

**(2000) 03 BOM CK 0047**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 1907, 1903, 1905, 1906, 1909, 1910 and 1911 of 1993

M/s. Atul Textiles and others

APPELLANT

Vs

Shivaji M. Shende and others

RESPONDENT

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**Date of Decision :** 30-03-2000

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33

**Citation :** (2000) 3 BomCR 857 : (2001) 1 LLJ 127

**Hon'ble Judges :** R.J. Kochar, J

**Bench :** Single Bench

**Advocate :** B.G. Vaidya, for the Appellant; Ms. Seema Sarnaik, for the Respondent

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## **Judgement**

R.J. Kochar, J.—These writ petitions have arisen from the Common Judgment and Order dated 16-3-1993 passed by the Presiding Officer, Labour Court, Sangli in Applications (IDA) Nos. 86/88 to 132/88 (47 in Nos.) against the respective Employers - Firms. The workmen had filed applications u/s 33C(2) of the Industrial Disputes Act, 1947 for claiming determination and computation of the monies/benefits due from the employers. Their claim was based on a notification dated 10-1-1986 fixing minimum wages for Powerloom Industry. The individual applications filed against the individual firms were opposed by the employers on various grounds, with which presently I am not concerned.

2. It appears from the record that the employees had adduced their oral evidence and they were cross examined on behalf of the employers. The employees had closed their evidence on 11-3-1992. It appears that the matter was posted for evidence to be adduced by the employers. It further appears that consolidation and clubbing of all the matters together was opposed by the employers, as the facts in each case of the individual would differ. It further appears that the individual claims were required to be separately and individually determined and computed on the basis of their attendants and on the basis of

their production, as the wages were linked with production. It further appears that there was a serious dispute over the procedural wrangle between the parties. It further appears that finally on 28-12-1992 an adjournment was sought on behalf of the employers on the ground that the son of the Proprietor of Bakul Textiles was admitted in the Tata Memorial Hospital, and therefore, a prayer for adjournment was sought. It appears that the said prayer was not granted. It further appears from the record that on 13-1-1993 an application for adjournment was made for and also permission was sought for production of the necessary documents and also recording of oral evidence. This application was filed on behalf of the petitioners-employers on 13-1-1993 wherein they have recorded in detail the background of the matter. In support of their case they have also produced along with the said application Medical Certificates issued to show that the son of the Proprietor of the Bakul Textiles was admitted in the Tata Memorial Hospital and that he was to be operated for Cancer. Shri Vaidya, the learned Counsel for the respondents has also pointed out that finally the Proprietor lost his son, who died due to Cancer.

3. It appears that the said application was not granted by the Labour Court and the Labour Court finally allowed the claim of the employees. The Labour Court awarded the entire amount which was claimed by the employees in their applications. The said order is challenged before me. According to me, the petitions deserve to be allowed as the petitioners - Employers had no reasonable opportunity to adduce documentary or oral evidence to prove or disprove the entitlement of every individual employee to get the money due. Or rather under very unfortunate circumstances they could not avail of the opportunity. From the nature of the claim we cannot forget that the individual claims will have to be determined and computed on the basis of their number of days' attendance and production, during the relevant period. In the present case the employers had prayed for an opportunity of production of all such records and oral evidence which was denied to them. According to me, the Labour Court ought to have granted the application dated 13-1-1992 and ought to have allowed the petitioners-employers to adduce whatever evidence they had in their possession. It is true that there was some delay on their part but all said and done the computation of money due is required to be done on the basis of the record and it cannot be done in the absence of such documentary evidence.

4. The impugned Judgment and Order of the Labour Court dated 16-3-1993 in the above Applications is therefore quashed and set aside. The Labour Court is directed to allow the petitioners employers to adduce whatever relevant documentary and oral evidence they have in their possession. It is needless to point out that the employees will have an opportunity to cross examine the employers witnesses. Since the claim is very old the Labour Court is directed to dispose of the applications as expeditiously as possible, within a period of six months. In the aforesaid circumstances the rule is made absolute. No order as to costs.

5. Certified copy of the order is expedited.
6. All concerned to act on ordinary copy of this Order duly authenticated by the Sheristedar of this Court.