

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2015 OF 2021

Nandu Mahipat Dalvi

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Pramod Kulkarni for the Petitioner.

Mr. A.I. Patel, AGP for the Respondent-State.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.

DATE : 1 July 2021

ORDER : (*Per R.I. Chagla, J*)

1. The learned Counsel for the Petitioner states that the Respondents have been served and an Affidavit of Service has been filed on 23rd June 2021 showing service on Respondent Nos. 1 to 5 by hand delivery along with acknowledgment. Learned AGP Mr. Patel represents the Respondent-State. Respondent No. 5-Zilla Parishad inspite of service, has not remained present. Thus, this Petition is taken up for disposal.

2. This Petition is filed under Article 226 of the Constitution of India seeking direction against Respondents for payment of wages to the Petitioner at the minimum of the pay scale (at the lowest grade, in the regular pay scale).

3. The Petitioner is working as ambulance driver on contractual basis, the contract is given by the Respondent No.5-Zilla Parishad. The Petitioner is being paid salary of Rs. 8,000/- per month for the duty which is of 24 hours. The Petitioner has stated that even this Rs. 8,000/- monthly remuneration is paid after 5 to 6 months and it is clear that the act of the Respondent is exploitation of the Petitioner.

4. Mr. Pramod Kulkarni, the learned Counsel for the Petitioner submits that issue involved in this Petition is covered by the view taken by this Court (Nagpur Bench) in its judgment dated 20th November 2019 passed in the case of *Dhiraj S/o. Sudhakarrao Wankhede & Ors. Vs. The Zilla Parishad, Chandrapur & Ors.*¹. This Court (Nagpur Bench) had directed the Respondents to pay the Petitioner wages at the minimum of the pay scale (at the lowest grade, in the regular

¹ *Writ Petition No. 2247 of 2014*

pay scale) extended to regular employees holding the same post with effect from the date of the Petition. All arrears to be calculated accordingly and paid by the Respondent - Zilla Parishad to the Petitioner within a period of six months from the date of this order. This Court while disposing of the said Writ Petition made it clear that the benefit shall be extendable to all other similarly situated contractual drivers who are not parties to that Petition.

5. The learned Counsel for the Petitioner has further relied upon the decision of the Division Bench of this Court in the matter of *Nagendrayya P. Hiremath and Ors. Vs. The State of Maharashtra and Ors.*² along with companion matters. By order dated 8th December 2020, this Court has held that the issues involved in that Petition are covered by the view taken by this Court in *Dhiraj S/o. Sudhakar Rao Wankhede* (supra). Accordingly, the Petitioners were directed to pay 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. Respondent No. 5 was directed to comply with this order within six months from

2 *Writ Petition (st) No. 92250 of 2020*

the date of this order.

6. Having considered the above submissions, it is clear that the issue arising in this Petition is no longer *res integra*. Further, the Supreme Court in case of *State of Punjab and ors Vs. Jagjit Singh and Ors.*³ has held that no artificial parameter can be devised to deny the fruits of labour when an employee performs the same work as another employee and no such artificial distinction can be made between two such employees, whereby one is given higher salary and another is paid a lower salary. It is noted that the Petitioner has restricted the relief sought in Petition to the extent of equal work, equal pay parity with the regular ambulance drivers in Class-III category.

7. There is no dispute that the Petitioner is a contractual employee and this Court both at Nagpur Bench as well as the Principal Bench has taken a consistent view that the Petitioners are entitled to the 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. This Court (Nagpur Bench)

³ (2017)1 SCC 148

in *Dhiraj S/o. Sudhakar Rao Wankhede* (supra) held thus:-

“9. The other relief claimed by the petitioners is about pay parity with the regular drivers in Class-III category. In this regard the law has been settled by the Hon’ble Apex Court in the case of *State of Punjab and others...Versus...Jagjit Singh and others*, reported in (2017)1 SCC 148.

10. The Hon’ble Supreme Court has held that no artificial parameters can be devised to deny the fruits of labour when an employee performs the same work as another employee. The Hon’ble Apex Court has further held that no artificial distinction can be made between such two employees, whereby one is given higher salary and another is paid lower salary. Relevant observations of the Hon’ble Apex Court appearing in paragraph no.58 of the judgment are reproduced as below :-

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He

does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

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.”*

8. Since the issue arising in this Petition is covered by

the view taken by this Court in the above referred decisions,
the following order is passed:-

- (a) The Petitioner shall 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.
- (b) Respondent No. 5 is directed to comply with this order within six months from today.
- (c) Writ Petition is disposed of with no order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]