IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 120 OF 2018

SHANKAR VITTHAL MANDAVKAR DIED LRS SHASHIKALA SHANKAR MANDAVKAR
VERSUS
SIZE CONTROL GAUGES AND TOOLS PRIVATE LTD THROUGH ITS MANAGING DIRECTOR AND ANOTHER
...
Advocate for the Petitioners : Shri Barde Parag Vijay.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd January, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 29.06.2016 passed by the Labour Court by which, the application Exhibit U/6 filed by the Petitioner praying for production of the pay and muster roll by the Management, has been rejected.

2 Shri Barde, learned Advocate for the Petitioner/ Workman, who has preferred an application under Section 33C(2) of the Industrial Disputes Act, 1947 for recovery of unpaid amounts by the Employer, has strenuously criticized the impugned order. He submits that every Establishment is bound to maintain the pay and muster roll. The Management has taken a spacious plea that the Pay and Muster Rolls were never maintained. This was an eyewash only to mislead the Labour Court.

Unfortunately, the Labour Court has concluded that when these documents were not in existence, the application Exhibit U/6 did not require any consideration.

3 Insofar as the provisions of law are concerned, Shri Barde is rightly contending that every Establishment has to maintain the pay and attendance/ pay and muster roll, which is commonly understood as the attendance and payment register. If such documents are not maintained by an Establishment, the Labour Court can consider, under the Indian Evidence Act, as to whether, an adverse inference could be drawn for non maintenance of such documents as they happen to be the foundation of the attendance of an employee. Based on such attendance, the payment is to be calculated.

4 As such, keeping the above aspects open for the Labour Court to decide in the light of the categoric statement of the Management that it has not maintained the attendance and pay register, this Writ Petition is disposed of.

kps **(RAVINDRA V. GHUGE, J.)**