

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

Writ Petition No. 7798/2017

PETITIONERS:-

1. Mahesh S/o Ram Halde,
aged about 35 yrs., R/o Shivaji Nagar,
Ner, Dist. Yavatmal.
2. Ravichandra Dhanraj Ade,
aged about 34 yrs., R/o. Darvha, Dist.
Yavatmal, R/o. Near S.T. Stand.
3. Sadhana D/o Suresh Hatwar,
Aged about 42 years, R/o. Plot No. 117,
Kamakshi Nagar, Wathoda, Nagpur.
4. Praful Dyaneshwar Dhoke,
aged about 28 years, Occ. Service,
R/o. Hingana, Dist. Nagpur.
5. Manisha Vasant Choudhari,
aged about 34 years, Occ. Service,
R/o. Birsi, Th. Amgaon, Dist. Gondia.
6. Pravin Namdeorao Wakade,
aged about 35 yrs., R/o Ralegaon,
Dist. Yavatmal.
7. Mukesh S/o Govind Patle,
aged about 33 yrs, R/o. Panjara, Tah.
Tirora, Dist. Gondia.
8. Dilip S/o Maniram Rathod,
aged about 45 yrs., R/o. Jawala,
Tah. Arni, Dist. Yavatmal,
9. Vinod Sheshrao Shende,
aged about 40 yrs., MHADA Colony, 288,
Godhani Rly. Nagpur.

10. Suhas Sheshrao Bondre,
aged about 32 yrs., Occ. Service,
R/o. Takiya Ward, Bhandara,
Dist. Bhandara.
11. Gajanan Maroti Gobade,
aged about 33 yrs., Occ. Service,
R/o. Jawahrbodi Mendha, Post Mendki,
Th. Bramphapuri, Dist. Chandrapur.
12. Mustak S/o Sattarkha Pathan,
aged about 32 years, Occ. Service,
R/o. Kondhali, Tq. Katol, Dist. Nagpur.
13. Bhimrao Bandu Chauhan,
aged about 35 yrs., R/o. Bajran Nagar,
Pabadgaon, Dist. Yavatmal.
14. Devanand S. Deshmukh,
aged about 30 yrs., R/o. Porla,
Tah. Armori, Dist. Gadchiroli.
15. Pramod Bhaurao Bharne,
aged about 43 yrs., R/o. Bokaro,
Post Godhni, Nagpur.
16. Rahul Devrao Gavai,
aged about 35 yrs., R/o. Darvha,
Dist. Yavatmal, R/o. behind S.T. Stand.
17. Vaishali d/o Ramdas Miskin,
aged about 30 yrs., R/o. Wardha,
Dist. Wardha.

VERSUS

RESPONDENTS:

1. The State of Maharashtra,
through its Secretary, Women and Child
Development Department, Mantralaya,
Mumbai – 32.
2. The Commissioner, Women and Child
Development Department, Commissioner
Officer, Pune.

3. The Officer On Special Duty,
Maharashtra Child Protection Society,
Women and Child Development, Arjun
Building, Pune.
4. The Program Manager, Maharashtra
Child Protection Society, Women and
Child Development Department, Arjun
Building, Pune.

Shri N. R. Saboo, Advocate with Shri S. Katkar, Advocate for petitioners.
Shri S.M. Ukey, Addl. Government Pleader for respondent Nos. 1 & 2.

CORAM: R. K. DESHPANDE AND
VINAY JOSHI, JJ.

DATE OF JUDGMENT :- 04.03.2019

JUDGMENT (PER R. K. DESHPANDE, J.)

Rule made returnable forthwith. Heard finally by
consent of the learned counsels appearing for the parties.

2. In response to the Revised Integrated Child Protection Scheme (ICPS) sponsored by the Ministry of Women and Child Development, Government of India, an agreement was entered into with the State Government containing Clause Nos. 3.1 to 3.4 under the caption of Selection and Appointment Process which are reproduced below:-

“3.1. A Program of this magnitude and nature requires a team of dedicated professionals to establish and run ICPS successfully. The Scheme provides for hiring of contractual staff at State and District level; however the States may appoint the staff on permanent basis or on higher salaries than provided in this scheme for which the States will have to bear the extra expenditure incurred in this regard.

3.2 In order to appoint competent and professionally qualified personnel, the contractual posts would be advertised through national/local dailies and personnel recruited on the basis of qualifications, experience, high degree of motivation and commitment to children’s causes. Individual terms of reference (TOR) will be drawn up for each post by the State Government. Central level contractual staff will be recruited by the program Joint Secretary (ICPS). State level staff shall be recruited by the Director, ICPS in consultation with the State Principal Secretary/Secretary. The District level staff shall be recruited by the District Magistrate. All recruitments shall be made as per the guidelines of the respective Governments.

3.3 A Selection Committee constituted by the State Principal Secretary/Secretary dealing with ICPS shall recruit the technical and support staff of the SCPS and SARA. For appointment of staff of the DCPU; the District Magistrate shall head the Selection Committee. The other members of this selection committee may

include district level officers e.g. District Program Officer (ICDS), District Social Welfare Officer, Chairperson/Members of CWC, Members of JJB etc.

3.4 Every personnel shall have a contract of 3 years, extendable by 2 years on the basis of performance appraisal reports. A review of the performance of each personnel shall be undertaken every year at the state level by the State Principal Secretary/Secretary dealing with the ICPS and at district level by the District Magistrate. Once the DCPO is appointed, either by deputation or contract, he/she shall also be part of the selection committee for appointment of other personnel of the DCPU.”

3. All the petitioners were appointed on contractual basis by separate order to occupy various posts under the ICP Scheme pursuant to the advertisement dated 10.11.2012. The appointments were in accordance with the Clauses 3.1 to 3.4 initially for a period of three years extendable by further period of two years on the basis of appraisal reports as contemplated in Clause No. 3.4, reproduced above. In the meeting of the Maharashtra State Child Protection Society/Women and Child Development Department, Pune held on 28.06.2017, it was decided to outsource the recruitment in the post held by the petitioners. Hence, the petitioners are sought to be discontinued after a period of five years of service. Hence, this petition to challenge it.

4. On 12th December, 2017, this Court passed an order as under:-

“Heard Shri N.R. Saboo, the learned Counsel appearing on behalf of the petitioners.

Question is whether various judgments relied upon by the petitioners prohibit the State Government from appointing another agency for implementing the scheme without disturbing the contract basis work of petitioners.

Shri Saboo, the learned Counsel for the petitioners has invited our attention to judgment dated 24th August, 2016 in Writ Petition No. 5060 of 2016 where Division Bench finds that employer Zilla Parishad Could not have outsourced work as data operators and has directed Zilla Parishad to continue with it.

In view of this, notice returnable on 22nd January, 2018. Till then, though respondent No.1 may find out alternate agency, the petitioners shall be continued and shall not be forced to shift to that agency.

Shri M.A. Barabde, the learned AGP waives notice for respondent Nos. 1 and 2.”

As per the aforesaid order, the petitioners are continued in service on the post held by them, except petitioner No.17 who was appointed through outsourcing.

5. Under the Revised Integrated Child Protection Scheme, selection and appointment is required to be made by the State Government in terms of Clause Nos. 3.1 to 3.4. The scheme does not recognize mode of appointment through outsourcing. Hence, in our view, the decision taken in the meeting held on 28.06.2017 as has been communicated on 05.07.2017, cannot be sustained. The same will have to be quashed and set aside.

6. On the basis of the decision of the Apex Court in case of ***Mohd. Abdul Kadir and another Vs. Director General of Police, Assam and others***, reported in ***(2009) 6 SCC 611***, this Court has allowed Writ Petition No. 5060/2015 (ATMA Employee's Welfare Association (Maharashtra State), Aurangabad Vs. The Union of India & others) decided on 24.08.2016 and also following the said decision, the another Writ Petition No. 9539/2012 (Ajay s/o Ashokrao Ghatole and others Vs. The State of Maharashtra & ors) along with connected writ petitions were decided on 12.03.2014. Undisputedly, the scheme in question continues to operate and therefore, the selection and appointment under the scheme has to be in accordance with the terms and conditions in Clause Nos. 3.1 to 3.4 reproduced above.

7. In view of above, this writ petition is allowed. The decision containing in communication dated 05.07.2017 issued by the Commissioner, Women and Child Development Department to adopt outsourcing as mode of recruitment in ICPS Scheme is hereby quashed and set aside. The respondents shall be at liberty to consider the continuation in service of the petitioners in terms of Clause No. 3.4 of the scheme which is reproduced above.

JUDGE

JUDGE