

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

WRIT PETITION NO.9835 OF 2013

The Commissioner Of Agriculture, State Of Maharashtra and Others.

-VERSUS-

The Shetkari Shetmajoor Panchayat (Maharashtra) And Others.

**WITH
CIVIL APPLICATION NO.8734 OF 2016
IN
WRIT PETITION NO.9835 OF 2013**

Moulana Abdul Shaikh Died Through LRS Vahidabi Buranmiya Shaikh and
Others

VERSUS

The Commissioner Of Agriculture, State Of Maharashtra and Others

**WITH
WRIT PETITION NO.:9836 OF 2013**

The Commissioner Of Agriculture, State Of Maharashtra and Others.

VERSUS

The Shetkari Shetmajoor Panchayat (Maharashtra) And Others

**WITH
CIVIL APPLICATION NO.8704 OF 2016
IN
WRIT PETITION NO.9836 OF 2013**

Gangadhar Raghunath Damarge Died Through Lrs Kamalba Gangadhar
Damarge And Others

VERSUS

The Commissioner Of Agricul Ture, State Of Maharashtra and Others.

**WITH
WRIT PETITION NO.9837 OF 2013**

The Commissioner Of Agriculture, State Of Maharashtra and Others
VERSUS
The Shetkari Shetmajoor Panchayat (Maharashtra) And Others

WITH
CIVIL APPLICATION NO.8733 OF 2016
IN
WRIT PETITION NO.:9837 OF 2013

Shaikh Sadul Bashumiya Died Through Lrs Rezawanabee Sadul Shaikh
And Others.
VERSUS
The Commissioner Of Agriculture, State Of Maharashtra and Others.

WITH
WRIT PETITION NO.9838 OF 2013

The Commissioner Of Agriculture, State Of Maharashtra and Others.
VERSUS
The Shetkari Shetmajoor Panchayat (Maharashtra) And Others.

WITH
CIVIL APPLICATION NO.8711 OF 2016
IN
WRIT PETITION NO.9838 OF 2013

Madhav Damaji Chamkure Died Through Lrs Sambhaji Madhv Chamkure
And Others.
VERSUS
The Commissioner Of Agriculture, State Of Maharashtra and Others.

WITH
WRIT PETITION NO.9845 OF 2013

The Commissioner Of Agriculture, State Of Maharashtra and Others.
VERSUS
The Shetkari Shetmajoor Panchayat (Maharashtra) And Others

WITH

CIVIL APPLICATION NO.8715 OF 2016
IN
WRIT PETITION NO.:9845 OF 2013

Parabai Digambar Pawar Died Through Lrs Digambar Harji Pawar And
Others.

VERSUS

The Commissioner Of Agriculture, State Of Maharashtra and Others

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AGP for the State : Shyri N.T.Bhagat.

Advocate for the Employees : Shri V.D.Gunale.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th November, 2016

Per Court:

1 In all these petitions, the Petitioner/ Establishment has challenged identical judgments of the Labour Court, details of which are as under:-

Sr.No.	Writ Petition No.	Application (IDA) No.	Date of impugned Judgment
1	9835/2013	No.01/2011	18.01.2013
2	9836/2013	No.20/2010	18.01.2013
3	9837/2013	No.21/2010	18.01.2013
4	9838/2013	No.19/2010	18.01.2013
5	9845/2013	No.02/2011	18.01.2013

3 I have heard the learned AGP on behalf of the Petitioner/ Establishment and Shri Gunale, learned Advocate on behalf of all the

Respondents/ Employees, who are identically situated.

4 Civil Application No.8734/2016 in WP No.9835/2013, Civil Application No.8704/2016 in WP/9836/2013, Civil Application No.8733/2016 in WP/9837/2013, Civil Application No.8711/2016 in WP/9838/2013 and Civil Application No.8715/2016 in WP/9845/2013 have been filed for bringing the legal heirs of the deceased Employees on record. Considering the order that I would be passing in these matters, all the Civil Applications are allowed and the legal heirs of the deceased Respondents/ Employees are taken on record in the respective Writ Petitions. Shri Gunale appears on behalf of all the Legal Heirs.

5 There is no dispute that all these Respondents/ Employees have filed applications under Section 33-C(2) of the Industrial Disputes Act, 1947 for claiming difference in wages. Needless to state, when parity is sought and when the difference in wages on the basis of parity in wages is claimed, the Claimants have to specifically plead in their respective applications as regards the nature of work performed by them, the pay scale or scale of wages paid to identically situated workers who are performing identical work and then the difference of unpaid wages is to be calculated.

6 I have perused each of the applications filed by the Employees before the Labour Court with the assistance of the learned Advocates. It is apparent from the applications that besides claiming that Writ Petition No.4897/2003 was decided by this Court in the matter of Marathwada Sarva Shramik Sangh vs. the Petitioner Establishment herein, these Respondents had not specifically pleaded as regards the difference in wages. Barring this single statement in the entire applications, I do not find any pleading by the Employees as to what was the nature of work being performed by them, what was the pay scale being paid to them and who are those similarly/ identically situated workmen who are paid higher wages, inasmuch as, I do not find any specific calculation put forth by the Employees to arrive at a total of arrears of unpaid wages. A bald Annexure-A is annexed to the applications wherein there is a mention of the name of the workman, the period of working and figure of alleged unpaid money.

7 I have considered the impugned judgments in details with the assistance of the learned Advocates.

8 On the one hand, the applications filed by the Respondents/ Employees are vague and ambiguous and on the other hand, the Labour Court has concluded that since this Court has delivered the judgment and

the same has been sustained by the Honourable Supreme Court, the applications filed by the Respondents/ Employees deserve to be allowed in terms of Annexure A to the applications.

9 I find these cases to be glaring examples of lack of pleadings on the part of the Employees and apparently lack of application of mind by the Labour Court. It is the foundation of the claims under Section 33-C(2) of the Industrial Disputes Act, 1947 that the workers have to account for every rupee as is claimed by way of difference in wages and/or unpaid wages. The Employees should have led evidence before the Labour Court to identify those workers who are comparable, wages being paid to them and by comparing the wages inter-se between the two groups i.e. the Claimants and the other group, arrears of unpaid wages should have been calculated on month to month basis so as to arrive at a conclusion as regards the exact total amount of unpaid wages. I do not find in the impugned judgments that the Labour Court has taken such efforts to conclude accordingly.

10 There can be no dispute insofar as the law on this point is concerned. The Honourable Supreme Court in the matter of *Chief Conservator of Forests v/s Jagannath Maruti Kondhare*, **AIR 1996 SC 2898 : (1996) 2 SCC 293**, has concluded that even if the posts are not

available, an employee would be entitled for parity in wages after comparing the nature of work performed by him with the nature of work performed by similarly/ identically situated permanent employees.

11 As such, the Labour Court ought to have scrutinized the calculations on the basis of the evidence so as to arrive at an exact figure. In these matters, the Labour Court has blindly accepted Annexure-A, which is devoid of any details of unpaid difference in wages and calculations, except that figures of unpaid amounts are blindly mentioned, and has allowed all these applications in terms of Annexure-A. In my view, such conclusions are perverse and erroneous.

12 It is informed by Shri Gunale that under the orders of this Court dated 03.11.2014 delivered in Civil Application Nos.7186/2014, 7187/2014, 7188/2014, 7189/2014 and 7190/2014, the Employees were permitted to withdraw the amounts deposited in this Court by furnishing an undertaking to the Court that if the petitions are allowed, they shall redeposit the said amount within six weeks, with interest at the rate of 10%. On these conditions, the employees have withdrawn amounts.

13 In the light of the above, I am constrained to remand the matters to the Labour Court considering the law as is settled in the matter

of Chief Conservator of Forest (supra) and by this Court in the matter of *Shrirampur Municipal Council vs. V.K.Barde and others*, **2011 (4) Mh.L.J. 875**, so as to enable the litigating sides to lead further evidence and with a direction to the Labour Court to ensure that the intent and object of Section 33(C)(2) of the Industrial Disputes Act, 1947 is not frustrated by blindly accepting Annexure-A to the applications filed by these Respondents/ Employees. The legal heirs who have been brought on record in these writ petitions, shall be parties before the Labour Court upon remand.

14 In the light of the above, these Writ Petitions are partly allowed on the following conditions:-

- (a) The impugned judgments dated 18.01.2013 in Application (IDA) Nos.01/2011, 20/2010, 21/2010, 19/2010 and 02/2011 are quashed and set aside.
- (b) Reference (IDA) Nos. 01/2011, 20/2010, 21/2010, 19/2010 and 02/2011 are remitted back to the Labour Court, Nanded for permitting the Applicants/ Employees to lead evidence in addition to the evidence already placed on record. If need be, the Applicants/ Employees would be at liberty to appropriately amend their claim applications so as to bring the factual details on record in the light of the observations

set out herein above.

- (c) Those legal heirs, who have been brought on record in these petitions, shall be brought on record before the Labour Court after remand.
- (d) The amounts withdrawn only by the legal heirs need not be redeposited before the Labour Court as the original Claimants have died.
- (e) Those Applicants/ Employees, who have withdrawn the amounts under the orders of this Court dated 03.11.2014, shall redeposit the entire amounts before the Labour Court, without interest of 10% per annum. However, the said interest shall be subject to the result of the proceedings.
- (f) The above direction of redepositing the amount before the Labour Court shall be complied with, within SIX WEEKS from today considering the order passed by this Court on 03.11.2014, failing which the Applications remitted to the Labour Court shall stand dismissed by the Labour Court only for the reason of failure to deposit the amount, to the extent of those Applicants who have so failed to deposit. Thereafter, the Establishment would be at liberty to initiate the recovery proceedings against such Applicants in accordance with law.
- (g) Only if the amounts as directed above are redeposited, the

Applicants/ Employees will be at liberty to lead evidence to justify the figures (amounts of money) claimed in Annexure-A to the applications.

- (h) The amounts, which are not withdrawn under the orders of this Court dated 03.11.2014, shall be transmitted to the Labour Court by the Registry of this Court, forthwith.
- (i) After amendment in the applications, if any, filing of additional Written Statement, if any, and recording of further evidence, the Labour Court shall deliver a reasoned judgment with regard to the claims of unpaid wages considering the observations herein above.
- (j) The litigating sides shall appear before the Labour Court, Nanded on 03.12.2016 and formal notices need not be issued by the Labour Court.