

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2516 OF 2021

Shri Jayant Balkrishna Kulkarni,
 aged about 67 years,
 Occu.: Retired, R/o Plot No.122,
 Dnyaneshwar Nagar, Dabki Road,
 Akola. **PETITIONER**

...V E R S U S...

1. NTC Ltd. (Government of India Undertaking),
 through General Manager (HR Legal)
 (Western Region), N.T.C. House, 15,
 NM Marg, Ballard Estate, Mumbai-1,
 holding charge of G.M. & B.B.B.A
 Mills Hinganghat, District Wardha.
2. N.T.C. Ltd., (Government of India
 Undertaking), through
 General Manager, Finance Scope
 Complex, Core-iv-7, Lodhi Road,
 New Delhi-110003.
3. Officers In-Charge/Region Head
 (Western Region), N.T.C. House,
 15, N.M. Marg, Ballard Estate,
 Mumbai-400001. **RESPONDENTS**

 Mr. S. P. Kshirsagar, Advocate for Petitioner.
 Mr. Ashish Mehadia, Advocate for Respondents 1 to 3.

CORAM: **ROHIT B. DEO AND Y. G. KHOBRAGADE, JJ.**
DATE: **30th JANUARY, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

The prayer clause of the petition reads thus:

- (a) to direct the respondents to make payment of working Sundays to the petitioner at the rate of Rs.800/- per day as shown in the order dated 30/07/2015 (Annexure-2) and payment be made with interest at the rate of 20% per annum from the date of accrual till its realization of the actual payment to the petitioner.*
- (b) Any other suitable relief, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be granted in favour of petitioner.*

2. Irrefutably the petitioner was appointed on daily wage of Rs.800/- per day at R.B.B.A./Model Mills, Hinganghat, as is discernible from order dated 30.07.2015.

3. It is made clear in the order dated 30.07.2015 that the payment shall be on the basis of actual working days of Mills.

4. The claim of the petitioner is that since he has worked on Sundays, he is entitled to the daily wage for the Sundays on

which he was constrained to work.

5. The petition is filed in May, 2021 claiming the alleged shortfall in salary for the period 2015 till 2021.

6. When we indicated to the learned counsel for the petitioner Mr. Kshirsagar that in writ jurisdiction it would not be possible to consider the submission of the petitioner that he is entitled to shortfall in salary from 2015 till 2021, particularly since the contract states that daily wage shall be paid on the basis of actual working days of the Mills, Mr. Kshirsagar would submit in response that it is admitted by the National Textile Corporation that the petitioner has as a fact worked on Sundays.

7. Mr. Kshirsagar invites our attention to the inspection report of the R.B.B.A. Mills for the period October 2017 to March 2018 which is at page 59 of the petition. Mr. Kshirsagar emphasizes that the inspection note is that the petitioner has taken D.A. as per actual working days but local conveyance has been taken for the whole month. We are afraid, we do not see any admission in the inspection report that the petitioner has worked on Sundays much less that the petitioner was entitled to be paid

for having worked on Sundays. *Au contraire*, the inspection note is not very flattering.

8. We are more than satisfied that the petition is an abuse of the process of the law. We have not come across any material on record to suggest that the petitioner is entitled to be paid on Sundays much less that the petitioner has as a fact worked on Sundays.

9. We have further not come across any material to suggest that from 2015 till 18.11.2018 the petitioner made any grievance that he worked on Sundays, or that he was entitled to be paid for having allegedly worked on Sundays and that some amount is outstanding.

10. In any event, factual disputes cannot be resolved in writ jurisdiction. We note that every material averment in the petition is specifically denied.

11. At this stage Mr. Kshirsagar is inviting our attention to the judgment of a learned Single Judge in ***Ramkhilawan s/o Ramprasad Gupta (since dead by L.Rs.) Madanlal Ramkhilawan***

Gupta and others v. Model Mills, Nagpur 2010(2) Mh.L.J. 279.

We are afraid that the petitioner is persisting in labouring under serious misconceptions. The factual matrix in *Ramkhilawan* was that the petitioner was a workman who approached the Labour Court under section 33-C(2) of the Industrial Disputes Act for overtime wages. The claim was rejected by the Labour Court on the premise that there was no evidence to indicate the exact number of holidays on which the petitioner worked. Unlike the petitioner, who was appointed on contract basis to discharge the duties of coordinating and handling the litigation and was designated as an Officer, the petitioner in *Ramkhilawan* claimed overtime wages on the basis of the statutory provisions *inter alia* of the Bombay Industrial Relations Act and the statutory regimes in force. No assistance can be derived by the petitioner on the basis of observation of the learned Single Judge in *Ramkhilawan*.

12. Mr. Kshirsagar would submit that liberty may be granted to the petitioner to approach the appropriate forum.

13. We have not looked into the merits of the matter since according to us, the seriously disputed questions cannot be determined in writ jurisdiction. If there is any other remedy

available, the petitioner is free to avail the same.

14. The petition is dismissed.

(Y. G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

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