

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

WRIT PETITION NO. 11009 OF 2021

1. Jayshree Vishwanath 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, 02nd Floor, Commissionerate
Women and Child Development
Department, 28, Queens Garden,
Near Old Circuit House,

Pune – 01.

4. The Program Manager,
Child Protection Society,
02nd Floor, Commissionerate
Women and Child Development
Department, 28, Queens Garden,
Near Old Circuit House,
Pune – 01.
5. District Woman and Child
Development Department,
Osmanabad, Tq. and Dist.
Osmanabad,
Near Aurangabad Tuljapur Road. .. Respondents

Shri Sandeep C. Swami, Advocate for the Petitioners.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 and 2.
The Respondent Nos. 3 to 5 are served.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR JUDGMENT ON : 23.08.2022
JUDGMENT PRONOUNCED ON : 30.08.2022

JUDGMENT (Per Sandeep V. Marne, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Integrated Child Protection Scheme (for short ICPS) has been implemented by the Central Government in partnership with the State Government for prevention of child rights violation, enhanced infrastructure for protection services and financial support for implementation of the Juvenile Justice

(Care and Protection of Children) Act 2000. The ICPS envisages setting up of District Child Protection Units in each of the districts.

3. The Commissioner Woman and Child Development Department Pune had issued an advertisement on 10.11.2012 for filling up various posts in District Child Protection Units in each districts in various divisions. The posts were to be filled on contract basis. The petitioners applied in pursuance of the advertisement and came to be appointed on the posts of Legal cum Probation Officer, Accountant, District Child Protection Officer and Protection Officer-Non-Institutional, etc. The appointments were on contract basis for a period of three years. There was a provision for renewal of the appointment after 11 months based on performance. It was further provided that total contract was for three years extendable by two years, based on performance. The petitioners continued to work on these terms. Apprehending that they would not be continued in service, they filed Writ Petition No. 6142 of 2016 seeking continuation in service and payment of salary. The petition was disposed of by order dated 26.04.2017 recording statement on behalf of respondents therein that such of the petitioners whose appraisal reports were found satisfactory would be continued for a further period of two years. Accordingly, the services of the petitioners were continued.

4. On 05.07.2017 instructions were issued for outsourcing manpower required in the District Child Protection Unit. This decision for outsourcing the manpower became subject matter of Writ Petition No. 7798 of 2017 filed before the Nagpur Bench of this Court, which was pleased to set aside the instructions dated 05.07.2017. The petitioners had also challenged the said decision dated 05.07.2017 in Writ Petition No. 13713 of 2018, which came to be disposed of by judgment and order dated 09.02.2021 following the decision of the Nagpur Bench.

5. It is the case of the petitioners that, even after succeeding in Writ Petition No. 13713 of 2018, their services came to be terminated by the respondent No. 6 with effect from 04.03.2021 vide communication dated 24.03.2021. The reason for termination of services of the petitioners was shown to be non issuance of specific directions by this Court for continuance of services of the petitioners. The petitioners have challenged the termination of their services in the present petition and have also sought regularization as per the scheme in operation or till they attain the age of superannuation.

6. Appearing for the petitioners Mr. Sandeepkumar Swami, learned advocate has submitted that as long as the scheme is in continuation, the petitioners are required to be continued in service. He has placed reliance on communication dated 07.07.2022, by which fresh recruitment is sought to be undertaken on contract basis. He submits that the respondents

are seeking to replace one set of contractual employees with another, which is impermissible in law. He relied on the decision of the Jharkhand High Court in the case of **Alok Burman and others Vs. Union of India and others in Writ Petition (S) No. 20 of 2017 decided on 24.10.2017**. He also relied on the decision of this Court in the case of **ATMA Employees' Welfare Association, Aurangabad Vs. The Union of India in Writ Petition No. 5060 of 2015 decided on 24.08.2016**.

7. Per contra, Mr. Yawalkar appearing for the respondents has opposed the petition submitting that the appointments of the petitioners are in accordance with the scheme and, therefore, they are bound by all the terms and conditions thereof. He submitted that the scheme does not contemplate extension of contract beyond the prescribed period. He further submits that, even in the judgment and order in the case of **Mahesh Ram Halde and others Vs. The State of Maharashtra and others in Writ Petition No. 7798 of 2017** decided by Nagpur Bench of this Court on 04.03.2019, it has been directed, "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." He therefore submits that the appointments cannot be in excess/breach of the provisions of the scheme. Having completed maximum permissible period of contract, petitioners can't seek continuation in service.

8. Mr. Yawalkar also relies upon decision of the Apex Court in the case of **Satish Chandra Anand Vs. The Union of India** reported in ***AIR 1953 SC 250*** in support of his contention that contractual employees are bound by the terms of contract. He further relies upon the judgment of the Apex Court in the case of **Gridco Ltd. and another Vs. Sadananda Doloi and others** reported in ***AIR 2012 SC 729*** in support of his contention that Court cannot exercise power of judicial review in the matter of termination of contractual employees. Relying upon the said decision, he further submitted that in absence of any unreasonableness, unfairness, perversity or irrationality in action taken by the State Government, no interference is called for in the matter of termination of services of the petitioners.

9. Upon hearing the learned counsels for the parties at length, we find that the scheme under which the petitioners were initially appointed on contract basis continues to operate. Undeniably, the respondents are recruiting fresh candidates in the scheme by issuance of an advertisement. It is not the case of the respondents that, the scheme is of temporary nature or has fixed life. Equally, no specific case has been put forth that there is proposal for discontinuation of the scheme.

10. In such circumstances, it is clear that the respondents are replacing the services of the petitioners with fresh candidates. It is trite that adhoc candidates cannot be replaced by another adhoc candidates. The Supreme Court in the case of **Mohd.**

Abdul Kadir and another Vs. Director General of Police, Assam and others reported in **(2009) 6 SCC 611** has held that the process of termination and reappointment every year should be avoided and the candidates should be continued as long as the scheme continues, co-terminus with the scheme. In its recent judgment in the case of **Mukesh Gupta Vs. President Jan Bhagidari Samiti in Civil Appeal Nos. 3084-3088 of 2022 decided on 21.04.2022**, the Apex Court has reiterated the principle that an adhoc employee cannot be replaced by another adhoc employee. He can be replaced only by a candidate who is regularly appointed by following regular procedure prescribed.

11. In **ATMA Employees' Welfare Association, Aurangabad** (*supra*), this Court was concerned with the appointments under a scheme. Though the principal issue was about outsourcing of manpower, while setting aside the decision for outsourcing, this Court directed continuation of services until continuation of the scheme or until the employee attained age of superannuation, whichever happened earlier. Similar direction has been issued by the Jharkhand High Court in the case of **Alok Burman and others** (*supra*). In fact, in **Alok Burman and others** (*supra*) the same scheme of ICPS was involved.

12. Even otherwise this Court has already set aside the proposed action of outsourcing the manpower under the scheme in writ petition filed by the petitioners. In our opinion, outsourcing of manpower and replacement by other contractual

employees would have same effect so far as the petitioners are concerned. Both would entail termination of their services. Therefore, once the outsourcing is prohibited, it does not mean that a license is given to the respondents to replace petitioners with another set of contractual employees.

13. The judgments relied upon by Mr. Yawalkar have no application to the present case. In the case of **Satish Chandra Anand** (supra), the issue was about application of Article 311 of the Constitution of India in respect of termination of contractual services. In the present case, it is not the case of the petitioners that they are entitled to protection under Article 311 of the Constitution. All that they seek is that as long as the scheme continues, they should not be replaced by another set of contractual employees. In the case of **Gridco Ltd. and another** (supra), the issue was about scope of judicial review while deciding validity of the termination order of contract appointee. In the instant case, we are not called upon to determine validity of termination of the petitioners separately. The issue of termination is essentially linked to the issue of replacement of petitioners by another set of contractual employees. Therefore, this is not a case of termination simplicitor. Once we are of the opinion that respondents cannot replace the petitioners with another set of contractual employees, termination of services of the petitioners would automatically be rendered illegal.

14. In **ATMA Employees' Welfare Association, Aurangabad**

(*supra*), this Court has directed continuation of services of the petitioners therein until continuation of scheme. Following the said directions, we proceed to partly allow the present petition by passing following order:

ORDER

- A. The respondents are directed to reinstate the petitioners in service on their respective posts and to continue them on contractual basis until continuation of the scheme or until they attain the age of superannuation, whichever occurs earlier. For that purpose, the termination orders are set aside.
- B. The prayer of the petitioners for regularization of their services is rejected.
- C. The respondents would be free to terminate the services of the petitioners for any other reason like dissatisfactory service, misconduct, medical unfitness, etc. as and when occasion arises.
- D. The petitioners shall not be entitled for backwages in respect of the period during which their services were terminated on the principle of no work no pay.
- E. Rule is made absolute in above terms with no orders as to costs.

[SANDEEP V. MARNE, J.]
bsb/Aug. 22

[MANGESH S. PATIL, J.]