

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

**WRIT PETITION NO.1879 OF 2019
AND
WRIT PETITION NO.1936 OF 2019**

The State of Maharashtra,
Through the Superintendent Engineer,
PWD, Osmanabad, Dist. Osmanabad
and ors.

..Petitioners

Vs.

Sarchitnis,
Marathwada Lalbawta Kamgar Union,
TradeUnion Centre, Vidyanagar,
Jalkot Road, Ugdir,
Dist.Latur

..Respondents

Mr.S.N.Morampalle, AGP for petitioners
Mr.A.V.Indrale-Patil, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 10, 2021**

ORDER :-

These Writ Petitions are being decided by this
common order since common questions of facts and law arise
therein.

2. Original respondent no.1 in both the Writ Petitions filed complaints against the petitioners herein, being Complaint/ULP Nos.147 of 2013 and 143 of 2013, before the Industrial Court at Latur. Original respondent no.1 is a trade union. The contentions in the complaints before the Industrial Court were as follows -

The petitioners (respondents in the complaints) indulged in unfair labour practice. The workmen/employees named in the Annexure to the complaints, were working on daily wages. Petitioner nos.3 and 4 extracted work from them on holidays namely, second and fourth Saturdays and even on public holidays. The details thereof were given in the annexure to the complaints. It is also the case of the original respondent that as per the Kalekar Committee report (Award), the workers who have worked on holidays, have to be paid twice the amount of daily wages. The respondent – Union had, therefore, requested the petitioners to pay the workers their dues towards the work they have done on the holidays.

3. The Industrial Court, on appreciating the evidence in both the matters, partly allowed the complaints, holding that the respondents to have engaged in unfair labour practices and further directed to cease and desist in future from such unfair labour practice. The respondents have been directed to pay the monetary benefits, as claimed, within a period of one month from the date of the order.

4. The original respondents in the complaint have, therefore, preferred these Writ Petitions.

5. Learned AGP appearing for the petitioners in both the Writ Petitions, would submit that the complaints were filed by the respondent – Union on behalf of its so called members. The burden of proof was on the respondent/Union. Instead of calling upon the respondent/Union to discharge the burden, Industrial Court found the petitioner nos.3 and 4 to have failed to prove that the workers did not work on holidays. The Industrial Court did not allow the petitioner to lead further evidence. The complaints were abruptly kept for final

arguments in the matter. He, therefore, urged for setting aside the impugned judgment and order.

6. Mr.A.V.Indrale-Patil, learned counsel for the respondent, in both the petitions would, on the other hand, submit that the issue is no longer *res integra*. Similarly placed employees have been already granted relief. On the ground of parity, the workers are entitled for their dues. Learned counsel has placed reliance on following decisions:-

(i) The Superintending Engineer, Sarvajanik Bandhkam Mandal, Osamanabad and anr. Vs. General Secretary, Marathwada Lal Bavta Kamgar Union, Trade Union Centre, Jalkot Road, Dist. Latur (Writ Petition No.2955 of 2009 decided on 02.08.2010);

(ii) Writ Petition Nos.6674 of 2007 and Writ Petition No.6675 of 2007 decided on 30.04.2013.

7. I have considered the submissions made by learned counsel for the respective parties.

8. The Industrial Court, on appreciating the evidence in the matter, has partly allowed the complaints. It is not in

dispute that as per the recommendations of Kalekar Committee, the workers who worked on holidays, are entitled to receive wages twice the amount of daily wage. The question was, whether the employees/members or original respondent/Union had worked on holidays, as was averred in the complaints. It is true that the claim for such wages dates for the period from 1980-81 to the date of retirement of respective employees/workers. The State of Maharashtra accepted the recommendations of Kalekar Committee and issued Government Resolution dated 31.08.1988 and communication dated 28.11.2003.

9. The Industrial Court has observed in its judgment that inspite of the direction, the original attendance registers, pay registers, etc., were not produced on record. Those registers were admittedly in the custody of the respondents. The Assistant Engineer examined on behalf of the respondents/petitioners, admitted in cross-examination that the attendance registers of various workers were maintained. He had verified original record. The witness had shown his readiness to file

original registers on record. He admitted that the workmen had made representations asking for wages for the work done on holidays. In spite of undertaking to produce the original attendance registers, the respondents did not produce the same. Adverse inference was therefore drawn. The Industrial Court found that the similarly situated workmen have been granted such benefits. It is further found that the workmen had made representations in 2011 onward. The claim cannot be defeated on the ground of limitation as it was for compliance of terms of the Award, service conditions, rules. The same respondents in other circles and Divisions have extended same benefits to other workmen.

10. The aforesaid observations of the Industrial Court have not been disputed before this Court. The judgment and order dated 02.08.2010 passed in Writ Petition No.2955 of 2009 indicate that the similarly placed workmen have been granted similar relief. Moreover, vide order dated 30.04.2013 passed by this Court in Writ Petition Nos.6674 of 2007 and 6675 of 2007, similar reliefs have been granted. The workmen

in this case, therefore, could not be denied the relief prayed for. The Industrial Court, on facts and on the ground of parity as well, allowed the complaints. No interference is called for with the impugned orders.

11. The Writ Petitions, therefore, fail and stand dismissed.

[R.G. AVACHAT, J.]

KBP