

(2011) 05 BOM CK 0050

In the Bombay High Court

Case No : C.A.J. Writ Petition No. 3581 of 2010

Shri Warana Agricultural Goods Processing Co-operative
Society Limited, Warana Nagar, Kolhapur

APPELLANT

Vs

Dilip D. Patil and others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2011) 130 FLR 813 : (2012) 1 LLJ 177

Hon'ble Judges : K.K.Tated, J

Bench : Single Bench

Judgement

K.K. Tated, J.—Heard learned Counsel for the parties. Rule.

2. By consent, matter is taken on board for final hearing at the stage of admission.

3. By this Petition under Articles 226 and 227 of the Constitution of India, Petitioner/Original Opponent challenges the order dated 5th February, 2010 passed by the First Labour Court, Kolhapur in IDA No. 26 of 2006 allowing Respondent/Original Applicant's application u/s 33-C(2) of Industrial Dispute Act, 1947 (herein after referred to as "the said Act"), holding that the Respondent/Original Applicants are entitled to recover the difference of wages between minimum wages and actual paid wages;.

4. A few facts of the mater are as under:

The Petitioner is a Co-operative Society duly registered under the Maharashtra Co-operative Societies Act, 1960. The Respondents-Original Applicants were in the employment with the Petitioner. Respondent-Original Applicant filed application under sub-section (2) of section 33-C of the said Act dated 4th July, 2006 before the Labour Court, Kolhapur for determining the amount due to each of the workers, on the basis of Minimum Wages Act They pleaded in their

application that though they were working with the Petitioner for the last several years, they were paid wages less than prescribed wages as per Minimum Wages Act. In the said application, the Petitioner filed their Written Statement dated 14th December, 2006 and denied Respondent/Original Applicants' claims under the Minimum Wages Act.

5. The Labour Court by its impugned order dated 5th February, 2010 held that Respondents/Original Applicants were entitled to recover the difference in the minimum wages under the Act and the wages actually paid. Being aggrieved by the said order, Petitioner preferred this Writ Petition.

6. The learned Counsel appearing on behalf of the Petitioner submits that impugned judgment and order dated 5th February, 2010 passed by the First Labour Court, Kolhapur is contrary to law. He submits that undisputedly, fruit processing industry is not covered under the Minimum Wages Act as Scheduled Industry and no notification has been issued by the appropriate government, fixing the minimum wages for the fruit processing industries. The Labour Court has agreed that no notification has been issued by the appropriate government for fruit processing industries and in spite of that, wrongly applied provisions of Minimum Wages Act, holding the Petitioner as Scheduled Industry in the products of dairy and cold drinks.

7. He further submits that Lower Court ought to have held that the application filed by the Respondent-workmen is not maintainable in view of the fact that they have previously filed proceedings being complaint (ULP) No. 82 of 2006 before the Industrial Court, Kolhapur, claiming minimum wages for the period covered under this application also and the same is pending for decision. The Lower Court failed to appreciate that unless and until the entitlement and/or rights of the workmen to receive the wages as claimed are determined in the pending proceedings, the application u/s 33-C(2) is not maintainable.

8. He further submits that the Lower Court while deciding the application u/s 33-C(2) of the said Act, filed by the Respondent-workmen, ought to have considered the provisions of section 59 of the MRTU and PULP Act and further ought to have considered the contention that the Petitioner was right in contending that the application filed by the Respondent-workmen was not maintainable.

9. He further submits that the Labour Court ought to have rejected Respondent-Original Applicant's application only on the ground that the Respondent-workmen failed to prove their respective claim by leading oral evidence and proving relevant documents on record. Thus, the Labour Court ought to have rejected their application, by observing that there was no preexisting benefit or right available to the Respondent/Original Applicants. Similarly, the Labour Court also ought to have appreciated that there were no pleadings and proof to decide the issues raised by the parties.

10. He further submits that the Labour Court failed to appreciate that the averments made in the application were vague and were liable to be rejected. He

further submits that the original complaint is filed by one Shri Dilip D. Patil, on behalf of 147 workmen. During pendency of the said application in Trial Court, several workmen approached the Labour Court and withdrew their appearances from the said application, except 61 workmen, who are Respondents in the present Petition. It shows that originally Shri Dilip D. Patil filed complaint before the Labour Court u/s 33-C(2) of the said Act without any authority and/or consent of those workers. He submits that the said complainant/ application was not verified on oath and, therefore, same was liable to be dismissed with costs.

11. In some and substance, the learned Counsel appearing on behalf of Petitioner pressed the present Petitioner on the following grounds:

(a) the application filed by the Respondent-workmen u/s 33-C(2) of the said Act is not maintainable, because, their dues, entitlements are not decided by any Courts and/or any other authority or same were not admitted by the Petitioner.

(b) the learned Counsel appearing on behalf of Petitioner submits that the Labour Court while deciding the application filed by the Respondent-workmen framed issue No.1 as under:

Whether the applicants prove that they were employed by Respondent?". He submits that while dealing with the application u/s 33-C(2) of the said Act, Labour Court have no jurisdiction to decide the relationship of employer and employee and, therefore, the said application is liable to be dismissed.

(c) the Respondent-workmen failed to produce cogent evidence on record in respect of each workman to support their claim that they were entitled to the benefit u/s 33-C(2) of the said Act.

(d) the present application is filed by the Respondent- workmen u/s 33-C(2) of the said Act is not maintainable, because, previous complaint (ULP) No. 82 of 2006 filed by Respondents before the Industrial Court u/s 28 r/w Item Nos. 6, 9, and 10 of Schedule IV of MRTU and PULP Act, 1971 in which they also claimed wages as per Minimum Wages Act is pending. Application filed by Respondents u/s 33-C(2) of the said Act was barred by limitation.

12. In support of his first submission, the learned Counsel appearing on behalf of Petitioners relied on unreported oral judgment in the matter of Shri Saptashrung Niwasini Devi Trust Sevakanchi Pat Sanstha Limited v. Nand kumar Motiram Chitte and another in Writ Petition No. 7342 of 2008 (Coram: Justice Dr. D.Y. Chandrachud) dated 1st December, 2008. In that matter, our High Court held that proceedings u/s 33-C(2) are in the nature of execution when the right on the basis of which the claim has been preferred is an established right. The learned Counsel appearing on behalf of Petitioner submits that the matter in hand is fully covered by this judgment. He submits that Respondent-workmen's claim is not determined by any competent Court and/or same is not accepted by the Petitioner. Therefore, the Respondent-workmen's claim was not established by any competent court/authority till filing of the complaint u/s 33-C(2) of the

said Act. Therefore, same is not maintainable and is liable to be dismissed.

13. The second submission of Petitioner is that the Labour Court erred in deciding the relationship of employer and employee in the application filed by the Respondent-workmen u/s 33-C(2) of the said Act. In support of his submission, he relied on judgment in the matter of Central Group and others v. Motiram S. Thakare. 2006 (1) CLR 470. In that case, our Court held that the Labour Court while dealing with application u/s 33-C(2) of the said Act cannot deal with issue relating to status of the applicant as the workman and such an issue is not an incidental issue but it relates to jurisdictional fact and in the absence of decision on such jurisdictional facts by the Competent Authority, Labour Court is not empowered to entertain application u/s 33-C(2) of the said Act. Para 18 of the said judgment reads as under:

Para - 18. It is, therefore, to be held that the Labour Court while dealing with the application u/s 33-C(2) of the Industrial Disputes Act, 1947, cannot deal with the issue relating to the status of the applicant as the workman and such an issue is not an incidental issue in such, proceedings but it relates to jurisdictional fact and in the absence of such jurisdictional fact, the Court is not empowered to entertain the application u/s 33-C(2) of the said Act.

14. In support of the third submission, Respondent-workmen failed to produce any cogent evidence in support of their claims u/s 33-C(2) of the said Act, learned Counsel for the Petitioner relied on the judgment in the matter of Union of India through General Manager Western Railway v. Shridhar R. and 18 others. 2002 (3) CLR 477. In that case, our Court has held that it is mandatory on the part of the workmen to produce the cogent evidence on record and/or to enter into witness box to prove his case. Para 11 of that judgment read as under:--

Para -11 - The claim of overtime wages requires minute particulars and it cannot be granted on the basis of loose and vague statements made by the applicants in their applications as has been done in the present case. All the applications are more or less identical and are cyclostyled copies with the change in the names of the applicants. In these applications only the names of the Trains and their destinations are given. The numbers of Trains and hours of working of overtime are very vaguely stated without any particulars to know the exact place and time of the overtime done by the claimants. There is no period or date on which the alleged overtime was done by each of the claimants. Two types of claims of overtime are given i.e. the period from 1.7.1984 to 15.10.1989 or so, in each case. In another table which is annexed with the applications some calculations are made on the basis of some hours. There is absolutely no relation or connection with these calculations. The Applicants having not stepped in the witness box it is impossible for any one to decide such claims of overtime wages of the distant past. All these applications have the same pattern. None of the applicants, except one, stepped in the witness box to verify and to swear oh oath that the contents of the said applications were proved and that he had performed overtime work at the place and time given in the said application. The applicants

have merely given some figures and the period in the applications without giving any good particulars to claim over time wages. Assuming that the figures and the time and place given in the applications are legible, there is nothing on record to support the said claim as there is no material and there is no evidence before the Labour Court at all. It was the primary duty of each of the applicants who have examined themselves before the Labour Court to prove their case of overtime wages. I fail to understand how and on what basis the Labour Court has determined and computed the amounts of overtime wages and has awarded the same in a very mechanical manner looking into the applications filed by the Applicants. He has failed to appreciate that there was absolutely no evidence on record in support of the vague claims of overtime allegedly done by them in the distant past. It can thereafter only be expected from the Railways that they should have produced evidence in rebuttal. How can it be expected that the Railways should have preserved the documents pertaining to the period of decades back? It is further expected that the documentary evidence in respect of some Ticket Checkers who were working at a particular station in the year 1980 or 1981 should have been produced by the Railways before the Labour Court as it was the best record available with the Railways and that they should have produced it to show that the claimants or the applicants had done or not done the overtime wages which are scattered loosely in the body of the applications. The law of the land has been as laid down by the Supreme Court that no state Industrial Disputes should be encouraged. The Supreme Court time and again observed that the Industrial Disputes raised by the workmen after inordinate delay should not be entertained. If that is the law in respect of the industrial disputes for adjudication, in my opinion the same principle should be made applicable to test the legality and genuineness of the claim made u/s 33-C(2) of the Act though there is no period of limitation prescribed in the said section. It appears that the said provision is being abused by the workmen in cases like the present one. The legislature never expected and anticipated that state claims of 20 years back could be filed under the said section. I am aware of some of the judgments wherein the Courts have taken a view that there is no limitation prescribed u/s 33-C(2) of the Act. Still I am of the opinion that the claim pertaining to the distant past must be examined very carefully and more strictly and should not be awarded lightly or mechanically merely because there is no period of limitation. As soon as the Railway attendants or Railway Servants performed their overtime work they must get the same certified from their head of the department and thereafter they must lodge their vouchers of overtime done by them with the Accounts or the concerned Section. In the present case, there is no evidence adduced by the workmen that they had got certified the overtime work done by them and that they had lodged such vouchers. It is impossible to believe that a Railway Servant who had lodged his claim in 1980 for overtime will wait for 12 years to claim the overtime wages without making any grievance that he did not get his overtime dues. Further, it is not expected from the Railways to have preserved the documentary evidence such as certificates issued by the concerned head of the department and the vouchers

lodged by such Railway servants for a period of 10 years or 20 years. Ordinarily, no workman would wait for such a long period if his due is just and legitimate. Ordinarily, further even the Railway Administration will not deprive the Railway servants of their legitimate claim of overtime if the Railway Administration had received the required claim in accordance with the rules. If the Railway servants did not receive their overtime wages within a reasonable period of three months or six months in that case it was their duty to have brought to the notice of the higher authorities that they were denied their legitimate claim. There is not even an iota of such evidence adduced by the workmen.

On the basis of that judgment, the learned Counsel appearing on behalf of Petitioner submits that in the present case, the Respondent-workmen failed to produce any cogent evidence on record, except one workman, no one else entered into witness box to prove their case. Therefore, the present case in hand is squarely covered by the judgment in the matter of Shridhar R. and 18 others (supra).

15. He further relied on the Apex Court judgment in the matter of State Bank of India Vs. Ram Chandra Dubey and Others, . In that case, the Apex Court held that the benefit sought to be enforced u/s 33-C(2) of the said Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. Para 8 of the said judgment reads thus:--

Para - 8- The Principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court" exercising powers u/s 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workmen as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference u/s 10 of the Act is made. To state that merely upon reinstatement, a workman Would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to

find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.

16. He also relied on the judgment in the matter of U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, . In that case, the Apex Court held that the benefit enforced u/s 33-C(2) of the said Act is to be a pre-existing benefit or one flowing from the pre-existing rights. He also relied on the judgment in the matter of Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., .

17. The learned Counsel appearing on behalf of Petitioner also relied on the decision in the matter of Manager, R.B.I., Bangalore Vs. S. Mani and Others, . In that case, the Apex Court held that pleadings were not substitute for proof and therefore, it was necessary for the Respondents/ Original Applicants to bring on record the cogent evidence either by documentary proof and/or by entering into witness box. Paras 18, 20, 21 and 28 reads thus:--

Para - 18 - Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore, not correct to contend that the plea raised by the respondents herein that they had worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. In any event the contention of the respondents having been denied and disputed, it was obligatory on the part of the respondents to add new evidence. The contents raised in the letters of the union dated 30.5.1988 and 11.4.1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved, particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

Para - 20 -It is no doubt true that the Industrial Tribunal by an order dated 12.5.1993 inter alia directed the appellant to produce register of the workmen for the period between April, 1980 and December 1982 in respect of the first party workmen and attendance register. The Tribunal, however, in its award noticed the explanation of the appellant that the attendance registers being old and hence could not be produced holding:

Of course, it is true that the second party had given an explanation namely those attendance registers are very old and hence could not be produced. But this explanation cannot be acceptable, because as I pointed out earlier, apart from the attendance registers, there may be other relevant records to show that the first parties either worked continuously as alleged by the first parties or only

during the leave vacancy with break of service.

Para - 21 -The learned Tribunal further held:

Therefore, the materials placed before this Tribunal lead to the only conclusion that the second party is not in a position to prove their case namely First Parties 1 to 11 concerned had abandoned themselves without any proper reasons.

Para - 28- The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service stating:

It is admitted case of the parties that all the first parties under the references CRs Nos.1 to 11 of 1992 have been appointed by the second party as ticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December, 1982. But the second party had denied the abovesaid claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the Counsel for the first party, since the second party had denied the abovesaid claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party.

18. In support of 4th submission, i.e. present application filed by the Respondent-workmen u/s 33-C(2) of the said Act is not maintainable, because, they have already filed complaint (ULP) No. 82 of 2006 for the same cause of action on 12th April, 2006. He submits that initially Respondent-workmen filed complaint (ULP) No. 82 of 2006 before the Industrial Court u/s 28 r/w. Item Nos. 6, 9 and 10 of Schedule IV of MRTU and PULP Act, 1971 with directions to make them as permanent employees and to pay wages as per Minimum Wages Act. Prayers in the said complaint reads as under :

(a) An enquiry be made into the unfair Labour practices committed by the respondent and it may be declared so.

(b) The respondent be ordered and directed to cease and to desist from committing and continuing the unfair Labour practices.

(c) The respondent be ordered and directed to make the annexed employees permanent from the 241st day of their employment and to pay them the consequential benefits, including the wages, dearness allowance, other allowances etc.

(d) The respondent may be ordered and directed to pay to all the employee in Annexure A, wages as per the Minimum Wages Act and the wages being paid to

the permanent employee.

(e) The complainant be permitted to amend or to alter the complaint as and when necessary.

He submits that unless and until Respondent-workmen's claim is determined by the Industrial Court in Complaint (ULP) No. 82 of 2006, present application u/s 33-C(2) of the said Act filed on 4th July, 2006 before the Labour Court is not maintainable. In view of this, the judgment and order passed by the Labour Court is liable to be set aside.

19. On the other hand, the learned Counsel appearing on behalf of the Respondent vehemently opposes the present Writ Petition. She submits that the Labour Court while considering the facts and circumstances of the case, rightly passed order holding that Respondents/Original Applicants were entitled to recover differences of wages between minimum wages and actual paid wages as shown in the schedule from the Petitioners. She submits that though the Respondent were working with the Petitioner for last several years, they failed and neglected to pay them according to the Minimum Wages Act.

20. The learned Counsel appearing on behalf of Respondent further submits that u/s 33-C(2) of the said Act, the Labour Court had jurisdiction to entertain the application, even if, dispute on the same cause of action is pending before the Industrial Court. She submits that there is no question of res judicata arises. In support of her contention, she relied on judgment in the matter of Union of India Vs. Samuel Peters and Another, . In that matter, the Division Bench of this Court held that the proceedings under the Industrial Dispute Act and under the MRTU Act, in respect of payment of wages cannot operate as res judicata. Therefore, the submission made by learned Counsel appearing on behalf of Petitioner above, res judicata on the ground that Respondent's previous application under the Industrial Disputes Act is pending for the same cause of action is not maintainable.

21. She further submits that issue raised by the learned Counsel appearing on behalf of Petitioner about the limitation is also not maintainable. She further submits that u/s 33-C(2) of the Industrial Disputes Act, there is no question of any limitation for claiming the difference between actual wages paid to the Respondents and the rate at which they are entitled under the Minimum Wages Act. In support of her contention, she relied on judgment in the matter of Samuel Peter (supra), in para 9 of that judgment, it is held that "under section 33-C(2) of the Industrial Disputes Act, there is no question of any limitation. Such a claim could be entertained at any time and in a proceeding u/s 33-C(2), no issue could arise as to whether a particular claim is barred by limitation or not.

22. She further submits that objection raised by the Petitioner in the present Petition about the maintainability of application u/s 33-C(2) of the said Act on the ground that Respondent's claim is not decided by any Court or by any other authority is not tenable. She submits that there is no question of deciding the

said issue by any Competent Authority and/or by any authority, because employer is bound to pay Minimum Wages to their employees, if the Minimum Wages Act is applicable to that establishment. In the present case, the Minimum Wages Act is categorically applicable to the Petitioner's establishment and, therefore, Petitioner's are duty bound to pay the minimum wages to their employee. Therefore, the objection raised by the Petitioner on the point of maintainability to Respondent's application u/s 33-C(2) is not tenable.

23. The learned Counsel appearing on behalf of Respondent further submits that the issue raised by the learned Counsel appearing on behalf of the Petitioner about the jurisdiction of Labour Court to decide the relationship of employer and employee is also not maintainable. She submits that there is no question of deciding the said relationship, because admittedly, the Respondents were working in the Petitioner's establishment for last several years. From time to time, they paid their salary. They never raised this dispute till filing of the application u/s 33-C(2) of the said Act. As the Respondents were working for the Petitioner for the last several years, there is no question of deciding the said issue by the Labour Court. In any case, the issue raised about the relationship of employer and employee is incidental issue to the application made by the Respondent u/s 33-C(2) of the said Act, therefore, the Labour Court have jurisdiction to decide the same.

24. The learned Counsel appearing on behalf of Respondent submits that the issue raised by the Petitioner about the production of evidence on record in respect of each workmen by the Respondent to support their claim that they were entitled to the benefit u/s 33-C(2) of the said Act is also not maintainable. She submits that in Annexure "A" to their application u/s 33-C(2) before the Labour Court, they submitted the entire chart of each and every workers. In any case, whatever amount received by the Respondent is not disputed by the Petitioner. Only question to be decided is what is the difference between the actual payment made by the Petitioner towards their wages and the wages the Respondent are entitled to under the Minimum Wages Act. This is nothing but the matter of calculation and therefore, it is not necessary to lead any evidence to that effect. She further submits that on behalf of all the employees, one person entered into witness box and explained the entire case and, therefore, the Labour Court accepted their case and directed Petitioner to pay the differences between actual payment of wages and the wages as per Minimum Wages Act. The learned Counsel appearing on behalf of the Respondent in support of her submission relied on following authorities:- (1) Om Prakash Mathur Vs. M/s. Panjon Ltd. and Others, . (2) Chief Officer, Municipal Council, Akola v. Second Labour Court, Nagpur and others 1975 Mh.LJ 556.

25. With the assistance of both the Counsel, I have gone through the impugned judgment passed by the Labour Court. The, Annexure "A" to the application filed by the Respondent u/s 33-C(2) of the said Act, xerox copy of muster is produced by the Petitioner. Bare reading of the application filed by the Respondent u/s 33-

C(2) of the said Act shows that the Respondent failed to give calculation of the amount which they are entitled. The application u/s 33-C(2) of the said Act is of the nature of execution application. The Applicant must state the actual figure which they are entitled according to law. If that is not stated in the application, same is not maintainable in law. As held by this Court in the matter of Shri Saptashrung Niwasini Devi Trust Sevakanchi Pat Sanstha Limited (supra), wherein it is held that proceedings u/s 33-C(2) are in the nature of execution when the right on the basis of which the claim have been preferred is established right. In the present case, Respondent has not stated the exact calculations before the Labour Court. Therefore, it must be held that the application as filed by the Respondent before the Labour Court u/s 33-C(2) is not maintainable.

26. In respect of second point about deciding the relationship of employer and employee by the Labour Court, I do not find any substance in a submission made by the learned Counsel appearing on behalf of the Petitioner. Respondents were working with the Petitioner for the last several years, they were on their muster roll and, therefore, there was no question of deciding the said issue raised by the Labour Court. The Labour Court while deciding the application u/s 33-C(2) of the said Act framed issue No. 1 i.e "whether the applicant proved that they were employed by the Respondents." This issue is unnecessary as it is not in dispute that the present Respondents undisputably were employed by the Petitioners and they worked with them for many years.

27. In respect of third point raised by the learned Counsel appearing on behalf of Petitioner about the production of evidence on record, in respect of each worker, to support their claim by the Respondents, it is to be held that the Respondents failed to produce any evidence on record. It is mandatory on the part of Respondents to produce the evidence in support of their case before the Labour Court. In the present case, Respondents neither gave any calculation about the exact amount of difference which they are entitled on the basis of Minimum Wages Act nor the employees entered into the witness box in support of their respective cases. Except one person, no one entered into witness box in support of their claim. As this Court held in the matter of Shridhat R. and 18 others (supra), Apex Court in the matter of Ram Chandra Dubey and others (supra), and Apex Court in the matter of S. Mani and others (supra), Delhi High Court in the matter of UCO Bank (supra), it is mandatory on the part of each employee either to enter into the witness box and/or produce the evidence in support of his claim. In the present case, the Respondents filed Annexure "A" to their application. In the said Annexure "A", nowhere they have stated how much amount each of them is entitled towards the difference between the actual payment and the entitlement as per Minimum Wages Act. On the contrary, the Petitioner placed on record xerox copy of the muster maintained by them, showing the total days in a month each of the Respondent worked. As the Labour Court without verifying whether the working days shown by the Respondents in their application tallied with the working days shown by the Petitioner in the muster roll, allowed their claim as stated in their application, it must be held that

the Labour Court erred in doing so.

28. The forth submission made by learned Counsel appearing on behalf of the Petitioner that the present application filed by the Respondent u/s 33-C(2) of the said Act is not maintainable, because, the previous complaint (ULP) No. 82 of 2006 filed by the Respondent before the Industrial Court in which they claimed wages as per Minimum Wages Act is pending and, therefore, the present application is not maintainable. It is clear from record that the Respondent filed previous complaint (ULP) No. 82 of 2006 before the Industrial Court u/s 28 r/w Item No. 6, 9 and 10 of Schedule IV of MRTU Act and PULP Act, 1971 in which they claimed wages as per Minimum Wages Act and it still is pending. During pendency of the said complaint, Respondent filed the present application u/s 33-C(2) of the said Act. Admittedly, Respondent cannot claim the same relief in two different proceedings - one under Industrial Disputes Act and another under MRTU and PULP Act, 1971. Same is barred by section 59 of MRTU and PULP Act, 1971.

29. Considering these facts and authorities cited by the Counsel, the Labour Court erred in allowing the Respondents' application u/s 33-C(2) of the said Act and the impugned order is liable to be set aside.

30. Writ Petition is allowed in terms of prayer clause (a) which reads as under:

this Hon''ble Court be pleased to exercise power vested in it under Article 226 of Constitution of India and issue a writ of certiorari or any other writ in the nature of writ of certiorari and call for the record and proceedings from the custody of the Labour Court, Kolhapur in respect of the Judgment and Order passed in Application IDA No. 26 of 2006 dated 5th February, 2010 and after examining the same and satisfying about the legality, validity and propriety thereof be pleased to quash and set aside the same.

31. Writ Petition is allowed in the above terms with no order as to costs.

32. Civil Application tendered by the learned Counsel appearing on behalf of the Petitioner for amendment is allowed in terms of prayer clause (a). Amendment to be carried out within two weeks from today.

33. Civil Application is disposed off accordingly with no order as to costs.