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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.785 OF 2021

Mansingh Popat Kharat & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Pramod Kulkarni, for the Petitioners.

Mr. C.D. Mali, AGP for State.

Mr. Pankaj Deokar for Respondent No.5.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.
DATE : 9TH MARCH, 2021

ORDER :

1. Heard learned Counsel for parties.
2. Rule. Rule made returnable forthwith. By consent of parties matter taken up for final hearing.
3. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking a direction against the Zilla Parishad - Respondent to pay the wages of the Petitioners at the minimum of the pay scale (at the lowest

grade, in the regular pay scale.)

4. Learned Counsel Mr. Pramod Kulkarni for the Petitioners submits that the Petitioners are working as ambulance drivers on contractual basis with Respondent No.5 Zilla Parishad's Primary Health Centers. He submits that their duties are 24 hours and salary is paid to all the Petitioners. Although the monthly remuneration is to be paid to the Petitioners, they are paid after 5 to 6 months and that too not at the minimum of pay scale (at the lowest grade), in the regular pay scale which they are entitled. Thus it is a clear act of exploitation by the Respondents.

5. The learned Counsel for the Petitioners submits that this issue was before the Nagpur bench of this Court in Writ Petition No.2247 of 2014. He submits that Nagpur bench by order dated 20th November, 2019 after considering all the facts and the view taken by the Supreme Court in ***State of Punjab & Ors. Vs. Jagjit Singh & Ors.***¹ allowed the Petition filed by drivers of Zilla Parishad for payment of minimum wages to the Petitioners. He relies upon paragraphs 11 and 12 of the said order which read thus:-

¹ (2017) 1 SCC 148.

11. *It is clear that the Hon'ble Supreme Court has held that when one employee discharges / performs same work as another employee, there cannot be any distinction between the two employees so far as the application of the pay scale to both of them is concerned. The Hon'ble Apex Court has further held that all the temporary employees who are performing similar work as the regular employees would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the same post. This relief would also have to be granted to all the petitioners as there is no dispute that their work is similar to the work of the regular drivers.*

12. *Accordingly, the writ petition is partly allowed. The petitioners are granted same protection as the similarly situated drivers have been granted by the Division Bench of this Court in Writ Petition No.6025/2015 decided on 29/06/2017. We further direct that the petitioners be paid wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the same post with effect from the date of the petition. All arrears be calculated accordingly and paid by the respondent no.1 to the petitioners within a period of six months from the date of the order.*

At this juncture, the learned Counsel for the petitioners, upon instructions, submits that few of the petitioners have been terminated from service by the respondent no.1 on account of some misconduct. If this is so, we make it clear, those petitioners whose services have been terminated on account of misconduct, shall not be entitled to the benefits of this judgment. We also make it clear that these benefits shall be extendable to all other similarly situated contractual drivers who are not party to this

petition.

Rule is made absolute in the aforesaid terms. No order as to costs.

6. Learned Counsel for Petitioners submits from the said order dated 20th November, 2019 an SLP was preferred before the Apex Court. The SLP was on board on 22nd February, 2021, at that time, the Apex Court passed the following order:-

“Delay condoned.

We are not inclined to interfere with the order passed by the High Court. The Special Leave Petition is dismissed. Pending application(s), if any, shall stand disposed of.

7. Learned Counsel for the Petitioners submits that in similar way, this Court by order dated 8th December, 2020 in *Nagendrayya P. Hiremath & Ors. Vs. The State of Maharashtra & Ors.*² along with companion matters directed the Zilla Parishad to pay wages at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regular employees holding the same post with effect from the date of the petition. Paragraph 6 of the said order reads thus:-

“6. The fact that the petitioners in above referred judgment were contractual employees is not disputed. We are, therefore, of the opinion that the

²Writ Petition (St.) No.92250 of 2020.

issue involved in all these petitions is covered by view taken by this Court in its judgment dated 20.11.2019 in above referred writ petition. Accordingly, the following order is passed.

a. The petitioners be paid wages at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regular employees holding the same post with effect from the date of the petition.

b. The respondent No.5 is directed to comply with this order within six months from today.

c. No order as to costs.

8. Learned Counsel for the Petitioners has submitted that the above referred orders have been followed by this Division Bench in *Shri Vasant Pandurang Patil & Ors. Vs. The State of Maharashtra & Ors.*³

9. Learned Counsel for the Petitioners submits that as the issue involved in the present Writ Petition is already covered by the orders of this Court as well as Apex Court, the present Petition may be allowed.

10. On the other hand, the learned Counsel Mr Pankaj Deokar appearing on behalf of the Respondent No.5 submits that, factually the Petitioners were appointed on contract basis. He

³Writ Petition (St.) No.9985 of 2020 decided on 1st March, 2021.

further submits that the Petitioners have not made contractor – Royal Security and Allied Services, Kadepur, Dist. Sangli as a party Respondent in the present Writ Petition. Hence there is no question of entertaining the present Writ Petition and same is required to be dismissed with costs.

11. The learned Counsel for Respondent No.5 submits that since the Petitioners are not in direct employment with the Respondent Zilla Parishad the rules which are applicable to the permanent employees are not applicable to the Petitioners. The decision of this Court and the Apex Court relied upon by the learned Counsel for the Petitioners were decided according to the facts of those cases and are not applicable to the present case.

12. We have considered the rival submissions. We are of the view that the issue arising in the present Petition has been covered by the orders passed by this Court as stated above as well as affirmed by the Apex Court on 22nd February, 2021. These were cases of similarly situated ambulance drivers who were granted protection i.e. payment of wages at the minimum of the pay scale (at the lowest grade) in the regular pay scale extended to regular employees holding the same post with

effect from the date of the Petitions. For the reasons stated in these orders, we are satisfied that the Petitioners have made out a case to allow this Writ Petition. Hence the following order:-

i. The Petitioners be paid wages at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regular employees holding the same post with effect from the date of the petition.

ii. The Respondent No.5 is directed to comply with this order within a period of three months from today.

iii. Parties to act on an authenticated copy of this order.

iv. Rule is made absolute on the above terms.

v. Writ Petition is disposed of accordingly with no order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]