

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

WRIT PETITION NO. 626 OF 2002

Tapi Irrigation Development Corporation,
Jalgaon, Through :

1. The Superintending Engineer,
Jalgaon Irrigation Project,
Circle, Jalgaon.
2. The Executive Engineer,
Jalgaon Medium Project,
Jalgaon.
3. Sub-Divisional Engineer,
Tondapur Dam Sub-Division,
Tq. Jamner,
Now shifted to Erandol,
Tq. Erandol, Dist. Jalgaon. **... PETITIONERS**

VERSUS

1. Shri Shamrao Deochand Pawar,
R/o Tondapur, Tondapur Dam
Sub-Dv. Tondapur, Tal. Jamner,
Dist. Jalgaon.
2. Hon'ble Member,
Industrial Court,
Jalgaon. **...RESPONDENTS**

...

WITH

**CIVIL APPLICATION NO. 15120 OF 2019 IN
WRIT PETITION NO. 626 OF 2002**

Tapi Irrigation Development Corporation,
Jalgaon, Through :

1. The Superintending Engineer,
Jalgaon Irrigation Project,

Circle, Jalgaon.

2. The Executive Engineer,
Jalgaon Medium Project,
Jalgaon.
3. Sub-Divisional Engineer,
Tondapur Dam Sub-Division,
Tq. Jamner, at present merged
In Jalgaon Medium Project
Division Jalgaon.

... **APPLICANTS**

VERSUS

Shri Shamrao Deochand Pawar,
Age Major, Occu : Labour,
R/o Tondapur Dam Sub-Division,
Tondapur, Tq. Jamner,
Division Jalgaon.

... **RESPONDENT**

...
Advocate for the Petitioners : Shri D. R. Shelke and
Ms. S. D. Shelke
Advocate for Respondent/s : Shri G. J. Karne
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th MARCH, 2020.

...

ORAL JUDGMENT :

1. This petition was earlier decided by judgment dated 20/09/2019. It was pointed out that the learned Division Bench had delivered an order on 26/08/2019 in an identical matter of ***Ulsha Sonu Pawar Vs. Tapi Irrigation Development Corporation Jalgaon (the***

present petitioner) in Writ Petition No. 13245/2018. As it was pointed out that the facts and circumstances in Ulsha were identical to the present case, this petition was dismissed and Rule was discharged.

2. The Petitioner Tapi Irrigation Department approached this Court with a Civil Application No. 15120/2019, requesting for leave to deposit an amount of Rs. 25,42,000/- with the learned Registrar of this Court. No other prayer was put forth in the said Civil Application.

3. Thereafter, the Petitioner approached the Honourable Apex Court in Special Leave to Appeal Nos. 741 and 742 of 2020. The said SLP was disposed off by order dated 17/01/2020 by recording that a Review Petition is pending and the High Court could decide the Review Petition within FOUR WEEKS. The Petitioner was directed to deposit the entire amount in the High Court and the amount has been deposited in this Court.

4. By an order dated 11/02/2020, this Court (Coram : Rohit B. Deo, J.) allowed the Review Petition and the original Writ Petition No. 626/2002 was restored so as to be decided/ re-heard on its merits.

5. I have heard the strenuous submissions of the learned Advocates for the respective sides on 02/03/2020, 03/03/2020 and today. Due to paucity of time, after the hearing had concluded, this matter was posted today for dictating the judgment in open Court.

6. I find from the judgment delivered by my learned brother on 11/02/2020 that he was impressed by the submissions of the learned Advocate for the Petitioner that the case of *Ulsha Sonu Pawar (supra)*, cannot be compared with the case of the present employee Shamrao Deochand Pawar. In paragraph 20, the learned Advocate Shri D. R. Shelke conveyed to my learned brother that *Ulsha Sonu Pawar* had notionally completed five years in continuous service and this was appreciated by the learned Division Bench in Writ

Petition No. 13245/2018 and hence, the case of Ulsha can be held to be different from the case of Shamrao, which is in hand. This was the 1st incorrect statement made by Advocate D. R. Shelke as, Ulsha had admittedly worked only for 2 years and 7 months and was out of employment for 34 years. Per contra, Shamrao had worked for 5 consecutive years.

7. In paragraph 21 of the judgment of my learned brother, he appreciated the strenuous submission of Shri Shelke that in the case of *Ulsha Sonu Pawar*, this Court had not granted any stay and in the present case of Shamrao, this Court had stayed the judgment. It was suppressed by Shri Shelke that, notwithstanding the pendency of the two Writ Petitions in these two cases, both Ulsha and Shamrao were kept out of employment.

8. In paragraph 22, the learned Advocate Shri Shelke conveyed to my learned brother that the judgment delivered on 20/09/2019 was based on misconception of facts and then, he had hastened to

add that the misconception would be on the part of the Advocate. In paragraph 25, my learned brother noted that the judgment under Review was based on the judgment of the learned Division Bench in Writ Petition No. 13245/2018 as conveyed by Advocate D.R. Shelke.

9. It was in the above backdrop that my learned brother reviewed the earlier judgment dated 20/09/2019.

10. The learned Advocate for the Petitioner Shri Shelke has canvassed the following points :-

(a) The employee Shamrao was working as a machine operator from 01/04/1983 till 30/01/1988, for a consecutive period of about four years and ten months. (five consecutive years as per the Kalelkar Settlement).

(b) He was terminated with effect from 03/02/1988. Retrenchment compensation was granted under Section 25-F of the Industrial Disputes Act, 1947.

(c) He has not completed five years as a daily wager and is not entitled for the benefits of the Kalelkar Award. [This is Advocate Shri Shelke's 2nd incorrect statement].

(d) There was no work available so as to be allotted to him. (This was Adv. Shelke's 3rd incorrect statement).

(e) His case cannot be compared with *Ulsha Sonu Pawar (supra)*, as the judgment in favour of Ulsha Pawar delivered by the Labour Court in his ULP proceedings, was not stayed by this Court and subsequently Writ Petition No. 3604/2003, as like this petition, was filed by the Petitioner Irrigation Department which was disposed off and the Petitioner was permitted to take a decision in the case of *Ulsha Sonu Pawar*, as per the G.R. dated 24/04/2001.

(f) That as the case of *Ulsha Sonu Pawar* was recommended by the Department to the Government and after the Government rejected his proposal, since he had not completed five years

which was the requisite condition under the Kalelkar Settlement, Ulsha had approached the learned Division Bench which directed the Petitioner to consider, that though Ulsha had worked for only three years and was out of employment even today in 2020, he should be granted all the benefits under the Kalelkar Settlement.

(g) The Petitioner Irrigation Development Corporation, therefore, complied with the directions of the learned Division Bench and proceeded with the case of *Ulsha Sonu Pawar* and very soon, he would be granted all monetary benefits from 1986 onwards till 2020. He would be given all benefits under the Kalelkar Settlement and would be deemed to be in continuous service of the Petitioner establishment with 30 % back wages.

11. The learned Advocate Shri Karne for the Respondent employee submits that he himself had conducted the case of *Ulsha Sonu Pawar*, before the

learned Single Judge of this Court in Writ Petition No. 3604/2003 as a Respondent and he had approached the learned Division Bench in Writ Petition No. 13245/2018. *Ulsha Sonu Pawar* has worked for only three years from 01/09/1983 till 30/04/1986 (2 years and 7 months). He was also granted reinstatement in service with continuity and 30 % back wages by the award of the Labour Court in Reference (IDA) No. 42/1992. Though the said Award was not stayed by this Court in Writ Petition No. 3604/2003, *Ulsha Sonu Pawar* was deliberately kept out of employment for the last 34 years and the State Government has now granted him continuity with 30 % back wages and all benefits under the Kalelkar award.

12. Shri Karne, the learned Advocate, who appeared on behalf of *Ulsha Sonu Pawar* and represents the present Respondent Shri Shamrao Deochand Pawar, submits that Shri Shelke, learned Advocate has misled my learned brother in the Review Application No. 23/2020. He strongly criticizes that Shri Shelke had not cited any documentary record so as to compare

the case of *Ulsha Sonu Pawar* with Shamrao Deochand Pawar, before my learned brother and merely relying upon his contentions, the Review Application was allowed with the observations in paragraphs 20, 21 and 22. He submits that he can demonstrate that the case of Shamrao Deochand Pawar is comparable with the case of *Ulsha Sonu Pawar*.

13. As noted above, *Ulsha Sonu Pawar* had worked from 01/09/1983 to 30/04/1986, which is a period of two years and seven months. Shamrao Deochand Pawar had worked from 01/04/1983 to 30/01/1988, which is a period of four years and ten months. Both were working initially as daily wagers with the Tapi Irrigation Development Corporation at Jalgaon. *Ulsha Sonu Pawar* was a labourer and Shamrao Deochand Pawar is a machine operator.

14. The Kalelkar Settlement requires five consecutive years of working as a daily wager to be eligible for its benefits. The number of days or 240 days to be put in service in a single year is not a criteria under the

Kalelkar Settlement. Notwithstanding the number of days that a daily wager works in one calendar year, the requirement of the Kalelkar Settlement is that such a daily wager should work for some days in each calendar year and he should work in this manner for five consecutive years.

15. Shri Karne, then points out from a bunch of documents produced by Shri Shelke on 03/03/2020 in which, a communication by the Executive Engineer, Dhule Irrigation Project Mandal to the Principal Secretary Water Resources Department, Mantralaya. By the said communication dated 07.05.2018, Shri M.S. Amle, Executive Engineer, Dhule Irrigation Project Mandal has mentioned below issue No.1 that Shri Shelke, the learned Advocate, who is now appearing in this petition for the petitioners, had given a legal opinion to the Tapi Irrigation Development Corporation that the department has no case in the case of *Ulsha Sonu Pawar* and, therefore, there is no necessity to challenge the judgment of *Ulsha Sonu Pawar* before the Honourable Apex Court. Shri Karne, repeats that

Ulsha Sonu Pawar had worked for two years and seven months and yet, Advocate Shelke opined that the department had no case to approach the Honourable Apex Court, when *Ulsha* was not eligible under the Kalelkar Award. The Petitioner department accepted the Legal Advice of Shri Shelke, which is a tainted advice, as per Shri Karne. These aspects were not brought to the notice of my learned brother.

16. Shri Karne, learned Advocate, therefore, submits that the case of *Ulsha Sonu Pawar* was a much weaker case than the case of the present Respondent Shamrao and yet the Petitioner Department has clearly adopted an unfair discriminatory stand though the case of the present Respondent Shamrao was on a better footing. All the benefits are now being extended to *Ulsha Sonu Pawar* and he is being granted continuity of service from 1983, till his age of superannuation. The same treatment, therefore, should be extended to the present Respondent Shamrao Deochand Pawar, on parity.

17. In view of the above, I am preparing a ready reference chart to compare the fact situation in *Ulsha Sonu Pawar* and Shamrao Deochand Pawar as under :-

<i>Ulsha Sonu Pawar</i>	Shamrao Deochand Pawar
Worked on daily wages from 01.09.1983 as labourer till 30.04.1986	Working as a Machine Operator w.e.f. 01.04.1983 Terminated from service w.e.f. 03.02.1988 by retrenchment notice dated 30.01.1988
is Junior to Shamrao	is Senior to Ulsha
He was in continuous service for two years and seven months	He worked continuously from 01.04.1983 till 30.01.1988, which is a period of four years and ten months
Reference (IDA) No.42/1992 was filed challenging the action of termination and claiming reinstatement with all consequential benefits	Complaint (ULP) No.12/1983 was filed before the Labour Court under item 1(a) to (g) of Schedule IV of the MRTU & PULP Act, 1971.
Award dated 21.11.2002 was passed and it was held that he was entitled to be reinstated in his usual position with continuity of service from 01.05.1986. He is also entitled to receive 30% of the back wages with effect from 03.08.1992.	Complaint is allowed by order dated 11.07.1994 and the employer was directed to reinstate the employee within a month with continuity of service and pay him full back wages from the date of termination till the date of his reinstatement.
	Industrial Court concurred

	with the Labour Court and dismissed the Management's Revision Petition.
High Court did not stay the award	High Court stayed the judgment
Management did not reinstate Ulsha	Management did not reinstate Shamrao
Now Maharashtra State has taken a decision to grant all service benefits with continuity and 30 % back wages.	No benefits granted on the plea that this Writ Petition is pending.

18. From the above, it is apparent, not on the basis of the oral submissions of the parties, but squarely based upon the facts of the cases of both these employees, emerging from the record of their cases, that parity will have to be granted to Shamrao. It is disturbing to note the conduct of Shri D.R.Shelke, who has dealt with both these cases before this Court. He tendered a legal opinion to the Irrigation Department, which is quoted by Shri M.S. Amle in his communication to the Principal Water Resources Department dated 07/05/2018, wherein he has opined that the case of *Ulsha Sonu Pawar* is strong and the Department should not approach the Honourable Supreme Court. And in the case of Shamrao, he

contends that he is not covered by the Kalelkar Award, though it is crystal clear that Shamrao is on a better footing.

19. It is unfortunate that the Kalelkar Settlement was not brought to the notice of my learned brother when he delivered the judgment in the Review Application on 11/02/2020 which prescribes working of an employee on daily wages in each year for some days for a period of five consecutive years, to be taken on CRTE. After working for five consecutive years on CRTE, such a candidate is then taken on regular establishment which amounts to regularization as per the Kalelkar Settlement. These features were not brought to the notice of my learned brother.

20. This Court is a court of equity. With similarly situated employees, this Court is expected to be just and equitable towards both. In ***Food Corporation of India and another Vs. Seil Ltd., and others [(2008)3 SCC 440]***, the Honourable Apex Court has held in paragraph No. 24 that the High Court, in an

appropriate case, may grant such relief, to which the writ petitioner would be entitled to, in law as well as in equity.

21. Upon perusing the judgment delivered by the Labour Court dated 11/07/1994, when the Respondent Shamrao succeeded in his ULP Complaint, the Labour Court recorded on the basis of evidence that the witness of the Petitioner did not support the case of the Department that the work at Tondapur had come to an end. The said witness for the Department submitted in cross-examination that, after Shamrao was removed, a junior person by name Shalik Shamrao Koli had been retained by the Petitioner establishment. It was also admitted that Shamrao can be accommodated if he is willing to work as a daily wager and on a lower rank.

22. These statements made by the witness of the department namely, Sudhakar Eknath Choudhari, Deputy Executive Engineer, would indicate that the Petitioner establishment had shrewdly removed the

present Respondent Shamrao and had continued a junior namely Shalik Shankar Koli contending that the work of operating the Air Compressor Machine was not being done by him. It was then admitted in cross-examination that *“the work of daily wages as a worker can be allotted to the operator Air Compressor Machine and this was done by Shalik Shankar Koli”*. No such offer was made to Shamrao.

23. On the basis of the evidence recorded, the Labour Court concluded that Shamrao had completed five years on daily wages with the Petitioner and he was eligible to be brought on CRTE. There were four machines in operation and the Deputy Executive Engineer, witness of the Petitioner, offered an evasive reply by stating *“ I do not know at this juncture whether the said compressor machine is in operation or not”*.

24. It was in the above backdrop that the Labour Court concluded that, as Shamrao had worked for almost five years, was eligible to be brought on CRTE

under the Kalelkar award and a junior employee Shalik Shankar Koli was retained, the Petitioner had violated Section 25(G) and (H) of the Industrial Disputes Act, 1947.

25. The Petitioner had approached the Industrial Court in Revision (ULP) No. 129/1999 (old No. 238/1994). The Industrial Court once again scanned through the R & P of the Labour Court and further noted a glaring identical case filed by an identically placed employee in Complaint (ULP) No. 8/1988. The Labour Court, Jalgaon had also granted similar relief to the said complainant in Complaint ULP No. 8/1988 and the Petitioner admitted before the Industrial Court that the complainant in the said case had been reinstated by the Petitioner establishment and was extended all benefits. The Industrial Court, therefore, dismissed the Revision filed by these Petitioners.

26. As such, it is obvious that the Petitioner Management has behaved unfairly with the present Respondent Shamrao. After analyzing the identical

features in the two cases of *Ulsha Sonu Pawar* and *Shamrao Deochand Pawar*, when the latter case is on a better footing, the Petitioner establishment unjustly kept Shamrao at a bay. So also, another similarly situated employee in ULP No. 8/1988, was granted reinstatement and all consequential benefits.

27. Section 17B of the Industrial Disputes Act reads as under :-

17B. Payment of full wages to workman pending proceedings in higher courts.-Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

28. It is, therefore, obvious that the law mandates an employer to pay last drawn full wages inclusive of dearness allowance, if the Labour Court directs reinstatement of any workman and the employer challenges the award in the High Court or the Supreme Court. No doubt the case of the present Respondent Shamrao is not under the Industrial Disputes Act. The legal debate as to whether Section 17B would apply only to cases under the Industrial Disputes Act and would not apply to identically situated employees under the MRTU and PULP Act, 1971, is still going on. Notwithstanding this position, *Ulsha Sonu Pawar*, as well as, Shamrao Deochand Pawar have been kept away from work during the pendency of the litigation even upto the High Court

and now the Petitioner is granting the entire benefits under the Kalelkar Award, to Ulsha. Shamrao therefore cannot be deprived of such benefits, on parity.

29. I deem it appropriate to cause an interference in the present case of Shamrao only to the extent of the back wages, for one reason. As stated above, this is a court of equity and I find that *Ulsha Sonu Pawar* was granted 30% back wages and Shamrao Deochand Pawar was granted 100% back wages. The Petitioner establishment has now implemented the orders in favour of *Ulsha Sonu Pawar* by giving him all the benefits as granted by the Labour Court and the High Court. Shamrao has been granted 100% back wages. It would be appropriate to reduce the back wages to 50% as Shamrao would also get the benefits of the Kalelkar Settlement as like *Ulsha Sonu Pawar*. Notwithstanding that the case of *Ulsha Sonu Pawar* was on a weaker footing, both these employees were not in employment during this litigation and in the face of *Ulsha Sonu Pawar* being granted 30% back wages, the present Respondent Shamrao could be

granted 50% back wages since he had to litigate even in the Industrial Court and before the Honourable Apex Court, as well as, in the Review Petition. The litigation journey of *Ulsha Sonu Pawar* was shorter than the present Respondent Shamrao, who needs to be, therefore, compensated with 20% back wages more than what has been granted to *Ulsha Sonu Pawar*. The Respondent Shamrao has attained the age of superannuation in 2015 and as on date, he is 62 years of age.

30. Considering the above, this petition is partly allowed only to the extent of reducing the back wages from 100 % as granted by the Labour Court, to 50 %. Rule is made partly absolute accordingly.

31. The Respondent Shamrao is, therefore, at liberty to withdraw an amount of Rs.12,71,000/- (Rupees Twelve Lakhs Seventy One Thousand only) from this Court, without conditions. The remaining amount of Rs. 12,71,000/- (Rupees Twelve Lakhs Seventy One Thousand only) shall be withdrawn by the Tapi

Irrigation Development Corporation, Jalgaon through an Authorized Officer, subject to identification by the learned Advocate. The interest accrued on the whole amount shall be paid to Respondent Shamrao.

32. The pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-