

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1524 OF 2009

1 Nileshkumar Baburao Jadhav,
Age. 30 years., Occ. Service,
R/o. At Post-Malewadi, Tq. Shrirampur,
Dist. Ahmednagar.

2 Paratap Suryabhan Shinde,
Age. 34 years, Occ. Service,
R/o. Naur, Tq. Shrirampur,
Dist. Ahmednagar.

3 Babasheb Jijabapu Dange,
Age. 32 years, Occ. Service,
R/o. Matapur, Tq. Shrirampur,
Dist. Ahmednagar.

4 Gorakshnath Ananda Dolas,
Age. 31 years, Occu. Service,
R/o. Khokar, Tq. Shrirampur,
Dist. Ahmednagar.

5 Anil Venunath Sabale,
Age. 26 years, Occu. Service,
R/o. Belapur Khurd, Tq. Shrirampur,
Dist. Ahmednagar.

6 Sanjay Sitaram Brahmne,
Age. 25 years, Occu. Service,
R/o. Takali Bhan, Tq. Shrirampur,
Dist. Ahmednagar.

7 Rajendra Babasaheb Adhav,
Age. 28 years, Occu. Service,
R/o. Malwadgaon, Tq. Shrirampur,
Dist. Ahmednagar.

8 Ravindra Vishwanath Khare,
Age. 43 years, Occu. Service,
R/o. Gaikwad Vasti, Belapur Raod,
Behind K.K. Motors, Tq. Shrirampur,
Dist. Ahmednagar.

9 Dilip Vasant Navale,
Age. 30 years, Occu. Service,
R/o. Near Hanuman Temple,
Vadala Mahadeo, Tq. Shrirampur,
Dist. Ahmednagar.

10 Kisan Jagannath Yadav,
Age. 39 years, Occu. Service,
R/o. Sirasgaon, Tq. Shrirampur,
Dist. Ahmednagar.

11 Pratap Machhindra Sarode,
Age. 30 years, Occu. Service,
R/o. Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar.

12 Bhagwat Suresh Gore,
Age. 23 years, Occu. Service,
R/o. Belapur Khurd, Tq. Shrirampur,
Dist. Ahmednagar.

13 Chandrakant Kacharu Lande,
Age. 30 years, Occu. Service,
R/o. At Nayegaon, Post. Naur,
Tq. Shrirampur, Dist. Ahmednagar.

14 Dattatraya Ananda Dolas,
Age. 24 years, Occu. Service,
R/o. Khokar, Tq. Shrirampur,
Dist. Ahmednagar.

15 Mhais Sharad Waman,
Age. 26 years, Occu. Service,
R/o. Belapur Khurd, Tq. Shrirampur,
Dist. Ahmednagar.

16 Shivaji Ashok Barde,
Age. 24 years, Occu. Service,
R/o. Belapur Khurd, Tq. Shrirampur,
Dist. Ahmednagar.

17 Pratap Jagannath Dhanwate,
Age. 42 years, Occu. Service,
R/o. Puntamba, Tq. Rahata,
Dist. Ahmednagar.

...Petitioners.

Versus

- 1 Chief General Manager
Telecommunications
Bharat Sanchar Nigam Limited,
8th Floor, Fountain,
Telephone Building No. 2,
Mumbai-1.
- 2 General Manager Telecom,
Bharat Sanchar Nigam Limited,
DTO Compound, Near GPO
Ahmednagar.
- 3 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Ahmednagar Division (Planning),
Behind GPO, Ahmednagar.
- 4 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Shrirampur Division, Behind GPO,
Shrirampur, Dist. Ahmednagar.
- 5 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Telephone Bhavan, Sangamner,
Dist. Ahmednagar.
- 6 M/s Kumar & Brothers
Sangit, A=104, Ganagvihar Complex,
Akole Road, Nalasopara (E),
Thane 401 209
Through Mr. Anand Dube.
- 7 Pistika Labour Services Pvt. Ltd,
Plot No. 11, Survey No. 52/2,
Abhyudaya Housing Society,
Wanwari, Pune 40
(Through Mr. Babasaheb Kute)
- 8 Shri M.S. Ajay Enterprises
Near Religious Exam Board,
Shivajinagar, Ahmednagar,
(Through Mr. Andhale Rajendra)

9 Rakshak Industrial Securities Agency Pvt. Ltd.,
B – 108, Juee Nagar, Station Complex,
Navi Mumbai 605,
Through its Managing Director.

10 Sab Divisional Engineer (Rural),
Bharat Sanchar Nigam Limited,
Shrirampur Division,
Behind GPO, Shrirampur,
Dist. Ahmednagar.

11 Mayur Allied Services,
6 – B, Amar Ashiyana,
Tatya Tope Society Office,
Wanwari, Pune 411 040.

...Respondents.

WITH
WRIT PETITION NO. 1525 OF 2009

1 Rajendra Kisan Dhamdhare,
Age. 36 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

2 Jeooghale Ravindra Maruti,
Age. 28 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

3 Pacharane Nanabhau Bhanudas,
Age. 46 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

4 Tipole Achyutrao Subhash,
Age. 24 years, Occ. Service,
R/o. Ukkadgaon, Tq. Nagar,
Dist. Ahmednagar.

5 Subhash Chandrasing Yadav,
Age. 47 years, Occ. Service,
R/o. Wakod Phata, Solapur Road,
Ahmednagar.

6 Waghmare Ramesh Baburao,
Age. 54 years, Occ. Service,
R/o. Railway Station, Datta Mandir,
Near Pawar Vitbhatti, Ahmednagar.

7 Sonawane Abhimanyu Shankar,
Age. 40 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

8 Kamble Sunil Bhaguji,
Age. 31 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

9 Jadhav Dattatraya Uttam,
Age. 50 years, Occ. Service,
R/o. Ayodhya Nagar Kedgaon,
Ahmednagar.

10 Jadhav Raosaheb Bhanudas,
Age. 41 years, Occ. Service,
R/o. Jadhav Mala, Burudgaon,
Ahmednagar.

11 Raut Bhima Narayan,
Age. 50 years, Occ. Service,
R/o. Shastri Nagar, Kedgaon,
Ahmednagar.

12 Ashok Rambhatu Sathe,
Age. 48 years, Occ. Service,
R/o. Narayan Doh, Tq. Nagar,
Dist. Ahmednagar.

13 Dilip Vitthal Gaonkhare,
Age. 34 years, Occ. Service,
R/o. Vas, Tq. Nagar, Dist. Ahmednagar.

14 Shinde Sanjay Chatrubhuj,
Age. 36 years, Occ. Service,
R/o. Nagar-Aurangabad Road,
Suryanagar, Ahmednagar.

15 Shaikh Arif Baba,
Age. 39 years, Occ. Service,
R/o. Burudgaon, Dist. Ahmednagar.

16 Nevase Bhim Parshuram,
Age. 48 years, Occ. Service,
R/o. Burude Male, Balikaashram,
Ahmednagar.

17 Damodar Tatyaba Kuchekar,
Age. 53 years, Occ. Service,
R/o. Sadar Bazar, Bhingar,
Ahmednagar.

18 Bhausabheb Baburao Kale,
Age. 43 years, Occ. Service,
R/o. Buddhe Dashmi Gavan,
Post. Bhatodi, Ta. Nagar, Dist.
Ahmednagar.

19 Sadanand Singh,
Age. 44 years, Occ. Service,
R/o. Vakoki Phata, Solapur Road,
Ahmednagar.

20 Abhimanyu Changdeo Bagul,
Age. 54 years, Occ. Service,
R/o. Undirgaon, Tq. Shrirampur,
Ahmednagar.

21 Raj Baburao Desai,
Age. 33 years, Occ. Service,
R/o. Vadala Mahadeo, Tq. Shrirampur,
Dist. Ahmednagar.

22 Keshav Dhondiram Shinde,
Age. 49 years, Occ. Service,
R/o. Ambedkar Colony,
Gondhwani Road, Tq. Shrirampur,
Dist. Ahmednagar.

...Petitioners.

Versus

1 Chief General Manager
Telecommunications
Bharat Sanchar Nigam Limited,
8th Floor, Fountain,
Telephone Building No. 2,
Mumbai-1.

2 General Manager Telecom,
Bharat Sanchar Nigam Limited,
DTO Compound, Near GPO
Ahmednagar.

3 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Ahmednagar Division,
Behind GPO, Ahmednagar.

4 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Shrirampur Division, Behind GPO,
Shrirampur, Dist. Ahmednagar.

5 Rakshak Industrial Securities Agency Pvt. Ltd.,
B – 108, Juee Nagar, Station Complex,
Navi Mumbai 605,
Through its Managing Director.

...Respondents.

WITH
WRIT PETITION NO. 1526 OF 2009

Umesh Sudhakar Kale,
Age. 28 years, Occ. Service,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

...Petitioner.

Versus

1 Chief General Manager
Telecommunications
Bharat Sanchar Nigam Limited,
8th Floor, Fountain,
Telephone Building No. 2,
Mumbai-1.

2 General Manager Telecom,
Bharat Sanchar Nigam Limited,
DTO Compound, Near GPO
Ahmednagar.

3 Divisional Engineer,
Bharat Sanchar Nigam Limited,
Ahmednagar Division,
Behind GPO, Ahmednagar.

4 Divisional Engineer,
Bharat Sanchar Nigam Limited,

Shrirampur Division, Behind GPO,
Shrirampur, Dist. Ahmednagar.

5 Flood Light Security Service,
103, Vasundhara Niti Garden,
Mohamad Wadi, Pune.

....Respondents.

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Advocate for Petitioners : Shri P.V.Barde
Advocates for Respondent 1 : Smt. Manjusha Deshpande
a/w Shri Ashok Patil
Advocate for Respondent 7 : Shri Mobin H. Shaikh
h/f Shri V.R.Dhorde

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 24, 2017

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ORAL JUDGMENT :-

1. I have heard the learned Advocates for the respective sides.

2. The undisputed factors in these identical three proceedings are as under:-

(a) All these petitioners had preferred Complaint (ULP) Nos.86, 72 and 11 of 2008 respectively.

(b) In all these matters, interim relief was granted to these petitioners and their services were protected.

(c) They are about such 50 petitioners / workers.

(d) By order dated 26.6.2009, impugned in these petitions, all these complaints were dismissed for the reason that there was no employer-employee relationship between the complainants and respondent / establishment, keeping in view the law laid down by the Honourable Apex Court case in Vividh Kamgar Sabha Vs. Kalyani Steels Limited, [(2001) 2 SCC 381 = 2001[1] CLR 532], Cipla Ltd. Vs. Maharashtra General Kamgar Union and others [(2001) 3 SCC 101], and the Five Judges' judgment in the matter of Steel Authority of India Limited and others Vs. National Union Water Front Workers and others [2001 III CLR 349].

(e) After these petitioners approached this Court as the Industrial Court has continued interim relief granted earlier for 15 days post decision of the complaint, this Court granted protection to these petitioners by order dated 16.3.2009.

(f) The respondents moved this Court for modification of the ad-interim protection granted. By order dated 14.12.2009, the specific request of the respondent / establishment seeking modification of the order, so as to change the contractor, was recorded. Based on the said request, services of these petitioners were continued as they had no objection for change of contractor

and the respondent / establishment was granted the liberty to change the contractor by maintaining the same service conditions under which these workers were working as contract labourers.

3. The petitioners submit that they are willing to raise an industrial dispute under Section 2(k) of the Industrial Disputes Act (ID Act) for making out a case of a sham and bogus contractor and for establishing employer - employee relationship with the respondent.

4. Learned counsel for the respondent / establishment submits that being a Central Government undertaking the Industrial Dispute will have to be raised before the Assistant Commissioner (Labour)(Central), as the Labour Department at the local office would not be the 'appropriate Government' under Section 2(a) of the ID Act.

5. Considering the above, I do not find any impediment in disposing of these three petitions in the light of the statement made by the petitioners. It, however, cannot be ignored as is rightly contended by the learned Advocate for the respondent / establishment that being a Central Government instrumentality,

the protective orders of this Court might create a burden on the respondent in the event of reduction in work.

6. Shri Barde submits that some of the workers find themselves engaged for lesser periods than the others and consequentially, there is a loss of earning. He submits that the principle of seniority could be followed by the respondent / establishment and the junior most employee may be allotted lesser work if genuinely the work had reduced.

7. Learned counsel for the respondent submits that a specific time frame may be granted for raising the Industrial Disputes, for conciliation proceedings and further consequential orders. The establishment would not be averse to appearing before the Assistant Commissioner Labour (Central) on a specific date so as to avoid wastage of time in serving notices.

8. Considering the above, these three petitions are disposed off without causing any interference in the impugned orders and on the following terms:-

(A) The petitioners may raise an industrial dispute before the Assistant Commissioner Labour (Central) at Pune on/or before 7.9.2017.

(B) Copies of the Industrial Dispute would be supplied to the respondent / establishment at its office at Ahmednagar on/or before 7.9.2017.

(C) The litigating sides shall appear before the Assistant Commissioner Labour (Central) at Pune on 13.9.2017 by 3.00 pm and shall abide by the further dates of hearing as may be posted by the concerned authority.

(D) The 'appropriate Government' shall deal with the said conciliation process and shall conclude the same in any case within 45 days from the date of appearance of the parties on 13.9.2017.

(E) In the event, the 'appropriate Government' concludes that there is no industrial dispute, the petitioners would be at liberty to redress their grievance as is permissible in law.

(F) In the event the 'appropriate Government' finds that the conciliation proceedings have failed and the dispute deserves to be referred to the Industrial Tribunal (Central), it shall, thereafter, proceed to do so within a period of three weeks from the date of the failure of the conciliation proceedings.

(G) If the petitioners raise an industrial dispute on or before 7.9.2017, they shall be protected by the interim orders of this Court for a further period of

ninety days from 7.9.2017.

(H) It is clarified that in the event the respondent / establishment has work available for such employees, it may continue to engage these petitioners on the same terms and conditions and would be precluded from replacing these petitioners with new contract labours.

(I) Needless to state, in the event the Industrial Dispute is referred to the Industrial Tribunal (Central), the said Tribunal shall consider the reference on its own merits and without being influenced by the observations of the Industrial Court, Ahmednagar in the impugned orders.

9. Rule in all these petitions stand discharged.

(RAVINDRA V. GHUGE, J.)

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akl/d