner : Smt.Kulkarni M.A.
AGP for Respondents: Shri S.N.Kendre.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th November, 2016

Oral Judgment :

1 Respondent No.3 being the Labour Court, stands deleted from these proceedings.

2 The Petitioner is aggrieved by the judgment of the Labour Court dated 22.03.1999 by which the claim of the Petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 seeking payment of money due from the Employer, has been rejected.

3 This Court has not granted any relief to the Petitioner while admitting this petition.

4 I have heard Mrs.Kulkarni, learned Advocate for the Petitioner and the learned AGP for the State. With their assistance, I have gone through the impugned judgment.

5 I find that the claim of the Petitioner before the Labour Court under Section 33-C(2) was that he was working as a Road Karkoon from 1973. The work of Road Karkoon was equated with the work of Class-III employees. From 1983 he was appointed under the Employment Guarantee Scheme (EGS) as a Mustering Assistant on consolidated salary

of Rs.300/- per month and that he was entitled to basic pay scale and other allowances available to regular workman on the ground of “equal wages for equal work”.

6 It is settled law that disputed questions are not to be raised under Section 33-C(2) of the Industrial Disputes Act, 1947. The claim under Section 33-C(2) seeking recovery of money said to be due from the employer, is based on a preexisting right. In the instant case, the Petitioner, on the one hand, claimed that he was working on EGS and on the other hand, he claimed that he was entitled to basic pay scale of Rs.260/- per month along with dearness allowances and other benefits which are available only to permanent employees.

7 From the judgment of the Labour Court, it is apparent that besides the words of mouth the Petitioner did not place any documentary material on record, which would have assisted the Labour Court to conclude that the Petitioner deserved to be equated with regular employees and by applying the principle of “equal wages for equal work”, he would be entitled for difference in unpaid wages. Since it is a monetary claim, the burden lies on the claimant to prove that he was entitled for certain amount of wages and as the employer did not pay such amount, Section 33-C(2) was attracted.

8 In his cross-examination, the Petitioner has admitted that he was working on the post created under the EGS. He was unable to point out the parity in the work in between himself and those employees with whom he sought to compare himself. In this backdrop, notwithstanding the strenuous submissions of the Petitioner, I am unable to conclude that the impugned judgment of the Labour Court could be termed as being perverse or erroneous.

9 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

10 The pending Civil Application does not survive and stands disposed of.