



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

WRIT PETITION NO. 3363/2020
WITH
WRIT PETITION NO. 3362/2020
WITH
WRIT PETITION NO. 970/2024
WITH
WRIT PETITION NO. 2170/2021
WITH
WRIT PETITION NO. 2171/2021
WITH
WRIT PETITION NO. 2763/2017
WITH
WRIT PETITION NO. 2764/2017
WITH
WRIT PETITION NO. 2765/2017
WITH
WRIT PETITION NO. 2766/2017
WITH
WRIT PETITION NO. 2767/2017
WITH
WRIT PETITION NO. 2768/2017
WITH
WRIT PETITION NO. 2769/2017
WITH
WRIT PETITION NO. 3289/2020
WITH
WRIT PETITION NO. 3290/2020
WITH
WRIT PETITION NO. 3291/2020
WITH
WRIT PETITION NO. 2142/2021
WITH
WRIT PETITION NO. 3373/2020

WITH
WRIT PETITION NO. 3374/2020
WITH
WRIT PETITION NO. 3375/2020
WITH
WRIT PETITION NO. 3378/2020
WITH
WRIT PETITION NO. 3379/2020
WITH
WRIT PETITION NO. 3416/2020
WITH
WRIT PETITION NO. 3417/2020
WITH
WRIT PETITION NO. 3468/2020
WITH
WRIT PETITION NO. 3469/2020
AND
WRIT PETITION NO. 3470/2020

WRIT PETITION NO. 3363/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Line, Nagpur

(2) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation, Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Harilal alias Haribhau Brijlal
Biranwar,
aged about 79 years, Occupation- Nil,
Resident of Sahejpur, P.O. Sejgaon,
Tahsil and District Gondia

.... **RESPONDENT(S)**

Shri Uday Gosavi, Advocate with Shri J.J.Chandurkar, Advocate for
Petitioner(s)

Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3362/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Line, Nagpur

(2) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation, Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Gendlal Namaji Chaudhari,
aged about 60 years, Occupation-Nil,
Resident of Sahejpur, P.O. Sejgaon,
Tahsil and District Gondia

.... **RESPONDENT(S)**

Shri Uday Gosavi, Advocate for the Petitioner(s)

WITH

WRIT PETITION NO. 970/2024

(1) **Chief Engineer,**
Irrigation Vibhag (Govt of Mah),
Sinchan Bhawan, Civil Lines, Nagpur

(2) **Executive Engineer,**
Gondia Irrigation Division, Gondia,
District : Gondia

(3) **Sub-Divisional Officer,**
Irrigation, Sub-Division, Tiroda, **PETITIONER(S)**

// VERSUS //

Baliram Atmaram Ambedare
Ages about 65 years, Occ- Nil Dead
Thr. Legal Heirs:-

(1) **Sewanta Wd/o. Baliram Ambedare,**
Aged about 65 Years, Occ.:-Labour

(2) **Jiwankala W/o. Sukram Neware,**
Aged about Major Years, Occ.:-Labour

(3) **Urmila D/o. Baliram Ambedare,**
Aged about 65 Years, Occ.:-Labour
All Resident of Majitpur,
Tahsil and District Gondia **RESPONDENT(S)**

Shri A.M.Kukday, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2170/2021

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Irrigation Division, Civil Lines, Gondia,
Tah. & Dist. Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia **PETITIONER(S)**

// VERSUS //

Bhaiyalal S/o. Nathu Rahangdale,
Aged about 67 years, Occupation Nil,
R/o. Dandegaon,
Tah. & Dist. Gondia

.... **RESPONDENT(S)**

Shri Neelesh Gaidhane, Advocate for Petitioner(s)
Shri Bharat Chandrakapure, Advocate for Respondent(s).

WITH

WRIT PETITION NO. 2171/2021

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Line, Nagpur

(2) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation, Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Ramdas Punaji Galatkar,
Aged about 66 years, Occupation- Nil,
Resident of Sahejpur, P.O. Sejgaon,
Tahsil and District Gondia

.... **RESPONDENT(S)**

Shri Neelesh Gaidhane, Advocate for Petitioner(s)
Shri Bharat Chandrakapure, Advocate for Respondent(s).

WITH

WRIT PETITION NO. 2763/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, TIRORA,
Dist. Gondia.

**(2) The Executive Engineer,
Gondia Irrigation Division, GONDIA**

(3) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines,
NAGPUR ..

... **PETITIONER(S)**

// VERSUS //

(1) **Madhukar Motiram Bhandarkar,**
Aged about 54 years, Occ.:—Nil,
R/o. DHAWANIWADA,
Tq. & Dist. Gondia.

**(2) The Labour Court,
Gondia.**

... **RESPONDENT(S)**

[illegible]

Ms. Ujjwala Patil, Advocate for Petitioner(s)

[illegible]

WITH

WRIT PETITION NO. 2764/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, TIRORA,
Dist. Gondia.

(2) **The Executive Engineer,**
Gondia Irrigation Division, GONDIA

(3) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines,
NAGPUR ..

... PETITIONER(S)

// VERSUS //

(1) **Tularam Mayaramji Kawle,**
Aged about 63 years, Occ.: - Nil,
R/o. DHAWANIWADA,
Tq. & Dist. Gondia.

**(2) The Labour Court,
Gondia.**

.... RESPONDENT(S)

Ms. Ujjwala Patil, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2765/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, TIRORA,
Dist. Gondia.

(2) **The Executive Engineer,**
Gondia Irrigation Division, GONDIA

(3) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines,
NAGPUR

.... **PETITIONER(S)**

// VERSUS //

(1) **Udelal Kusoba Katre,**
Aged about 56 Years, Occ.: - Nil,
R/o. DHAWANIWADA,
Tq. & Dist. Gondia.

(2) **The Labour Court,**
Gondia.

.... **RESPONDENT(S)**

Ms. Ujjwala Patil, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2766/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, TIRORA,
Dist. Gondia

(2) **The Executive Engineer,**
Gondia Irrigation Division, GONDIA,
District Gondia.

... **PETITIONER(S)**

.... RESPONDENT(S)

WITH

.... PETITIONER(S)

.... RESPONDENT(S)

Ms. Ujjwala Patil, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2768/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, TIRORA,
Dist. Gondia.

(2) **The Executive Engineer,**
Gondia Irrigation Division, GONDIA,
District Gondia.

(3) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines,
NAGPUR

.... **PETITIONER(S)**

// VERSUS //

(1) **Anantram Surajlal Lihare,**
Aged about 58 years, Occ.: - Nil,
R/o. DHAWANIWADA,
Tq. & Dist. Gondia

(2) **The Labour Court,**
Gondia.

.... **RESPONDENT(S)**

Ms. Ujjwala Patil, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2769/2017

(1) **The Sub-Divisional Officer,**
Irrigation Sub-Division, GONDIA.

(2) **The Executive Engineer,**
Bhandara (Gondia) Irrigation Division,
GONDIA, District GONDIA

(3) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines,
NAGPUR

.... **PETITIONER(S)**

// **VERSUS** //

(1) **Ramchandra Maniram Lanjewar,**
Aged about 47 years, Occ.:-Nil,
R/o. DHAWANIWADA,
Tq. & Dist. Gondia.

(2) **The Labour Court,**
Gondia.

.... **RESPONDENT(S)**

Ms. Ashwini Athalye, Advocate for Petitioner(s).

WITH

WRIT PETITION NO. 3289/2020

(1) **Chief Engineer,**
Irrigation Vibhag (Govt of Mah),
Sinchan Bhawan, Civil Lines, Nagpur

(2) **Executive Engineer,**
Gondia Irrigation Division, Gondia,
Dist. Gondia

(3) **Sub-Divisional Officer,**
Irrigation, Sub-Division, Tiroda,

.... **PETITIONER(S)**

// **VERSUS** //

Dhanlal S/o. Rajaram Bisen,
Aged about 58 years, Occupation- Nil,
Resident of Majitpur,
Tahsil and District Gondia

.... **RESPONDENT(S)**

Shri H.D.Marathe, Advocate for Petitioner(s)
Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3290/2020

(1) **The Chief Engineer,**
Irrigation Vibhag (Gov of Mah),
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Gondia Irrigation Division, Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Shriram S/o. Kusan Kokude,
aged about 58 years, Occupation-Nil,
Resident of Ekodi, P.O. Ekodi,
Tahsil and District Gondia

... RESPONDENT(S)

Shri H.D. Marathe, Advocate for the Petitioner(s)
Shri B.C. Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3291/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines, Gondia

(3) Sub-Divisional Officer,
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... PETITIONER(S)

// VERSUS //

Rewaram S/o. Aadku Kakirwar,
Aged about 46 years, Occupation : Nil,
Resident of Ekodi, Post Ekodi,
Tq. and Dist. Gondia.

.... **RESPONDENT(S)**

Shri H.D.Marathe, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 2142/2021

(1) **The Chief Engineer,**
Irrigation Vibhag (Govt. of Maharashtra),
Sinchan Bhavan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Irrigation Division,
Civil Lines, Gondia,
Tq. and District Gondia

(3) **The Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tq. Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Aadku S/o. Doma Kakirwar,
Aged about 65 Years,
Occupation: Nil,
R/o Ekodi, Post Ekodi,
Tq. and District : Gondia

.... **RESPONDENT(S)**

WITH

WRIT PETITION NO. 3373/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Gondia Irrigation Division,
Gondia, District Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Toliram S/o Kusan Kokude,
Aged about 58 Years,
R/o Gangala, Tahsil – Tiroda,
District : Gondia

.... **RESPONDENT(S)**

Ms. Ujjwala Patil, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 3374/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Gondia Irrigation Division,
Gondia, District Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Tukudu S/o. Zithoba Tumsare,
Aged about 54 years,
R/o. Murmadi,
Tahsil – Tiroda,
Dist. Gondia

.... **RESPONDENT(S)**

Ms. Ujjwala Patil, Advocate for Petitioner(s)
 Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3375/2020

(1) **The Chief Engineer,**
 Vidarbha Irrigation Development Corporation,
 Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
 Vidarbha Irrigation Development Corporation,
 Gondia Irrigation Division,
 Gondia, District Gondia

(3) **Sub-Divisional Officer,**
 Irrigation Sub-Division, Tiroda,
 Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Ghanshyam S/o. Tiju Maskare,
 Aged about 57 years,
 R/o Gangazari, Tahsil – Tiroda,
 District : Gondia

.... **RESPONDENT(S)**

Ms. Ujjwala Patil, Advocate for Petitioner(s)
 Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3378/2020

(1) **The Chief Engineer,**
 Vidarbha Irrigation Development Corporation,
 Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
 Irrigation Division, Civil Lines, Gondia,
 Tah. & District Gondia

(3) **Sub-Divisional Officer,**
 Irrigation Sub-Division, Tiroda,
 Tah. Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Vasant S/o Motiram Uikey,
Aged about 53 years, Occ. Nil,
R/o. Hanumantola,
Tah. & District Gondia

.... RESPONDENT(S)

Ms. Ashwini Athalye, Advocate for the Petitioner(s)

WITH

WRIT PETITION NO. 3379/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Irrigation Division,
Civil Lines, Gondia,
Tah. & Dist. Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... PETITIONER(S)

// VERSUS //

(1) **Shakuntalabai wd/o.**
Parasram Biranwar
Aged about 61 years, Occupation Nil,

(2) **Narendra S/o. Parasram**
Biranwar
Aged about 39 years, Occupation Labour,
Both R/o Sahespur,
Tah. & Dist. Gondia

.... RESPONDENT(S)

Ms. Ashwini Athalye, Advocate for Petitioner(s)
 Shri Bharat Chandrakapure, Advocate for Resp. no. 2

WITH

WRIT PETITION NO. 3416/2020

(1) **The Chief Engineer,**
 Vidarbha Irrigation Development Corporation,
 Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
 Gondia Irrigation Division, Civil Lines,
 Gondia, District Gondia

(3) **Sub-Divisional Officer,**
 Irrigation Sub-Division, Tiroda,
 Tah. Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Prithviraj Modku Ambekar,
 Aged about 57 Years, Occupation : Labour,
 Resident of Kesalvada, Tahsil :
 Tiroda, District : Gondia

.... **RESPONDENT(S)**

Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3417/2020

(1) **The Chief Engineer,**
 Vidarbha Irrigation Development Corporation,
 Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
 Vidarbha Irrigation Development Corporation,
 Irrigation Division, Civil Lines, Gondia,

(3) **Sub-Divisional Officer,**
 Irrigation Sub-Division, Tiroda,
 Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Chhaganlal Thuna Aagase,
Aged about 58 years, Occupation Nil,
Resident of Gangazari, Tahsil and
District Gondia.

.... RESPONDENT(S)

WITH

WRIT PETITION NO. 3468/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division,
Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... PETITIONER(S)

// VERSUS //

Premal S/o. Mansingh Katlam,
Aged about 52 years, Occ. Nil,
R/o Hanumantola,
Tah. And Dist. Gondia

.... RESPONDENT(S)

Ms. Ira P. Khisti, Advocate for Petitioner(s)
Shri Bharat Chandrakapure, Advocate for Respondent(s)

WITH

WRIT PETITION NO. 3469/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines, Gondia

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tahsil Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Dilip S/o. Durgaji Rinayat,
Aged about 45 years, Occ. Labour,
R/o. Ekodi,
Tah. And Dist. Gondia.

.... **RESPONDENT(S)**

Ms. Ira P. Khisti, Advocate for Petitioner(s)

WITH

WRIT PETITION NO. 3470/2020

(1) **The Chief Engineer,**
Vidarbha Irrigation Development Corporation,
Sinchan Bhawan, Civil Lines, Nagpur

(2) **The Executive Engineer,**
Vidarbha Irrigation Development Corporation,
Irrigation Division, Civil Lines,
Gondia.

(3) **Sub-Divisional Officer,**
Irrigation Sub-Division, Tiroda,
Tah. Tiroda, District Gondia

.... **PETITIONER(S)**

// VERSUS //

Anandrao S/o. Bisan Kumbhare,
Aged about 51 years, Occ. Nil,
R/o. Hanumantola,
Tah. And Dist. Gondia

.... **RESPONDENT(S)**

Ms. Ira P. Khisti, Advocate for Petitioner(s).
Shri Bharat Chandrakapure, Advocate for Respondent(s)

CORAM : M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON :- MAY 05, 2025

JUDGMENT PRONOUNCED ON :- July 31, 2025

JUDGMENT :-

RULE. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties. The matters are taken up for final hearing at the stage of admission.

2. In all these writ petitions, common question is involved, therefore, all the petitions are taken up together for final decision.

3. In these Writ Petitions, the order(s) passed by the learned Judge, Labour Court, Gondia in proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, I.D. Act) allowing aforesaid application in each case and granting relief to the respondent is under challenge. There being similarity of facts in each case

resulting in common reasoning in each order, the facts in Writ Petition No. 3363/2020 are being referred to.

4. It appears that this Court by the order dated 14/12/2020 issued notices to the Respondent for final disposal. The Petitioner (VIDC) is a statutory Corporation established under Section 3 of the Vidarbha Irrigation Development Corporation Act, 1997 (hereinafter referred to as “the VIDC Act”). The Corporation was formed to look after and carry out various irrigation projects all over the Vidarbha Region along with other allied and incidental activities.

5. It is the contention of the Petitioners that the Respondent is a seasonal daily wager who claimed, has worked for the Petitioners for a continuous period of five years. The Respondent has worked for few days as per the availability of work at Hari Talao Sub-Division, Tiroda at the time of actual irrigation for Kharif season and if water is available after that, it was given the same task for Rabi season as per necessity. The Petitioner (VIDC) is having

their own staff to carry out the required work i.e. desilting and cleaning the canal and other related works. The Respondent was given the work for very short period i.e. at the time of actual irrigation rotation period upto December, 2000. The Respondent has not challenged the same as he was not on work since 2001.

6. The Respondent thereafter filed Application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) before the learned Labour Court, Gondia in 2016. In the said Application, the Respondent has alleged that he was in continuous service for a period of 15 years with the Petitioners and failed to get the benefits of Kalelkar Award, as per Rule 28 of the said Award. The Respondent claimed retrenchment compensation from the Petitioners. The Petitioners herein filed their written statement to the said Application and challenged the maintainability of the Application filed by the Respondent. The Petitioner (VIDC) also denied the claim made by the Respondent on the basic ground that

there is no pre-existing right to claim the difference of wages as per Kalelkar Award.

7. It is further contended that, the application under Section 33-C(2) of the ID Act, it appears that it was filed on 30/09/2015. In the said Application, it is admitted that since 28/12/2000, they were not engaged by the Petitioners. As such, the said Application is filed after 15 years of their discontinuation of service.

8. It is the contention of the Petitioners that the Respondent has never worked with the Petitioners for 240 days in any year, and therefore, he is not entitled for any retrenchment compensation. Moreover, it cannot be decided under Section 33-C(2) of the ID Act. The Employee filed its evidence on affidavit. In the cross-examination, he has admitted that he has not placed any document that since 1988, he has worked with the Petitioners nor he has placed any document to show that till 2000, he was working with the Petitioners continuously. The Respondent herein examined Hiranman Pardhi who was working as

Amin and he was relieved from service in the year 2001, who deposed that the Respondent – Hari is working with the Petitioners since 1985 and every year, he has worked for more than 240 days. He has completed 15 years since 1985 to 2000. However, no documentary evidence is placed on record to that effect.

9. On perusal of the scheme of Converted Regular Temporary Establishment (CRTE), the said scheme was finalized in view of the agreement pursuant to the recommendations of Justice B.S. Kalelkar. The daily wagers, who are working for more than five years, their posts will be regularized. That will be an independent establishment which will be called as Converted Regular Temporary Establishment (CRTE). In view of the Kalelkar Award, the Converted Regular Temporary Establishment (CRTE) will be converted into Regular Permanent Establishment. It is made clear that in view of the provisions of Kalelkar Award, the Employee cannot get confirmed automatically. In order to get the benefits of

permanency for an Employee, permanent posts would be required. The Converted Regular Temporary Establishment (CRTE) and the Converted Regular Permanent Establishment (CRPE) who holds such posts were created for individual Employee, before it would be treated as individual post, and for any reason, the said person is retrenched, retired, resigned, transferred or promoted, his original post automatically gets abolished. There are certain conditions to be followed by the Employees to get their appointments regularized.

10. Main contention of the Petitioners is that there was no pre-existing rights in favour of Respondents employees and they were not in daily wages for about 15 years to claim such mandatory benefits. It is further contention of the Petitioners' that already a group of persons filed ULP Complaint and order therein is challenged in Writ Petition No.5614/2006 along with 25 connected writ petitions. By order in the said writ petition, matter was remanded back to the learned Industrial Court

to ascertain whether on the date of institution of complaint, employees were in the service. This Court observed in paras 8, and 9 as under:

“8. The perusal of ULP Complaint as filed by the respondents before Industrial Court in para 1 shows as use of past tense only thereby indicating that complainant was not in service on the date of institution of ULP Complaint. In para 3, however, the present tense has been used and the facts disclosed in para 3 reveal that employee has worked with employer for more than five continuous years since 1972. Thereafter his entitlement to regularization has been pleaded. This para 3 read with para 1, therefore, creates some doubt about continuation of respondent in service on the date of institution of complaint. The written statement as filed in para 2 specifically states that “all the workers are continuous working with the Respondent but they have not completed 240 days in one calendar year”. The perusal of chart in this background, therefore, shows that after relevant last year reflected against the respective respondent, he has not worked. The learned counsel for the respondents – employees have urged that this chart cannot be used to infer that on the date of institution of complaint, the employees were not in service or that their services were brought to an end after alleged last year of the working. In the absence of any specific mention in the chart in this respect, it is difficult to read said chart as proving the termination after the alleged last year of termination. Had there been a stand in the written statement, the respondent – employee would not have accepted that chart or then would have led evidence to point out their continuation

in service or to contradict that chart. It appears that only issue pressed into service before Industrial Court is continuation for a period of five years so as to enable the employees to claim benefit of clause 28 and the chart has been used by the Industrial Court for said purpose. The no objection given by the respondents to read that chart into evidence cannot, therefore, be read to mean that the chart also can be used to draw inference about other facts not then in contemplation of parties.

9. The effect of Clause 28 of Kalelkar Settlement is very clear. The employee, who has continued in service for a period of five years gets a post personal to him and after continuing for five years on such person post he become entitled to further advantages. Thus, the award imposes some burden on public exchequer. Before this Court on affidavit, the employer has pointed out that after last date of service as mentioned in attendance register, the respective employees have not worked. If this statement is accepted to be correct, the respondents – employees were not in service for a period of more than five years before the date of institution of complaint.”

11. After remand, learned Industrial Court held that complaint filed by the complainant is not maintainable. It was held that complainant failed to prove that the Respondents (VIDC) have engaged in unfair labour practice under Item 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention

of Unfair Labour Practices Act, 1971 (for short the “MRTU & PULP Act”) by not bringing the complainants on CRTE on completion of five years of continuous service with the Respondents. It is further submitted that after considering the evidence, the learned Industrial Court held in the decision in the said group of matter that, it is nowhere pleaded nor there is a very specific averment that they were in an employment at the time of filing of complaint or during the pendency of the case. They were not in employment and on daily wages up to 1995. Thus, none of the complainants were or are in an employment after 1995 and except affidavit, no evidence produce on record to show that on the date of filing of complaint, the complainants were or are in the employment. As there were no employee and employer relationship, there is no question of unfair labour practice. The learned Industrial Court held that when complainants are claiming benefit of Clause 28 of the Kalelkar Settlement, the complainants ought to have establish that they are in the employment and though they are in the employment since years

together, they were not extended the benefit of Kalelkar Settlement.

12. Learned Counsel for the Petitioners submitted that there is no automatic application of Clause 28 of the Kalelkar Award unless certain conditions are fulfilled. It is further submitted that learned Labour Court, Gondia totally erred in awarding payment as per Kalelkar Award without considering the law position under the judgment of this Court and by recording erroneous findings. The complaint is hit by delay and laches.

13. Learned Counsel for the Petitioners Mr. U. A. Gosavi, relied on the following citations :

(i) **Common Judgment in Writ Petition No.5614/2006, decided on 17.03.2010;**

(ii) **Common Judgment in Writ Petition No.5437/2012, decided on 12.03.2014;**

(iii) **Municipal Corporation of Delhi Vs. Ganesh Razak and Anr., reported in (1995) 1 SCC 235;**

(iv) **State Bank of India Vs. Ram Chandra Dubey, reported in (2001) 1 SCC 73;**

(v) **U. P. State Road Transport Corporation Vs. Briendra Bhandari, reported in (2006) 10 SCC 211;**

- (vi) ***Fabril Gasosa Vs. Labour Commissioner & Ors.***, reported in (1997) 3 SCC 150;
- (vii) ***Dhanpal Parisa Khot Vs. Shamrao Vithal Co-operative Bank ltd.***, reported in 2012 (6) Mah.Law Journal 306;
- (viii) ***Nanoo Ram Vs. Mahesh Chandra & Anr.***, reported in 1990 (Supp) SCC 752;
- (ix) ***Deputy Engineer Zilla Parishad (works) Sub-Division, Umred & Ors. Vs. Shantaram Ramaji & Ors.***, reported in 1996 (2) Mah. Law Journal 116;
- (x) ***RPG Cabels Ltd. Vs. Roshan A. Sujan***, reported in 2002 (3) L.L.N. 250;
- (xi) ***Union of India through General manager, Western Railway Vs. R. Shridhar***, reported in 2003 (2) L.L.N. 183 and
- (xii) ***Getwell Board and Paper (private) Ltd. Vs. Fakruddin S. Lokhandwala & Anr.***, reported in 2007(1) L.L.N. 488.

14. Learned Counsel for the Petitioners Mrs. Ujjawala Patil relied on **Writ Petition No.510/2019 (Hiraman Sitaram Shivankar & Ors. Vs. Chief Engineer, Irrigation Department, Nagpur & Ors.)** dated **24.08.2021**.

15. As against this, the learned counsel Shri Bharat Chandrakapure for the respondents submitted the Written

Notes of Argument. In other matters, Written Submissions are there on record filed by Shri R.D. Bombarde, learned counsel, Shri Bharat Chandrakapure, learned counsel and Ms. Tanuja Mukta, learned counsel for respondents in Writ Petition Nos. 3363/2020, 3468/2020, 2171/2021, 2170/2021, 3378/2020, 3470/2020, 3416/2020, 3374/2020, 3373/2020 & 3289/2020. So far as Shri Bhure, learned counsel appearing in place of Shri M.P. Jaiswal, is concerned, in spite of ample opportunity granted to advance oral argument or submit Written Notes of Argument, he did not appear. Order sheet reflects order to that effect that, in case, he would not appear, the matter would be worked out in his absence. In spite of this order, he was granted further opportunity to appear and submit his Written Notes of Argument but he failed to do so. As such, the citations placed on record along with Pursis dated 26/07/2023 by Shri Bhure, learned counsel are taken into consideration along with Written Submissions and judgments referred therein by Shri M.P. Jaiswal, learned counsel.

16. It is the contention of the respondents that, the application is filed by the employees under Section 33-C(2) of the I.D. Act claiming the amount as per Kalelkar Award/settlement. The respondents were working since 1985 till 2000 and have rendered more than 15 years of service, however, the benefits of Kalelkar Award as per Clause 28 are not extended to them. It is contended that, the department has not adduced any evidence, therefore, the adverse inference needs to be drawn. It is further contention that, there are pre-existing rights of the respondent employees and therefore, they can claim wages under Section 33-C(2) of the I.D. Act.

17. The learned counsel for the Respondents relied on the following citations:-

- (i) ***Vidhyadhar V/s. Manikrao and another {AIR 1999 SC 1441},***
- (ii) ***State of Maharashtra V/s. M.V. Ghalge {1992 Lab.I.C. 748},***
- (iii) ***Gopal Ketkar Vs. Mohd. Haji Latif & Anr. {AIR 1968 SC 1413},***
- (iv) ***H. D. Singh Vs. Reserve Bank of India & Ors.{AIR 1986 SC 132},***

- (v) ***Gauri Shankar Vs. State of Rajasthan {2016(1) SCC 546}***,
- (vi) ***Central Bank of India Vs. P. S. Rajagopalan {AIR 1964 SC 743}***,
- (vii) ***National Buildings Construction Corporation Ltd. Vs. Pritam Singh Gill & Ors. {AIR 1972 SC 1579}***,
- (viii) ***Bombay Gas Co. Ltd. Vs. State Bank of Bikaner and Jaipur {1963 Law Suit (S.C.) 143}***,
- (ix) Judgment in ***Writ Petition No.6380/2013 (Chief Engineer, Irrigation Vibhag & Ors. Vs. Sadaram Sahare)*** dated **31.10.2014**.

18. Shri Bhure, learned counsel relied on the judgment in ***Writ Petition No.6380/2013*** dated **31.10.2014** and ***M.V. Ghalge*** (supra). Apart from these judgments, there are many judgments referred in Written Submissions, however, which are relevant are discussed only.

19. I have heard both the parties at length. Considered the Written Notes of arguments as well as Written Submissions of the respective parties. In sum and substance, the contentions of the parties are the same in all the petitions.

20. It is the contention of the petitioners that the

proceedings under Section 33-C(2) of the I.D. Act were not maintainable at the instance of the complainant for the reason, that the complainant themselves claimed that they were no longer in service since 2000 and the complaint came to be filed in the year 2015. Therefore, the complaint is hit by laches. It is further submissions that, the complainant themselves averred, that they were daily wagers doing manual work, considering which, the Kalelkar Award could not have been applied to them for the reason that for applicability of the Kalelkar Award, in view of the requirement as contained in clause 28 of the said award, it was necessary to establish that the employees were in continuous uninterrupted employment for a period of five years, as a daily wager, only on which finding being rendered that the said employment could be treated as being a Converted Regular Temporary Establishment (C.R.T.E.). Since the employees were not fulfilling this criteria, therefore, the impugned judgment cannot be sustained.

21. As per averment of Respondent employees, the employees were disengaged from the year 2000, in view of the fact, that the C.R.T.E. was personal to the employee and ceased to be in existence, if employee left services or terminated. The disengagement of the year 2000, was not challenged. Therefore, it was not permissible to invoke the provisions of Section 33-C(2) of the I.D. Act. There is no relationship between the employer and employee remained, and therefore, on this ground also Section 33-C(2) of the I.D.Act could not be invoked. There is inordinate delay causing prejudice to the petitioners and burden on public exchequer.

22. Mrs. Ujjawala Patil, learned counsel for some of the petitioners submits that Section 33-C(2) of the I.D.Act can be invoked only in case there is admitted position on record and in case there are disputed facts, Section 33-C(2) of the I.D.Act could not be attracted. As role of Labour Court under Section 33-C(2) of the I.D.Act is not adjudicatory in nature.

23. Shri U.A.Gosavi, learned counsel with Shri J.J. Chandurkar, learned counsel for the petitioners in Writ Petition No. 3363 of 2020 filed written notes of argument on behalf of the petitioners therein. The respondent herein filed application under Section 33-C(2) of the I.D.Act before the learned Labour Court, Gondia which came to be registered as I.D.A. 72 of 2015. The reply of the petitioners in the said application is placed on record. By the said reply, the petitioners herein opposed the claim on the grounds that, (i) there is no pre-existing right in favour of the applicant to claim wages under Section 33-C(2) of the I.D.Act., (ii) the applicant is not entitled to claim the difference of wages under Kalelkar Award since he has not worked continuously uninterrupted for a period of five years from the date of his appointment, (iii) the applicant was disengaged in the year 2000 and the complaint is filed in the year 2015 and (iv) the claim of the applicant for retrenchment compensation cannot be decided in the proceedings under Section 33-C(2) of the I.D.Act. The learned Labour Court, Gondia vide its judgment dated

04/05/2019 in IDA 72/2015 was pleased to allow the application under Section 33-C(2) of the I.D. Act.

24. The learned counsel Shri U.A.Gosavi, learned counsel Shri Kasat and learned counsel Ms. Athalye further submit that the proceedings instituted under 33-C(2) of the I.D. Act are in the nature of execution and therefore, while exercising jurisdiction under it, the Labour Court cannot grant backwages nor grant any difference in wages as there was no predetermined entitlement in that regard.

25. The other advocates appearing for the petitioners adopted the argument advanced by Mrs. Patil as well as Shri Gosavi and Shri J.J. Chandurkar.

26. The learned counsel for the petitioners Shri Gosavi placed reliance on ***Fabril Gasosa*** (supra), wherein the Hon'ble Apex Court held in para 19 as under:-

*“19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to **have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections.**”*

The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no "adjudication."

27. Similarly, the learned counsel for the petitioners placed reliance on the judgment in ***Municipal Corporation of Delhi*** (supra), wherein it is held by the Hon'ble Apex Court that, *"the power of Labour Court in a proceeding under Section 33-C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution."*

In the said judgment, it is further held in para 12 as under:-

*“The ratio of these decisions clearly indicates that where the very basis of the claim or the **entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act.** The Labour Court has no jurisdiction to first decide the workmen’s entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act.”*

28. The learned counsel for the petitioners placed reliance on ***Dhanpal Parisa Khot*** (supra), wherein it is held by this Court that, *“the learned Labour Court held that to compute amount under section 33-C(2) of the Industrial Disputes Act, the claim should be based upon preexisting right and the petitioner had not mentioned what was the exact wage and what actually received from the Bank. According to the learned Labour Court, there is no pre-existing right.”*

One of the demand in the said matter of the employees were that, they be granted liberty to raise benefits if there is improvement in the financial position of

the bank. It is a matter of record in the said matter that, the terms itself permits the employees to raise the demand of the amount, but it was subject to improved financial condition. There was no determined and fixed commitment to make such payment. The entitlement to claim cannot be equated with crystallised amount as sought to be contended by the petitioners/employees. It is held by this Court that, *“in my view, amount was never determined and finalised. Therefore, such claim cannot be adjudicated in such summary proceedings. The remedy is elsewhere. I am not inclined to interfere with the reasoned order, as the amount was never admitted or crystallised earlier and or determinable first time in this proceeding.”*

29. Thus, the learned counsel for the petitioners submitted that, in the present matter also, the amount was never determined and finalised, nor it was proved that they were in service continuously for five years, therefore, it cannot be said that, there was any pre-existing rights.

30. In ***U. P. State Road Transport Corporation***

(supra), relying on the judgment in the case of ***State Bank of India Vs. Ram Chandra Dubey*** (supra), the similar view is taken. It is held that, **benefit enforceable has to be a pre-existing benefit or one flowing from a pre-existing right.** In the said matter, the claim of the petitioner for payment of arrears relating to difference of salary, leave encashment, DA arising out of recommendations of 5th Pay Commission accepted by the Labour Court and directed the payment. The High Court also took the view that the recommendations were binding on appellant Corporation and therefore, dues were payable. It is held by the **Hon'ble Apex Court that, Section 33-C(2) was not applicable as there was no pre-existing benefit or right available to the workman in the said case.**

31. The learned counsel for the petitioners relied on the judgment in the case of ***Nanoo Ram*** (supra) in support of his contention that, the Labour Court ought to have been rejected the application on the ground of laches itself. In

the said matter, the appellant after wrongful dismissal, reinstated in the service in 1973 and transferred to Ghaziabad. He filed first application under Section 33-C(2) in 1978 for benefits consequent upon reinstatement, and second application in 1979 for allowances and other benefits deemed to have continued in service till reinstatement. The Labour Court rightly rejected the second application on the ground of laches, which order was upheld by the Hon'ble Apex Court.

32. The learned counsel for the petitioners also placed reliance on the judgment in the case of ***Deputy Engineer Zilla Parishad (works) Sub-Division, Umred & Ors.*** (supra), wherein this Court held that, “*the Labour Court functioning under the Industrial Disputes Act not being a civil court, Article 137 of Limitation Act not applicable to the applications under section 33-C(2). Even though there is no limitation, stale claims should not be entertained unless delay is satisfactorily explained. Whether a claim is stale or not and whether the claimant has furnished satisfactory*

explanation in making delayed claim is always a question depending on the facts of each case and no hard and fast rule can be laid down nor any absolute proposition framed as to when an application or claim under section 33C(2) would be treated stale or belated or in what circumstances the labour court would entertain such claim or hold the explanation reasonable.”

33. This Court relying on the judgment in the case of ***Inder Singh and Sons Ltd. V/s. Their Workmen*** {1961 Vol. II L.L.J. 89} held that, “the principle of industrial adjudication demands that over-stale case should not be encouraged or allowed unless there was satisfactory explanation for the delay. **The reason is obvious that by entertaining the stale claim without explaining the delay, after a long lapse of time, any order passed entertaining such claim may affect the financial position and arrangement of the employer and thus right of the employer may be seriously prejudiced.**

34. In ***RPG Cabels Ltd.*** (supra), this Court set aside the order passed by the learned Labour Court. The Labour Court wrongly presumed while computing and granting amount that there were revision of wages and the employee was entitled to get benefit of revision of wages. It is held that, whether the respondent is entitled to revision or not is a dispute which cannot be resolved under Section 33C(2) of the Act. **The Labour Court could not have crossed its limit of determining and computing the money due to the respondent on the basis of the existing right in the said settlement the Labour Court could not have presumed that there was revision in the wages and other emoluments and the Labour Court, therefore, could not have directed the company to make payment of the differential amount on the basis of the alleged revision of wages and other emoluments.**

35. The learned counsel for the petitioners relied on the judgment in the case of ***Union of India through***

General manager, Western Railway (supra), wherein the claim of the complainant for overtime wages made after a period of 12 years by respondents Railway employees. The Labour Court sustained the claim. In the said case, it is held that, *“the decision of the Labour Court is totally baseless and cannot be sustained. The Labour Court has failed to appreciate that the applicants had to prove their claims for overtime by adducing sufficient material and by entering in the witness box to swear on oath as to when and where they had done the overtime work and whether they got the same properly certified by the concerned appropriate authority and whether they had lodged their claim vouchers and how they had followed the claim and why they kept quiet for such a long period. It is difficult to understand how the existing right to get overtime wages can be said to have been proved in the absence of any documentary evidence and/or oral evidence on oath. Even if there is no period of limitation under S.33C(2) of the Act, there is no escape for the applicant to prove his existing right to claim money due.”*

36. In ***Getwell Board and Paper (private) Ltd.*** (supra), the similar view is taken. In the said case, it is held that,

“in the absence of right to claim commission being crystallized either by an award or is admitted by employer, Labour Court would not get jurisdiction to pass an order under Section 33-C(2) of the Act. As such, Labour Court lacked jurisdiction and hence, the impugned order is set aside.”

37. As against this, the learned counsel Shri Chandrakapure for the respondents submitted his Written Notes of Argument and other counsels appearing for the respondents adopted his argument in addition to their Written Submissions on record. It is the contention of the respondents that, they have rendered more than 15 years of service on daily wages, however, the benefits of Kalelkar Award as per Clause 28 is not extended to them. It is contended that, the department has not adduced any evidence, therefore, an adverse inference needs to be drawn. There were pre-existing rights of the respondents

and therefore, the application under Section 33-C(2) of the I.D. Act is maintainable. Apart from this, it is the contention of the respondents that, in spite of order on application for “Notice to Produce the Documents”, the petitioners failed to produce the same and therefore, an adverse inference needs to be drawn as per order thereon.

38. Learned Counsel for the Respondents relied on Judgment in **Gopal Ketkar** (supra), **H. D. Singh** (supra) and **Gauri Shankar** (supra), wherein it was held that “on failure to produce the records despite notice to produce documents on record, adverse inference is to be drawn”

39. So far as the claim of the respondent that, that adverse inference is required to be drawn, the reliance is placed by the respondent on **H.D. Singh** (supra), **Gopal Krishnaji Ketkar** (supra) and **Gauri Shankar** (supra) wherein the common proposition of law evolved that though the burden of proof does not lie on the party, the

Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue.

40. In my considered opinion, the reliance placed is misconceived as in the said matter, the party wanted the relevant record to be filed, those were not produced. In ***Gopal Krishnaji Ketkar*** (supra) wherein the Hon'ble Apex Court held that, even if the burden of proof does not lie on the party, the Court may draw an adverse inference if he withholds important documents **in his possession** which can throw light on the facts at issue.

41. So far as ***Gauri Shankar*** (supra) is concerned, the Hon'ble Apex Court placed reliance on the judgment of ***Gopal Krishnaji Ketkar*** (supra), however, in the present matter, the complaint was filed 15 years after discontinuance. Therefore, it is necessary to ascertain whether such record of daily wagers is in possession of the department. There is nothing on record to show that there was any order passed on application or any notice to

produce document has been issued to the petitioner. No inspection was sought for. In absence of such exercise, considering 15 years of period, it would be unjustified to draw any adverse inference against the petitioners department, specifically, when the record was destroyed as per Manual after 5 years. It is the contention of the respondents that they worked for more than 5 years. To prove this facts, the respondent has given application to direct the petitioners to produce the documents. The certified copy of the application is placed along with Pursis dated 02/08/2023. On perusal of the application, it appears that the copy was served to the petitioners on 07/04/2017 and the order came to be passed for “other side to say” on the same date. On the back side of the said application, the learned counsel for the respondent therein filed his say on 05/05/2017 which reads thus:-

“Application is strongly opposed. Since applicant never worked with respondent, documents demanded not available with respondent. That further as per manual documents is 5 yrs. old are destroyed by respondent. Hence application may be dismissed.”

42. However, it appears that, there is typed order without date, without signature of the concerned Judicial Officer of the Labour Court. Therefore, as such, there is no order passed on that application directing present petitioners to produce the documents. Thus, unsigned, undated order typed on the application is doubtful. As such, what is contended in para 7 of the written notes of the argument, is incorrect. Therefore, finding of the Labour Court of drawing adverse inference as the documents sought which were not produced by the petitioners before the Labour Court, is perverse. After filing of reply, there was no order and the typed order which is produced, is neither signed by the concerned Labour Court' Judge nor there is any date, on which the said order came to be passed. It is informed by way of reply that, the documents is not in possession of the petitioners department as those were destroyed after 5 years as per Manual. The scanned application is reproduced for the sake of convenience as under:-

- 1 - U.S.

BEFORE THE HONBLE LABOUR COURT, AT GONDIA

I.D.A. Case No. 651/2015
Charial Versus The Chief Engineer & others

Application for directing the respondent to produce documents.

The Applicant most humbly begs to submit as under :-

- 1) That, the Applicant has filed the case against the respondents before this Honble court for recovery of due wages which is outstanding against the respondent.
- 2) That, the applicant was doing the work as a manual labour on daily wages at "Hq" Talav. He was terminated on 28/12/2000 by the respondent. To decide all the issues, the following documents are required. The said documents are in the custody of respondents which are very important for fair disposal of this case.

- A) Muster roll From 1995 to 28/12/2000
- B) Payment Register From 1995 to 28/12/2000
- C) Seniority list of worker

PRAYER :- It is therefore prayed that this Honble court be pleased to direct the respondent to produce abovesaid documents before the court in the interest of justice.

Gondia

Dated: 7/4/2017 Counsel For Applicant

[Signature]

[Circular Stamp]

Received Copy
 Charial
 Sr. 20/10/17
 Sr. 25/10/17
 Sr. 26/10/17
 R. 27/10/17

[Signature]
 7/4/2017

- 2 -

Say Application is strongly opposed, since applicant never worked with respondent (documents demanded not available with respondent. That further as per manual documents 5 yrs. old are destroyed by records. Hence application may be dismissed.

[Signature]
C.R. Bhambhani
CLF Res.
5-5-17

Order

Say not filed. The respondent shall produce the documents on next date. If the respondent fails to comply the order, the applicant is at liberty to produce the evidence.

CERTIFIED COPY

Original Copy Applied by Adv. R.D. Bombard on 21/07/23
Copy Typed by Nutan Kapse
Copy Compared By Nutan Kapse
Copy Ready on 21/07/2023
Copy Delivered on 21/07/2023
Charges in Certified Copy Rs. - 8/-
C.R. Eight only *[Signature]*
Peter Chik

43. The learned counsel for the respondents also placed reliance on ***Vidhyadhar V/s. Manikrao and another*** (supra) wherein, the Hon'ble Apex Court held that, *“where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.”* However, the facts involved in the said matter are distinguishable. It is the case of Transfer of Property Act. The suit was filed for redemption of the mortgage by conditional sale or in the alternative for a decree for specific performance of the contract for repurchase. In the said matter, the defendant no. 1 alleged that, the sale deed executed by the defendant no. 2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transactions as only Rs. 500/- were paid as sale consideration to defendant no. 2. This plea was not supported by defendant no. 1 as he did not enter into the witness box. In the matter of suit relating to transfer of property, the defendant is required to discharge his

burden. He did not state the facts pleaded in the written statement on oath. In view thereof, the Hon'ble Apex Court observed that, not entering into the witness box give rise inference adverse against him.

44. The learned counsel for the respondents also placed reliance on **M.V. Ghalge** (supra) wherein, it is held as under:-

“The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments or definite establishments) provided in rule 28 to such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The rule contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. The Rule does not contemplate actual working on the part of the daily rated employee for any specified number of days in any of the requisite five years. In other words, if the employee is on the daily rated establishment, in five consecutive years, irrespective of number of days of actual work rendered in each of the said five years, the employee would be entitled to the benefit of Rule 28 of having his post converted to the post of converted temporary establishment.

Interpretation of Rule 28 is not governed by Rule 1 in Part III as the entire Part III contemplates a situation which would come into play only after there has been conversion in accordance with Rule 28.”

*“it is not necessary to put 240 days of continuous service in every year. Rule 29 of Kalelkar Award contemplates at least five years of continuous working. It does not contemplate actual working for any specified number of days in any of the requisite five years. It is not necessary that the workman has to work for 240 days of continuous service in every year. Moreover, the learned Labour **Court has rightly drawn adverse inference as the documents sought were not produced by the Petitioners before the Labour Court, holding that Respondents employees have worked for five years.**”*

45. It is contended by learned Counsel for the Respondents that in view of Full Bench Judgment of five Judges, ***Central Bank of India Vs. P. S. Rajagopalan***, (supra), while interpreting the scope of Section 33(C)(2) of the ID Act, it is held that it applies even if right to benefit is disputed by the employer. The Labour Court has jurisdiction to determine whether workman has right to receive benefits, for that purpose, Labour Court can interpret the award or settlement on which workman's

right is based. There is no dispute over this proposition of law, however, there has to be settlement and pre-existing rights.

46. Learned Counsel for the Respondents also placed reliance on ***National Buildings Construction Corporation Ltd. Vs. Pritam Singh Gill & Ors.***, reported in ***AIR 1972 SC 1579***, and submitted that term workman as used in Section 33(C)(2) of the ID Act includes all persons whose claim requiring computation under the said Section of 33(C)(2) of the ID Act in respect of an existing right arising from his relationship as an industrial workman with the employer. It is submitted that so far as limitation is concerned, it will not apply in the proceedings under Section 33(C)(2) of the ID Act. For that purpose, learned Counsel for the Respondents relied on ***Bombay Gas Co. Ltd. Vs. Gopal Bhiva and ors.***, reported in ***AIR 1964 SC 752*** wherein, the Hon'ble Apex Court held that, "*there was no provision regarding limitation for applications under Section 33C(2) of the Act,*" however, the

facts involved in the matter is distinguishable. In the said matter, the central legal issue was, whether claims barred by Payment of Wages Act could still be entertained under Section 33C(2) of the I.D. Act.

47. In ***National Buildings Construction Corporation Ltd.*** (supra), on which, reliance is placed by respondents, wherein the Hon'ble Apex Court held as under:-

“In order to remove this repugnancy Section 33-C (2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in Section 33-C (2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act.”

48. In ***Bombay Gas Co. Ltd.*** (supra), in para 5

and 6, the Hon'ble Apex Court held as under:-

“5. The Tribunal which dealt with this demand observed that demand No. 11(a) had been badly worded. There was, however, no doubt that what the employees claimed against the appellant was, in substance, a demand for paid weekly off only for those workers who were actually getting a weekly off, though without pay. In dealing with this demand, the Tribunal noticed the fact that all the monthly paid staff employed by the appellant got a paid weekly off, and so, it thought that there was no reason to discriminate between the said staff and the daily rated workers. In regard to the daily rated workers usually, their monthly income would be determined on the basis of a month consisting of 26 working days. From the statement of claim filed by the Union before the Tribunal, it appeared that prior to 1946, most of the workers used to work for all the seven days of the week. By about August, 1946, however, weekly offs were enforced upon the major section of the workmen. In June 1946, the appellant and the Union had entered into an agreement as regards wage scales of various categories of workers, and the Tribunal assumed that in respect of most of the daily rated workers, the wages must have been fixed on the basis of what their monthly income would be for 26 working days. It is in the light of this background that the Tribunal proceeded to examine demand No. 11(a).

6. The Tribunal noticed that in the case of the four categories of workers specified in demand No. 11(b), difference had to be made because it could not be said in their case that their daily rates of wages were fixed with reference to a month of 26 working days. The result was that with the introduction of the weekly off, the wages of those workers were reduced. Naturally, the Tribunal observed that in

such a case, the concession of a weekly off would be a very doubtful benefit if as a result, the monthly income of the workers was to go down. That is why the Tribunal gave the direction on which the respondents' present claim is based. This direction we have already quoted at the beginning of the judgment."

49. It is also contended by learned Counsel for the Respondents that they had filed complaints before the Industrial Court, however, subsequently the said complaints were withdrawn by the Respondents employees. Vide Pursis dated 02.08.2023, the order in the said ULPs dated 31/03/2005 is filed. It is contended that the learned Industrial Court granted permission to withdraw the complaint with liberty to file cases before Labour Court under Section 33(C)(2) of the ID Act claiming amount as per the Kalelkar Award. The learned Industrial Court permitted to withdraw the complaints and granted liberty to file appropriate proceedings in the appropriate Forum. The scanned copy of order on application for withdrawal is as under:-

In The Court of Shri K. W. Thakre,
 Member Industrial Court,
 Chandrapur.

Comp. U.P. No. :- 192/04, 193/04,
197/04 to 198/04, 202/04, 204/04
to 211/04, 242/04 to 250/04,
253/04 to 262/04, 275/04 to
279/04, 283/04 to 289/04, 292/04
to 295/04, 362/04 to 364/04,
3.16/04, &
34/05, 41/05, 61/05 to 66/05, 68/05
to 76/05, 79/05 to 84/05,

Fekantatredatters w/s Immigration
 Department
 Chandrapur.

Common Order Below dated
 (A) - 31/03/2005.

This order reads

65/115
 not appearing
 in the list

- 2 -

4 -
- 2 -
out of common application
as per 20 of the Act.
Bhargava on behalf of above
Complainants to withdraw the
above Complaints with liberty
to file fresh Complaints &
Application no 33-C-2 before
the Labour Court.

② It appears that
the services of all the Comps
were terminated much prior
to filing of above Complaints.
Even though the Comps
are not in the service
of the respondents but they
can claim the monetary
benefits as per the provisions



— 3 — — 5 —

2d) Right to Settlements before
the Labour Court - u/s 33(1)(c)
of I.L.O. 1947. In fact the land
mark Judgment 'The State
of Maharashtra v/s M.V. Gherge'
reported in 1992 2 A.B.D. 748
(H.M.H.C.) regarding the benefits
of Khetkar Settlement itself
3) regarding the claim u/s
32(1)(2) of I.D. Act. There
is no limitation prescribed
u/s 33(1)(c) of I.D. Act to
approach to the Labour Court.
Hence Comptts are at liberty
to approach the Labour
Court u/s 33(1)(c) for
their claim of monetary
benefits as per the provisions

- 6 -
 of Kalkar Settlement.

③ If the law permits then, Compts are at liberty to challenge the termination of their services before the labour court by filing delay condonation applications.

Hence all the above Compts filed by the Compts are hereby disposed off as withdrawn & with permission to approach the appropriate forum if law permits. No order as to costs.

Bhandari

Atkate

RECEIVED
 31/03/2000
 Mr. J. Bhandari
 Mr. A. Bhandari
 Mr. C. Bhandari
 Mr. D. Bhandari
 Mr. E. Bhandari
 Mr. F. Bhandari
 Mr. G. Bhandari
 Mr. H. Bhandari
 Mr. I. Bhandari
 Mr. J. Bhandari
 Mr. K. Bhandari
 Mr. L. Bhandari
 Mr. M. Bhandari
 Mr. N. Bhandari
 Mr. O. Bhandari
 Mr. P. Bhandari
 Mr. Q. Bhandari
 Mr. R. Bhandari
 Mr. S. Bhandari
 Mr. T. Bhandari
 Mr. U. Bhandari
 Mr. V. Bhandari
 Mr. W. Bhandari
 Mr. X. Bhandari
 Mr. Y. Bhandari
 Mr. Z. Bhandari

31/03/2000
 Mr. J. Bhandari
 Mr. A. Bhandari
 Mr. C. Bhandari
 Mr. D. Bhandari
 Mr. E. Bhandari
 Mr. F. Bhandari
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 Mr. R. Bhandari
 Mr. S. Bhandari
 Mr. T. Bhandari
 Mr. U. Bhandari
 Mr. V. Bhandari
 Mr. W. Bhandari
 Mr. X. Bhandari
 Mr. Y. Bhandari
 Mr. Z. Bhandari

(R.W. Thakur)
 Member
 Just. Court
 Bhandari
 31/3/2000

50. It is further contended that the Judgment of this Court dated 17.03.2010 and the order passed by the Industrial Court dated 18.06.2012 are not binding to the Respondents as they were not parties in the order passed by the Industrial Court. It is contended that, the Judgment in ***Writ Petition No.6380/2013 (Chief Engineer, Irrigation Vibhag & Ors. Vs. Sadaram Sahare)*** dated **31.10.2014**, the petitions are squarely covered and are liable to be dismissed. In Writ Petition No. 6380/2013 along with connected matters, this Court referred the application filed before the learned Industrial Court and thereafter, seeking withdrawal of the same with liberty to file application under Section 33-C(2) of the I.D. Act before learned Labour Court. The main issue of the petitioners is that, the names of the respondents in the Writ Petition No. 6380/2013 and connected matters do not match with the names of present respondents. In fact, there was no such application filed by the present respondents in the year 2004 and false statement is made that, they have filed the application under Section 33-C(2) of the I.D. Act as liberty

was granted to the respondents to avoid ground of laches against them.

51. So far as the contention of the respondents that, they had filed complaint before the learned Industrial Court, however, subsequently, the said complaint was withdrawn by the respondents, is not correct and false statement is made to that effect.

52. Shri B.C.Chandrakapure, learned counsel appearing in Writ Petition No. 3289 of 2020 for Respondent, placed along with Pursis dated 02/08/2023, the order of learned Industrial Court dated 31/03/2005, by which, the Complaint ULP Numbers mentioned therein came to be disposed of as withdrawn with permission to approach the appropriate forum if law permits, wherein it is observed that, the complainant may approach as per Section 33-C(2) for their claim of mandatory benefits.

53. It is a matter of record that, during the evidence also, the complainant was not having any number of complaints as claimed to have filed before the learned

Industrial Court after 2000 till 2015. There is no specific statement made by the respondent that, the complaint numbers given in the said order dated 31/03/2005 passed by the learned Industrial Court, Bhandara pertains to present petitioners. The complaint filed with the numbers is reflecting in the said order. Thus, such false statement would not assist to the respondent to draw the conclusion that there was any complaint filed before the learned Industrial Court in 2004 or 2005 as claimed. In absence of any such document on record, the contention of the respondent that, the learned Industrial Court has granted permission to withdraw the complaint with liberty to file the cases before the Labour Court under Section 33-C(2) of the I.D. Act, is false statement and made to avoid ground of laches. There is no such order granting permission/liberty placed on record in respect of the present respondents in Writ Petition No. 3363/2020 or in connected matter.

54. It is the contention of the petitioner that, in Writ Petition No. 5614/2006 and other connected matters

wherein the similar issue was involved in the said group of matters. In the said matters, it was the contention of the complainants that they were continuously working and were in service even on the date of filing of complaint.

55. In view of observations in Writ Petition No. 5614/2006, this Court set aside the order and the respective ULP Complaints are restored back to file for taking fresh decision in accordance with law after giving parties necessary opportunities to amend their pleadings and to adduce evidence, if they felt necessary.

56. After remand, the learned Industrial Court, vide its common judgment dated 18/06/2012, recorded its finding that, the complaint is not maintainable. By the said judgment, also it is held that, the complainant failed to prove that the respondents have engaged in unfair labour practice under Items 5, 6 & 9 of the Schedule IV of the MRTU & PULP Act by not bringing the complainants on CRTE on completion of five years of continuous service

with the respondents.

57. It appears that the learned Industrial Court while deciding these group of matters duly considered the judgment in the case of ***State of Maharashtra V/s. M.V. Ghalge {1992 Lab.I.C. 748}, Chief Engineer, Irrigation Department V/s. Wasudeo Arjun Ghote {Judgment passed in LPA No. 135/2006 dated 4/9/2006}*** and ***State of Maharashtra, Irrigation Department V/s. Purushottam Shrikisan Bagde {Judgment passed in LAP No. 137/2006 dated 4/9/2006}***.

58. After considering the citations relied on and argument advanced, the learned Industrial Court observed that, in view of the judgment in ***M.V. Ghalge*** (supra), the argument as advanced by the department that, 240 days is necessary held cannot be accepted. It is observed that each complainant has completed five years of service as seen from the chart filed by the department in the said matter. However, the learned Industrial Court held that, it cannot

grant relief to the complainants because the Industrial **Court has already held that the complaint is not maintainable as the complainants were not in the employment at the time of filing of complaint. The complainants miserably failed to prove that they were in the employment after 2000.** The said order was challenged in Writ Petitions before this Court vide W.P. No. 5437/2012 with other connected matters. The said order of Industrial Court was confirmed by this Court vide its order dated 12/03/2014. Thus, it attains finality, however, the learned counsel for the respondents herein claimed that, the said judgment is not binding on the respondents as they were not parties to the said complaint before the Industrial Court or before the High Court in Writ Petition.

59. In the present matter, as per their own pleadings, the respondents are not in service since 2000 and the complaint is filed in the year 2015. The learned counsel for the respondent placed reliance on the judgment

of this Court in Writ Petition No. 6380/2013 and other connected matters decided on 31/10/2014. On perusal of the said judgment, it is clear that, there was notice to produce the documents in the said petitions, however, the department has not produced the said documents. So far as the present matters are concerned, as discussed earlier, though the application was filed, in reply, it is made clear that, the documents of which the complainants are seeking production, are not available with department and same are destroyed after 5 years as per Manual. Though there was no order on the said application, the respondent mislead this Court by showing that there was order of production of documents. Second misleading statement made by the respondent is about withdrawal of earlier complaints with liberty to avail remedy as per Section 33-C(2) of the I.D.Act. The respondent placed reliance on the judgment in Writ Petition No. 6380/2013 of this Court and other connected matters, this Court observed in para 14 and 15 as under:-

“14.

*In the evidence of the petitioners' witness, no specific stand as regards prejudice being caused on account of the aforesaid delay has been stated. There is no cross examination of the respondent on the aspect of delay and prejudice being caused to the present petitioners on account of the same. **It is to be noted that the respondent had sought production of records by the department as per application vide Exh.10. The same was allowed, but the documents as sought were not produced. It is not the case of the petitioners in their evidence that as aforesaid records were not available, the same could not be produced. It was open for the petitioners to have brought on record prejudice, if any, caused to them on account of the delay in filing proceedings under Section 33-C(2) of the said Act.** However, no such stand has been taken by the petitioners. Except stating that the proceedings were belated, said stand has not been substantiated. Thus, as observed by the Supreme Court in **Ajaib Singh** (supra), raising of a mere hypothetical defence is not sufficient and real prejudice has to be proved as a matter of fact. The same is, however, absent in the present case.*

*As regards the decision of learned Single Judge in **S. A. Shaikh** (supra) relied upon by the learned Counsel for the petitioners, claim for the period from 1957 to 1964 was sought to be agitated after a lapse of 26 years. **In the written statement, the employer raised a specific plea that they had not preserved old records as the same were destroyed according to the relevant rules. In that background and considering the specific plea of the***

employer regarding destruction of old records, this Court refused to grant relief to the workmen therein on the ground of delay. However, in the present case, it is not the case of the petitioners that on account of destruction of old records, their production was not possible. No such stand has been taken by the petitioners. On the contrary, the respondent sought inspection of the records of the petitioners by moving an application in that regard. During inspection, it was noticed that the records had not been properly maintained due to which records pertaining to the respondents could not be inspected. Hence, the observations made in aforesaid judgment are clearly distinguishable and cannot be made applicable to the facts of the present case.

15. From the above, therefore, it is clear that the relief sought by the respondent cannot be refused only on the ground that the proceedings have been belatedly filed. In absence of any specific stand as regards prejudice being caused on account of delay, the respondent cannot be non-suited on said count. **Moreover, in 2004, the respondent had approached the Industrial Court seeking relief under provisions of the Act of 1971. After withdrawing aforesaid proceedings and on the basis of liberty granted, the respondent approached the Labour Court.** Perusal of the impugned judgment reveals that the Labour Court has rightly taken into consideration the law laid down by this Court as regards applicability of Clause 28 of the Kalelkar Award. It has further noted that despite being called upon to produce its records as per the order passed below Exhibit-10, the same was not done

by the petitioners without any justifiable reason. On that basis, it granted relief to the respondent and also granted two months time to make necessary payments. There does not appear to be any jurisdictional error committed while passing the impugned order. The law as laid down by the Supreme Court and by this Court has been properly applied. Thus, in the facts and circumstances of the present case, no case for interference in writ jurisdiction has been made out. Rule in each writ petition, therefore, stands discharged with no order as to costs. The direction to make payment within a period of two months from the date of the order of the Labour Court stands confirmed. However, the period of two months to make such payment shall commence from the date of this judgment. If said amount is not so paid, the same shall carry interest at the rate of 6% per annum till realization.”

60. Accordingly, the petition came to be dismissed. On perusal of record of the learned Labour Court, it appears that, none of the present respondents was before the Industrial Court nor there was any liberty granted to the present respondents as claimed by them. The group industrial matters were altogether different and they were not filed by the present respondents. Even perusal of names of the respondents in Writ Petition No. 6380/2013, this fact can be confirmed. There is no action taken since

2000 to 2015 by the present respondents. As such, the misleading statement is made by the respondents that, the liberty was granted to the present respondents to file application under Section 33-C(2) of the I.D. Act.

61. In the present matter, the petitioners herein have already taken stand that, on account of destruction of old records as per Manual, their production was not possible, nor there was any application for inspection of the records. Thus, there is specific stand as regards prejudice being caused on account of delay. The citations relied on by the respondents is of no help to the respondents.

62. In the matter of **M.V. Ghalge** (supra), the issue was that the expression “continuous service” as used in Clause 28 of the Kalelkar Award is not defined anywhere in the Rules, though in connection with lay off and retrenchment, it has been defined to mean rendering of 240 days’ actual work in a year. The question was whether in the absence of any definition of the expression “continuous service”, for the purpose of Rule 28, a

reasonable construction will have to be put on this expression. However, it appears that in the said matter, the complainants were in the services at the time of filing of complaint, as there is no pleading to the effect that, their services at any point of time, discontinued as daily wagers. Moreover, even if it is presumed that, there is any such right it was not asserted during the last 15 years prior to filing of application.

63. Though Kalelkar Award made applicable to the petitioners department, however, as held in Writ Petition No. 6380/2013 and other connected matters, if serious prejudice is going to cause to the petitioners department, the complaint filed by the respondents are liable to be dismissed. The respondents failed to establish that there was any pre-existing rights. Nor there is any explanation for inordinate delay.

64. The respondents placed reliance on the judgment in the ***Central Bank of India Ltd.*** (supra) of the Hon'ble Apex Court consist of five judges wherein the

Hon'ble Apex Court held that,

“For the purpose of making the necessary determination under S. 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests. When the Labour Court is given the power to allow an individual workman to execute or implement his exercising execution power in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court, but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under S. 33C(2).”

65. Apart from this, in Written Submissions of the other learned counsel, there are certain judgment referred viz. ***Balaji Krushnaji Bhoyar V/s. Zilla Parishad, Nagpur {2014 (4) Mh.L.J. 383 (Bom)}***, however, reliance is misplaced in view of the specific finding that, the application with liberty to file appropriate proceedings was not filed by the present respondents. In view thereof, it would not apply in the present set of facts. There is no

dispute over the fact that, the law of limitation does not apply to application under Section 33-C(2), however, it is not out of purview of laches, specifically when, such unexplained delay caused prejudice to the other side. It appears that the attempt was made to show that there was application filed under Section 33-C(2) of the I.D. Act and liberty granted by the learned Industrial Court. However, it is not in respect of present respondents but some other group agitating their claim.

66. The reliance is also placed on **Gopal Krishnaji Ketkar** (supra). There is no dispute over the proposition laid down in the said matter that, **the party in possession of a best evidence** which could throw light on the issue in controversy, can not be withheld it on the abstract doctrine of burden of proof or on the fact that it was not called upon to produce it. The Hon'ble Supreme Court held that, in such circumstances, an adverse inference has to be drawn against the party withholding best evidence in his possession. As already discussed

above, the department has denied that, those documents are available and in possession of the respondents, and submitted that they were destroyed after 5 years as per Manual. Therefore, this citation is of no assistance.

67. Similarly, in ***Sitaram Sugar Mills Ltd. V/s. Their Workmen {AIR 1966 SC 1670}***, it is held that, it was the duty of the appellant to produce all the material evidence within its possession. The reliance is placed by the respondents on ***Director of Fisheries Terminal Division V/s. Bhikubhai Meghajibhai Chawada {AIR 2010 SC 1236}*** wherein the reliance is placed by the Hon'ble Apex Court on ***Municipal Corporation, Faridabad V/s. Shri Niwas {(2004) 8 SCC 195}*** wherein it is observed by the Hon'ble Apex Court as under:-

"A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contentions. The matter, however, would be different where despite direction by a court the evidence is withheld."

68. In the present matter, as discussed earlier, there is application to produce the documents. There is reply filed, which is self explanatory, and there is no order on the said application. In view of the reply, the documents sought to be produced, were not in possession of the petitioners department.

69. It is also the contention of the respondents that, what findings of the facts recorded by the learned Labour Court, may not be interfered by this Court. In support of his contention, the learned counsel for the respondent relied on ***Chief Conservator of Forest V/s. Jagannath Maroti Kondhare {1996 I CLR 680 (SC)}*** and ***Syed Yaqub V/s. K.S. Radhakrishnan {AIR 1964 SC 477, Constitution Bench}***. However finding recorded are perverse and based on misleading statement made by the complainants herein.

70. I am not referring all the citations referred by the learned counsel for the respondents in Written

Submissions, as there is no oral submission made by the learned counsel and those are appearing repetition. Similar issues are involved and set up in the matter referred by the learned counsel for respondents Shri Chandrakapure.

71. So far as the learned counsel for the respondents placed heavy reliance on **M.V. Ghalge** (supra), wherein it is held that,

“Rule 28 contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. The Rule does not contemplate actual working on the part of the daily rated employee for any specified number of days in any of the requisite five years.”

However, it has to be construed in accordance with the purpose and object of the said scheme, if any person engaged for 10 days in one year and 10 days in another 2nd year, 3rd year, 4th year and 5th year and if such person claims to have right for benefits under Clause 28 of Kalelkar Award for having the post converted into the post of converted temporary establishment will frustrate the object. Though there is no specific days given in the

Kalelkar Award, used words “continuous service” for 5 years on daily wages, therefore, the employees who have worked for 10 days, 2 days which cannot be termed as continuous service will not get the said benefits. The judgment in ***M.V. Ghalge*** (supra) case does not mean that, even if the workman has worked for 2 days in a year, shall be treated as working continuously. Therefore, the ratio has to be read in a manner which will serve meaningful purpose. By adopting such construction alone, we can advance the remedy.

72. The learned Labour Court, Gondia while passing the judgment on an application filed under Section 33-C(2) of the I.D. Act misled itself by relying on the submissions made by the complainant though the present respondents/complainants had not filed complaint (ULP Case) before the learned Industrial Court, Bhandara against termination of their service and the complainants were alleged to withdraw the said complaint with liberty to approach before the Labour Court to file application under

Section 33-C(2) of the I.D. Act for the monetary benefits. While doing so, the Labour Court has not verified whether any complainant or complainants were parties in the said complaint filed before the Industrial Court, Bhandara. In fact, the said application was filed by another group of employees and they claimed that, the liberty was granted to them to approach before the Labour Court. This fact is reflecting in the order passed by this Court in para 4 in Writ Petition No. 6380/2013 along with connected matters. The respondents in the said Writ Petitions are not the respondents herein, that group was totally different. However, as there is no explanation for the delay of 15 years, the support of this order is falsely taken claiming that, there were some proceedings taken up in the year 2004 and the learned Industrial Court had granted liberty to file the application under Section 33-C(2) of the I.D. Act. If that would be the position, the complainants would have to file the application under Section 33-C(2) of the I.D. Act immediately after the withdrawal from the Industrial Court but, for the reasons stated above, those are not the present

respondents before this Court and that group was totally different. The present group has not taken any effort during the last 15 years to agitate their claims. Therefore, there is unexplained delay and has to be considered as laches on the part of the respondents. The Labour Court without verifying this fact, came to the conclusion that, there was liberty granted.

73. The finding recorded in para 15 of the Labour Court order is that, the material brought forth on record falls short to depict continuous service of 240 days in a calendar year preceding the alleged termination and rightly refused the prayer for retrenchment compensation.

74. The second misleading statement was made by the complainants in their matters. It is the contention before this Court on behalf of the respondents that, there was an application for “Notice to Produce” documents, and in spite of the order, those were not produced, therefore, adverse inference needs to be drawn. However, I have reproduced the scanned copy of the same application and the order

thereon, from which, it appears that, by way of reply, the petitioners have clearly submitted that, the documents which were sought for, are not available with the department and those were destroyed as per the Manual after 5 years. After filing of reply, there is no order passed by the Labour Court. The typed copy which is shown as an order by the respondents, is neither signed by the concerned Judge nor there is any date on it. As such, the typed order is no order in law. In my considered opinion, it is another attempt to mislead the Court.

75. On perusal of citations relied on by both the sides, it is evident that, there is laches on the part of the respondents in filing complaint after a period of 15 years. Even it is more serious that, attempts were made to show that, they have filed proceedings in the year 2004 to mislead the Labour Court as well as this Court to avoid clutches of laches. There is no documentary evidence produced by the petitioners nor it was available with the department. After 15 years, the complainant came to the

Court. Though Limitation Act does not apply, it is not out of purview of laches. Secondly, the claim under Section 33-C(2) of the I.D. Act is like an execution proceedings and there has to be some determination of the rights of the parties. There is no case of pre-existing rights in case of present respondents. As observed above by this Court that what is held in ***M.V. Ghalge*** (supra) case, the meaningful interpretation is required to be given as no specific days are given, that does not mean that, the person working for 2 days or 3 days in a year may get the benefit as per Clause 28 of the Kalelkar Award. It has to be established that, continuously, for 5 years, the employees working on daily wages may not be for 240 days, but continuous substantial service in a year so as to reckon as continuous service. As such, the order passed by the learned Labour Court is perverse, unsustainable in law and liable to be set aside. It has not considered the complaint is hit by laches. It has also not considered that complainant failed to establish that they were in continuous service with the department. Accordingly, I proceed to pass the following order:-

ORDER

1) The Writ Petitions are **allowed**.

2) The impugned order passed by the learned Judge, Labour Court, Gondia in

(i) IDA Application No. 71 of 2015 Harilal @ Haribhau S/o. Brijlal Biranwar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 04.05.2019 in Writ Petition No. 3363/2020, is hereby quashed and set aside to the extent that, it directs the present petitioners to pay wages as per Kalelkar Award by calculating the same and consequential order in Clause 3 and 4.

Similarly, the following orders in connected Writ Petitions for the reasons stated in Writ Petition No. 3363/2020 are set aside:-

(ii) IDA Application No. 72 of 2015 Gendlal S/o. Namaji Chaudhari V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 04.05.2019 in Writ Petition No. 3362/2020,

(iii) IDA Application No. 66 of 2015 Baliram S/o. Atmaram Ambedare, since dead thr. LRs. Sewanta Wd/o. Baliram Ambedare and ors. V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 16.12.2020 in Writ Petition No. 970/2024,

(iv) IDA Application No. 77 of 2015 Bhaiyalal S/o. Nathu Rahangdale V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 2170/2021,

(v) IDA Application No. 73 of 2015 Ramdas S/o. Punaji Galatkar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 04.05.2019 in Writ Petition No. 2171/2021,

(vi) IDA Application No. 06 of 2013 Madhukar S/o. Motiram Bhandarkar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 18.08.2016 in Writ Petition No. 2763/2017 ,

(vii) IDA Application No. 08 of 2013 Tularam S/o. Mayaramji Kawle V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 20.08.2016 in Writ Petition No. 2764/2017,

(viii) IDA Application No. 07 of 2013 Udelal S/o. Kusoba Katre V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 19.08.2016 in Writ Petition No. 2765/2017,

(ix) IDA Application No. 09 of 2013 Dhanlal S/o. Harichand Thakre V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 22.08.2016 in Writ Petition No. 2766/2017,

(x) IDA Application No. 05 of 2013 Madanlal S/o. Dadu Raut V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 17.08.2016 in Writ Petition No. 2767/2017,

(xi) IDA Application No. 04 of 2013 Anantram S/o. Surajlal Lihare V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 30.06.2016 in Writ Petition No. 2768/2017,

(xii) IDA Application No. 01 of 2012 Ramchandra S/o. Maniram Lanjewar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 29.06.2016 in Writ Petition No. 2769/2017,

(xiii) IDA Application No. 65 of 2015 Dhanlal S/o. Rajaram Bisen V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 03.05.2019 in Writ Petition No. 3289/2020,

(xiv) IDA Application No. 94 of 2015 Shriram S/o. Kusan Kokude V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 07.11.2019 (ULP Complaint No. 358/2004) in Writ Petition No. 3290/2020,

(xv) IDA Application No. 75 of 2015 Rewaram S/o. Aadku Kakirwar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 3291/2020,

(xvi) IDA Application No. 74 of 2015 Aadku S/o. Doma Kakirwar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 2142/2021,

(xvii) IDA Application No. 90 of 2015 Toliram S/o. Kusan Kokude V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 07.11.2019 (ULP Complaint No. 349/2004) in Writ Petition No. 3373/2020,

(xviii) IDA Application No. 91 of 2015 Tukdu S/o. Zithoba Tumsare V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 07.11.2019 (ULP Complaint No. 359/2004) in Writ Petition No. 3374/2020,

(xix) IDA Application No. 68 of 2015 Ghanshyam S/o. Tiju Maskare V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 03.05.2019 (in Writ Petition No. 3375/2020),

(xx) IDA Application No. 69 of 2015 Vasant S/o. Motiram Uikey V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 03.05.2019 (in Writ Petition No. 3378/2020),

(xxi) IDA Application No. 76 of 2015 Shakuntalabai Wd/o. Parasram Biranwar and one and V/s. The Chief Engineer,

Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 3379/2020,

(xxii) IDA Application No. 93 of 2015 Prithviraj S/o. Modku Ambekar V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 07.11.2019 (ULP Complaint No. 177/2004) in Writ Petition No. 3416/2020,

(xxiii) IDA Application No. 03 of 2016 Chhaganlal S/o. Thuna Aagase V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 3417/2020,

(xiv) IDA Application No. 67 of 2015 Premlal S/o. Mansingh Katlam V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 03.05.2019 in Writ Petition No. 3468/2020,

(xv) IDA Application No. 04 of 2016 Dilip S/o. Durgaji Rinayat V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 09.05.2019 in Writ Petition No. 3469/2020,

(xvi) IDA Application No. 70 of 2015 Anandrao S/o. Bisan Kumbhare V/s. The Chief Engineer, Irrigation Vibhag (Govt. of Mah.), Nagpur & ors. dated 04.05.2019 in Writ Petition No. 3470/2020.

- 3) The copy of this judgment be kept in all the Writ Petitions referred above.
- 4) Accordingly, the petitions stand **disposed of**.
No order as to costs.

(SMT. M.S. JAWALKAR, J.)