

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

WRIT PETITION NO.5440 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bhagubai Ramdas Pawar,
R/o Kanegaon, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5441 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Sukhdev Nana Chakranarayan,
R/o Kauthe, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5442 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Ramdas Tukaram Kale,
R/o Nagapur, Post Ranjangaon, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5443 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Uttam Shahaji Lalzare,
R/o Gevrai, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5444 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Dilip Dadu Kolhe,
R/o Shahartakli, Tq.Shevgaon,
District Ahmednagar.

WITH
WRIT PETITION NO.5445 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Sitaram Yadav Khade,
R/o Kauthe, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5446 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Janardhan Laxman Bhasar,
R/o Kautha, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5447 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Rafiya Nurmohamad Shaikh,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5462 OF 1997
The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Jagannath Tukaram Hajare,
R/o Pichadgaon, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5463 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Ashok Raghunath Markali,
R/o Newasa, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5464 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Raghunath Nebhaji Kardile,
R/o Gevrai, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5465 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bhagubai Yadav Walture,
R/o Bhanashivra, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5466 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Sundarbai Sukhdev Chakranarayan,
R/o Kautha, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5467 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bakshu Papabhai Sayyed,
R/o Devgaon, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5468 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Ramdas Gangadhar Karjule,
R/o Tamaswadi, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5469 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bandu Hasan Shaikh,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5470 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Suryabhan Tatyaba Maindad,
R/o Newasa Kd., Tq.Newasa,

District Ahmednagar.

WITH
WRIT PETITION NO.5471 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Nana Laxman Darandale,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5472 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Vinayak Tukaram Nawale,
R/o Nipani Nimgaon, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5473 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Eaknath Raibhan Kale,
R/o Telkudgaon, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5474 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Natha Bhanudas Lalzare,
R/o Gevrai, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5476 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Chandrakant Goinvdrao Raut,
R/o Kautha, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5477 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Maihasan Ismail Shaikh,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5478 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Lajras Petras Kolhe,
R/o Shahar Takli, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5479 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Hasina Mehamud Shaikh,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH
WRIT PETITION NO.5480 OF 1997
The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bhaguji Shankar Newhul.
since deceased through his L.Rs.
1A) Vithal Bhaguji Newhul, (son)
Age : 31 years, R/o Jeur,
Tq.Newasa, District Ahmednagar.

1B) Meenabai Kalanrao Jadhav (Daughter)
Age : 24 years, Occupation : Household,
R/o Jeur, Tq.Newasa,
District Ahmednagar.

1C) Sakharbai Bhaguji Newhul (wife),
Age : 49 years, R/o Jeur,
Tq.Newasa, District Ahmednagar.

WITH

WRIT PETITION NO.5481 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Draupadabai Namdev Gaikwad,
R/o Kautha, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5482 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Dilip Devram Pandit,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5483 OF 1997

The State of Maharashtra.

Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Jijabai Laxman Kakde,
R/o Kukana, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5484 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Bhanudas Namdev Naik,
R/o Tarwadi, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5485 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Shairabi Nurmohanmad Shaikh,
R/o Chanda, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5486 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Harischandra Vitthal Kardile,
R/o Gevrai, Tq.Newasa,
District Ahmednagar.

WITH

WRIT PETITION NO.5487 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.

-versus-

Raosaheb Santram Tilekar,
R/o Pichadgaon, Post Salabatpur,

Tq.Newasa, District Ahmednagar.

WITH
WRIT PETITION NO.5488 OF 1997
The State of Maharashtra.
Through the Executive Engineer,
Mula Irrigation Division, Ahmednagar.
-versus-
Sahadev Bhimraj Barhate,
R/o Ghodegaon, Tq.Newasa,
District Ahmednagar.

...
Shri S.P.Tiwari, Shri S.N.Kendre, Shri N.T.Bhagat, AGPs for the Petitioners/
State.

Shri A.V.Hon, Shri S.T.Shelke, Shri D.R.Korde, Shri D.G.Nagode, Advocates
for the Respondents/ Employees.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 In all these petitions, the State of Maharashtra is the
Petitioner which has challenged the common judgment delivered by the
Labour Court dated 30.04.1996 by which all the applications were
allowed and the following order has been passed:-

*"16. The applicants have also claimed the difference
in wages for the period in between 01.03.1975 to
31.03.1976. The rate as per the Kalelkar Settlement
was Rs.5.70 and in fact they were being paid Rs.3/-
per day. The applicants are entitled for the said
difference also. The daily wage rates were revised from
time to time but the applicants were paid Rs.3/- per*

day only through out the period of 01.03.1975 to 31.03.1979. The period and revised rate of daily wages is as follows:-

<i>Period</i>	<i>Revised rate of daily wages</i>
<i>01.03.1975 to 31.03.1976</i>	<i>Rs.5.70 Ps.</i>
<i>01.04.1976 to 30.04.1977</i>	<i>Rs.6.28 Ps.</i>
<i>01.05.1977 to 31.08.1977</i>	<i>Rs.6.42 Ps.</i>
<i>01.09.1977 to 31.12.1977</i>	<i>Rs.6.58 Ps.</i>
<i>01.01.1978 to 31.07.1978</i>	<i>Rs.6.71 Ps.</i>
<i>01.08.1978 to 31.03.1979</i>	<i>Rs.6.95 Ps.</i>

The applicants were paid in between 01.03.1975 to 31.03.1979 at the rate of Rs.3/- per day only and obviously they are entitled for the amount of difference. Hence order:-

ORDER

It is hereby declared that the applicants are entitled for the difference in wages as claimed for the period in between 01.03.1975 to 31.03.1979.

It is also declared that the applicants are entitled for the difference in wages in between 1981 to 1984 after their being taken on CRT.

The statement at Sr.No.B annexed to the application shall form the part and parcel of the order and the payment should be made in accordance with the said rate and statement.

Copy of the order be sent to Asstt. Commissioner of Labour for necessary action."

2 All the Respondents herein are the individual workmen who had preferred their claims under Section 33-C(2) of the IDA Act, 1947 which reads as under:-

"33-C : Recovery of money due from an employer:-

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable

for being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

3 In all these matters, Respondent No.2 is the Labour Court and hence, stands deleted from the proceedings.

4 In all these matters, most of the Respondents/ Employees though served, have not entered an appearance either in person or through an advocate. For some of the Respondents, Shri A.V.Hon, Shri S.T.Shelke, Shri D.R.Korde and Shri D.G.Nagode, learned Advocates have appeared. I have therefore, considered their submissions on behalf of even those employees who have not appeared despite service. The learned AGP has strenuously criticized the impugned judgment.

5 This Court, while admitting the petitions on 18.12.1997, has granted interim relief in terms of prayer clause (D) thereby, staying the judgment of the Labour Court dated 30.04.1996.

6 The Respondents/ Employees by applications dated 06.10.1992 had claimed unpaid dues from 01.04.1975 till 31.03.1979, which is practically after a period of about 14 years. All of them were working on Employment Guarantee Scheme (EGS). It was averred that they were paid at the rate of Rs.3/- per day and the payable rates were in between Rs.5.70 paise to Rs.6.95 paise per day. They averred that they had worked for each and every day without a holiday from 01.03.1975 till 31.03.1979. It was also mentioned in their applications that they need to be paid their wages as per the Kalelkar Award. However, nowhere in the applications, have they mentioned the exact difference of amount not paid to them and which was payable under the Kalelkar Award from 01.04.1991. In fact it was claimed that they should be brought on Converted Regular Temporary Establishment (CRTE) and be paid wages as per the Kalelkar Award.

7 Though the learned Advocates for the Respondents have strenuously supported the impugned judgment, I do not find that the impugned judgment could be sustained to the extent of the direction that, the Applicants are entitled for difference in wages between 1981 to 1984 after they are taken on CRTE. It is settled law that an application under Section 33(C)(2) can be entertained with reference to a preexisting right.

Whether, a particular right is created in a litigant or as to whether, a litigant could be declared to be entitled to a particular right, is not the scope of Section 33(C)(2).

8 In the instant cases, the Respondents/ Employees claimed that they should be brought on CRTE and after they are brought on CRTE, the difference of wages should be calculated and should be paid to them. This claim has been blindly accepted by the Labour Court by directing the Petitioners to bring these Respondents on CRTE and then calculate their difference in wages. In my view, this was totally beyond the scope of the Labour Court while exercising its jurisdiction under Section 33(C)(2). For the said reason, the direction to bring them on CRTE as reproduced above, stands quashed and set aside.

9 Insofar as the calculation of the difference in daily wages is concerned, the Respondents proved before the Labour Court that though they were working on EGS, they were paid Rs.3/- per day and the shortfall was in between Rs.2.70 to Rs.3.95 paise. These rates were brought on record and the Labour Court concluded that they should be paid the difference for the period 01.03.1975 to 31.03.1979 as if the workers had worked without a single holiday and for 365 days in all the four years. It is unbelievable that the Respondents/ Workers had worked

for 365 days in each year and for four years, without a single weekly holiday. The Labour Court should not have blindly accepted such a contention.

10 It is submitted that the workers working on EGS were normally allocated the work in between 15 to 20 days in a month. Even if it was to be concluded that they have worked for all these 20 days in a month over a period of four years, the basis for the calculation for each Respondent would be as under:-

"20 days X (multiplied by) 12 months X (multiplied by) four years".

11 The difference in wages for the period 01.03.1975 to 31.03.1979 are reproduced above. As such, the difference in unpaid wages ranges from Rs.2.70 paise to Rs.3.95 paise depending on the periods mentioned herein above.

12 Considering the above, these Petitions are partly allowed and by modifying the impugned judgment dated 30.04.1996, the Petitioner is directed to calculate the difference in amounts as under:-

<i>Period</i>	<i>Difference in unpaid wages</i>
01.03.1975 to 31.03.1976	Rs.2.70 Ps.

<i>01.04.1976 to 30.04.1977</i>	<i>Rs.3.28 Ps.</i>
<i>01.05.1977 to 31.08.1977</i>	<i>Rs.3.42 Ps.</i>
<i>01.09.1977 to 31.12.1977</i>	<i>Rs.3.58 Ps.</i>
<i>01.01.1978 to 31.07.1978</i>	<i>Rs.3.71 Ps.</i>
<i>01.08.1978 to 31.03.1979</i>	<i>Rs.3.95 Ps.</i>

13 Considering the above rates, the average difference would be Rs.3.44 paise per day. The Petitioner shall therefore calculate the following amounts to be paid to each of the 34 employees:-

$$3.44 \times 20 \text{ days} \times 12 \text{ months} \times 04 \text{ years} = \text{Rs.3302/- (each).}$$

14 The Petitioner/ Establishment shall pay the aforesaid amount to each of the Respondents /Employees within a period of TEN WEEKS from today along with interest at the rate of 6% per annum from May, 1996 till actually paid.

15 However, if the Respondents have been brought on CRTE, they are at liberty to make a representation to the Petitioner Establishment for calculating their difference in wages as per the wages admissible for employees working on CRTE. After receiving the said representations or even a common representation on behalf of all the Respondents, the Petitioner shall consider them strictly in accordance with its rates of wages admissible and shall calculate the said amount and pass an order

on the said representations.

16 The said order shall be communicated to the Respondents within a period of THREE WEEKS from the date of its passing and thereafter, the payments, if any, shall be made by the State accordingly. If the Respondents are aggrieved by the same, they would be at liberty to resort to the remedy under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 or by raising an industrial dispute under Section 2(k) of the IDA Act, 1947.

17 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)