

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13713 OF 2018

- 1) Jayshree Vishwanth Bhale,
Age-33 Years, Occu:Service,
- 2) Vaishali Daoulat Patil,
Age-41 Years, Occu:Service,
- 3) Vibhavari Yogesh Khune,
Age-39 Years, Occu:Service,
- 4) Amol S/o Bhagwan Kove,
Age-33 Years, Occu:Service,

All R/o. C/o- Dhanaji Kadam, Near Pulse
Hospital, Shrikrishna Nagar, Osmanabad,
Tq. and Dist-Osmanabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Women and child development Department,
Mantralaya, Mumbai-32,
- 2) The Commissioner,
Women and child development Department,
Office, Pune,
- 3) The Officer on special Duty,
Maharashtra Child Protection Society,
Women and child development Department,
Arjune Building, Pune,

- 4) The Program Manager,
Child Protection Society,
Women and child development Department,
Arjune Building, Pune.

...RESPONDENTS

...
Mr.Sandip C. Swami Chakurkar Advocate for Petitioners.
Ms.Geeta L. Deshpande, A.G.P. for Respondents No. 1 and 2.
Respondents No. 3 and 4 served.
...

**CORAM: SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 9th FEBRUARY, 2021

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.
2. Petitioners are before this court aggrieved by communication dated 5th July 2017, whereunder the posts in which they were working, recruitment to the same was sought to be outsourced.
3. The petitioners are appointed on their respective posts under "Integrated Child Protection Scheme" (ICPS),

being implemented through State agency. Pursuant to the scheme, the petitioners were appointed on contractual basis and while they were on the verge of completion of tenure as referred to in the scheme, impugned communication had been issued.

4. This court, while issuing notice, had protected the interest of the petitioners by directing that they should be continued and they shall not be forced to shift to alternate agency.

5. Learned counsel for the petitioners, during the course of hearing, has placed reliance on a decision of Jharkhand High Court in Writ Petition (S) No. 20 of 2017 (*Alok Burman and others vs. Union of India and others*), dated 24th November 2017, which, according to learned counsel, has been given in similar circumstances, whereunder, referring to decision of the Supreme Court in the case of *Md. Abdul Kadir and another vs. Director General of Police*, reported in (2009) S.C.C. 611, and decision of this court in the case of *Ajay and others vs. State of Maharashtra and others* in writ petition No. 9539 of 2012, dated 12th March 2014, it has been considered that the rules by which the petitioners' appointments

were to be affected, would not be retrospective in operation. Having regard to aforesaid decisions, the high court had directed to continue the services of the petitioners therein till the scheme subsists or till the attainment of age of superannuation, whichever is earlier.

6. Learned counsel has further referred to a decision of division bench of this court at Nagpur Bench in writ petition No. 7798 of 2017 (*Mahesh S/o Ram Halde and others vs. the State of Maharashtra and others*), dated 4th March, 2019.

7. Learned AGP as well, refers to said decision and draws attention to that the same has been annexed to the affidavit-in-reply filed on behalf of the respondents. Learned AGP fairly submits that the decisions would not be said to be of no benefit to the petitioners.

8. Having regard to facts and circumstances, division bench of this court at Nagpur bench in its decision in the case of *Mahesh S/o Ram Halde and others* (supra) , had taken into account that appointments of petitioners therein were in accordance with

clauses 3.2 and 3.4 of the scheme (ICPS) for a period of three years, extendable by two years on the basis of performance appraisal reports. While in the meeting of Maharashtra State Child Protection Society held on 28th June 2017, it was decided to outsource recruitment to the posts held by the petitioners and accordingly impugned communication dated 5th July 2017 had been issued, the division bench had considered that the scheme does not recognize outsourced mode of appointment and, as such, has considered that communication dated 5th July 2017, based on the meeting dated 28th June 2017, is unsustainable. The division bench has further considered on the basis of decision of the Apex Court in the case of *Mohd. Abdul Kadir* (supra) and decision in writ petition No. 5060 of 2015 (*ATMA Employee's Welfare Association (Maharashtra State), Aurangabad vs. Union of India and others*), decided on 24th August 2016, as well as decision in the case of *Ajay and others* (supra), that, while the scheme in question continues to operate, the appointments and recruitment will have to be in accordance with the terms and conditions of the scheme. The division bench has, thus, allowed the writ petition and has quashed the communication dated 5th July 2017.

9. Communication dated 5th July 2017 being already quashed, it can no longer be put in operation against the present petitioners.

10. In view of setting aside said communication dated 5th July 2017 by Nagpur Bench of this court in writ petition No.7798 of 2017 under order dated 4th March 2019, as observed above, the same cannot be put in operation against present petitioners.

11. Rule is made absolute in above terms. Writ petition is accordingly disposed of.

12. In view of disposal of writ petition, civil application No. 11701 of 2019 also stands disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]