

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

WRIT PETITION NO. 14127 OF 2021

1. Balaji s/o Shivaji Kamble,
Age; 38 years, Occ; Driver,
R/o; Karepur, Tq. Renapur,
District; Latur.
2. Balasaheb s/o Dattu Jagtap,
Age; 40 years, Occ; Driver,
R/o; Karepur, Tq. Renapur,
District; Latur.
3. Gangadhar s/o Dattu Sagar,
Age; 45 years, Occ; Driver,
R/o; Bombli, Tq. Deoni,
District; Latur.
4. Omkareshwar s/o Ramrao Patil,
Age; 39 years, Occ; Driver,
R/o; Wanjarwada, Tq. Jalkot,
District; Latur.
5. Mahadev s/o Shivaji Devde,
Age; 38 years, Occ; Driver,
R/o; Kingaon, Tq. Ahmadpur,
District; Latur.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Ministry of Health and Family Welfare.
2. The State of Maharashtra,
Department of Rural Development
Through its Secretary, Mantralaya
Mumbai.

3. Director of Health Services,
Saint George Hospital Compound
P.D. Mello Road, Mumbai, 400001.
4. The Divisional Commissioner,
Division; Aurangabad.
5. The Chief Executive Officer,
Zilla Parishad Latur.
District; Latur.

...RESPONDENTS

WITH

WRIT PETITION NO. 14408 OF 2021

1. Hemant Ramdas Lange,
Age; 22 years, Occ; Driver,
R/o; Babhalgaon, Tq. Shiruranantpal,
District; Latur.
2. Ganpati Vishwanath Arjune,
Age; 22 years, Occ; Driver,
R/o; Ganeshwadi, Tq. Shiruranantpal,
District; Latur.
3. Mujmil Rajjak Patel,
Age; 25 years, Occ; Driver,
R/o; Manki, Tq. Udgir,
District; Latur.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Ministry of Health and Family Welfare.
2. The State of Maharashtra,
Department of Rural Development,
Through its Secretary, Mantralaya Mumbai.

3. Director of Health Services,
Saint George Hospital Compound,
P.D. Mello Road, Mumbai-400001.
4. District Medical Officer,
Zilla Parishad, Latur.
5. The Chief Executive Officer,
Zilla Parishad, Latur.
District; Latur.

...RESPONDENTS

WITH

WRIT PETITION NO. 14405 OF 2021

Akash Piraji Kamble,
Age; 28 years, Occ; Driver,
R/o; Halki, Tq. Shiruranantpal,
Dist; Latur.

...PETITIONER

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Ministry of Health and Family Welfare.
2. The State of Maharashtra,
Department of Rural Development,
Through its Secretary, Mantralaya Mumbai.
3. Director of Health Services,
Saint George Hospital Compound,
P.D. Mello Road, Mumbai-400001.
4. District Medical Officer,
Zilla Parishad, Latur.
5. The Chief Executive Officer,
Zilla Parishad, Latur.
District; Latur.

...RESPONDENTS

WITH

WRIT PETITION NO. 14442 OF 2021

1. Yusuf Ibrahim Sayyed,
Age; 44 years, Occ; Driver,
R/o; Borgaon Kale,
District; Latur.
2. Kashinath Tulshiram Katvate,
Age; 36 years, Occ; Driver,
R/o; Nalegaon, Tq. Chakur,
District; latur.
3. Jyotiram Hanumat Kshirsagar,
Age; 45 years Occ; Driver,
R/o; Kategaon, Tq. & Dist. Latur.
4. A Saiph A Bari Dange,
Age; 23 years, Occ; Driver,
R/o; Dangewadi, Po Wadhona,
Tq. Udgir, Dist. Latur.
5. Dattatraya Kishanrao Wadikar,
Age; 33 years, Occ; Driver,
R/o; Devarjan Tq. Udgir,
District; latur.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Ministry of Health and Family Welfare.
2. The State of Maharashtra,
Department of Rural Development,
Through its Secretary, Mantralaya Mumbai.
3. Director of Health Services,
Saint George Hospital Compound,

P.D. Mello Road, Mumbai-400001.

4. The Divisional Commissioner,
Division; Aurangabad.
5. The Chief Executive Officer,
Zilla Parishad, Latur.
District; Latur.

...RESPONDENTS

WITH

WRIT PETITION NO. 14441 OF 2021

1. Govind Bharat Shinde,
Age; 33 years, Occ; Driver,
R/o; Bitargaon, Tq. Renapur,
District; Latur.
2. Ramchandra Suryakant Panchal,
Age; 25 years, Occ; Driver,
R/o; Kharola, Tq. Renapur,
District; Latur.
3. Ahmed Khurshid Sayyad,
Age; 37 years, Occ; Driver,
R/o; Bhatangali, Tq. Latur.
District; Latur.
4. Rahul Prabhakar Chikate,
Age; 45 years, Occ; Driver,
R/o; Khalangri, Tq. Renapur,
District; Latur.
5. Shaikh Mehbub Rahimsab Shaikh,
Age; 30 years, Occ; Driver,
R/o; Wadhona, Behind Yashwant College,
Tq. Udgir, District; Latur.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through its Secretary,

Ministry of Health and Family Welfare.

2. The State of Maharashtra,
Department of Rural Development,
Through its Secretary, Mantralaya Mumbai.
3. Director of Health Services,
Saint George Hospital Compound,
P.D. Mello Road, Mumbai-400001.
4. The District Medical Officer,
Zilla Parishad, District; Latur.
5. The Chief Executive Officer,
Zilla Parishad, Latur.
District; Latur.

...RESPONDENTS

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Mr.Pramod A. Kulkarni, learned Advocate for Petitioners in all matters

Mr. S.B.Yawalkar, learned AGP for Respondent Nos. 1 to 4

Mr. Uttam B. Bondar, learned Advocate for respondent No. 5 in
WP/14127/2021, WP/14405/2021, WP/14442/2021, WP/14441/2021
and WP/14408/2021)

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

Reserved Date : 21.09.2022

Pronouncement Date : 28.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule. Rule is made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

2. The petitioners are the ambulance drivers engaged through a

Contractor by Zilla Parishad, Latur. They have filed present Writ Petitions with following prayers :

A) Writ Petition may kindly be allowed.

B) The Hon'ble Court be pleased to direct the respondent No. 5 to not to terminate the services of the petitioners as ambulance drivers till permanent drivers are appointed.

C) Pending hearing and final disposal of this Writ Petition the Hon'ble Court be pleased to direct the respondent No. 5 to not to terminate the services of the present petitioners.

3. Petitioners are engaged through contractors as ambulance Drivers in the Respondent Zilla Parishad. The petitioners had earlier filed various Writ Petitions seeking prayer for regularization of their services. Those petitions were disposed of by this Court by order dated 13.01.2021. As far as the relief of regularization was concerned, this Court did not specifically grant it but it merely noted order dated 03.09.2019 passed in Writ Petition No. 10260 of 2019, in which it was recorded that the grievance of the petitioners therein was being looked into. So far as the grievance with regard to equal pay for equal work was concerned, this Court relied upon various decisions earlier passed and directed that the petitioners be paid wages at minimum of pay scales in the lowest grade in regular pay scales entitled to the regular employees holding the same posts w.e.f. the date of the petitions.

4. Now the cause for filing the Petition is letter dated 10-12-2021

issued by the Respondent Zilha Parishad to M/s Frontier Ex-serviceman Association, Latur who is the contractor through whom the petitioners are engaged. By that letter, it was informed to the Petitioners' contractor that ambulance drivers now would be provided by CSC e-Governance India Ltd., and accordingly upon receipt of deployment of ambulance Drivers through the said Company, the work orders issued to Petitioners' contractor would come to an end. This is how issuance of letter dated 10.12.2021 has triggered filing the present petitions by the petitioners seeking prayers not to terminate their services till the appointment of permanent drivers. By way of interim order dated 15.12.2021, it was directed that the petitioners may not be replaced by either temporary or contractual employees.

5. Appearing for the petitioners Mr. Kulkarni, the learned counsel has submitted that the petitioners have put in about 10 years of services and therefore, they cannot be displaced in an unceremonious manner that too, by other contractual employees. That services of the petitioners cannot be replaced by other contractual ambulance Drivers. He relied on the order of the Apex Court in **Manish Gupta and Anr. Etc. Etc. V. President Jan Bhagidari Samiti and Ors. Etc. Etc.**, Special Civil Appeal Nos. 3084-3088 of 2022 decided on 21.04.2022, in support of his contention that adhoc employee cannot be replaced by another adhoc employee. He would also rely upon the decision of this Court, Bench at Nagpur in **Dhiraj S. Wankhede and Ors. Vs. The Zilla Parishad,**

Chandrapur and Ors., Writ Petition No. 2247 of 2014 decided on 20.11.2019. He would also rely upon the order dated 08.12.2020 passed in Writ Petition (ST.) No. 92250 of 2020 **Nagendrayya P. Hiremath and Ors. Vs. The State of Maharashtra and Ors.** Lastly, he would contend that in similar circumstances, this Court Bench at Nagpur in **Ritesh @ Jeetu Babulal Chakravarty and Ors. Vs. the State of Maharashtra and Ors.** in Writ Petition No. 1305 of 2021 decided on 06.04.2022 has granted protection to ambulance Drivers of non-replacement by other contractual employees.

6. Per Contra, Mr. Bonder, the learned counsel appearing for respondent No. 5-Zilla Parishad submits that the petitioners are engaged through the contractors and that there is no employer - employee relationship. He relied on the Government Resolution dated 26.08.2020, by which all Zilla Parishads have been directed by the State Government to procure manpower through CSC e-Governance India Ltd. By the said Government Resolution, it is directed that in respect of workers provided by the said Company, no post would be created nor there would be any liability on the Zilha Parishad. It is further provided that there would be no employer- employee relationship between the workers provided by the Company and the Zilla Parishad. He would submit that the Government Resolution dated 26.08.2020 has also directed Zilla Parishad not to renew the earlier contract and to procure manpower only through CSC e-Governance India Ltd. He further relies upon the work order dated

15.03.2021 issued to CSC e-Governance India Ltd., by which the Company has been called upon to provide contract ambulance Drivers on various terms and conditions w.e.f. 01-04.2021. He also relied on letter dated 10.12.2021 by which Petitioner's contractor M/s Frontier Ex-Serviceman Association, Latur was communicated the decision of termination of contract. He has produced before us a chart under which various contractors were engaged by the Zilla Parishad from the year 2015 onwards, to buttress his contention that different contractors have been providing ambulance Drivers to the Zilla Parishad. He also relied upon the letter dated 11.10.2021 of CSC e-Governance India Ltd. and submitted the list of 44 drivers for fulfilling contract engagement with Zilla Parishad. He has also taken us through the work order dated 16.09.2019 issued to CSC e-Governance India Ltd., as well as individual appointment orders issued by M/s Frontier Ex-Serviceman Association in favour of some of the petitioners.

7. Mr. Yawalkar, learned AGP appearing for respondent State has supported the stand of the Zilla Parishad and pressed for dismissal of the petitions.

8. The arguments were concluded and the judgment was reserved on 14.09.2022. However, on request of Mr. Kulkarni, he was permitted to rely upon additional documents. Accordingly, the petitions were fixed for further hearing on 21.09.2022. Mr. Kulkarni, has filed

additional rejoinder dated 19.09.2022. Mr. Bondar, has also filed additional compilation of documents. In the interest of justice, both have been taken on record. Both the counsels were heard on the additional documents on 21-09-2022.

9. During the course of further hearing, Mr. Kulkarni, has relied upon the monthly attendance sheets to contend that the attendance sheets are maintained by the Zilla Parishad and not by the Contractor. Relying on statements of accounts of some of the petitioners, he would further submit that the payments are also being made by the Zilla Parishad directly and not through the Contractor. That such payments were made on account of order dated 17.02.2022 passed by this Court in Contempt Petition No. 709 of 2021.

10. In his additional submissions, Mr Bondar has submitted that the payments are directly made in the bank account of the petitioners represent difference in wages on account of direction of this Court to grant wages in minimum of pay scales to the petitioners. He would submit that at the time of making of such payments, the contracts of the previous contractors had ended and therefore, the Zilla Parishad could not make such payments through contractors. It is only on account these circumstance that an exception was required to be made to deposit the arrears of wages directly in the bank accounts of the petitioners. Except this, wages are always paid to the petitioners through the respective

contractors.

11. Having set out the case of the parties and submissions of their counsels, we now proceed to examine the issue of application of the principle of 'ad hoc employee not to be replaced by ad hoc employee' to the present case.

12. Undisputedly, the petitioners have been currently engaged through the contractor M/s Frontier Ex.-Service Man Association. Petitioner's engagements flow out of work order dated 16-09-2019 issued to Frontier Ex-Serviceman Association for supply of drivers by the Zilha Parishad. The tenure of work order was for 10 months. Upon receipt of work order, Frontier Ex-Serviceman Association has issued individual appointment orders to each of the petitioners on or around 27.09.2019. The terms and conditions of the appointments are determined by the M/s. Frontier Ex-Serviceman Association.

13. Since the engagement is by the contractor M/s Frontier Ex. Serviceman Association, the termination of Petitioners' service, if any, would also be by the contractor. The petitioners have failed to implead the contractor as a party respondent to the present petitions. The contractor's contract came to an end upon expiry of tenure of the contract. Even otherwise, the contract was terminated by way of communication dated 10.12.2021. Admittedly, the contractor has not

initiated any proceedings challenging termination of its contract. We, therefore, fail to comprehend as to how the petitioners can independently file present petitions against the Zilla Parishad seeking relief of protection from termination. Petitioners are, admittedly, appointed by the contractor and the Zilla Parishad cannot terminate their services. The termination will have to be effected by the contractor alone. The petition is thus a flawed document.

14. Now we deal with contention of Mr. Kulkarni, that an adhoc employee cannot be replaced by another employee. In support of his contention he has relied upon the order of the Apex Court in **Manish Gupta** (supra) in which it is held,

*“It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of **Rattan Lal and others vs. State of Haryana and others**’ and on the order of this Court in the case of **Hargurpratap Singh vs. State of Punjab and Others**.”*

15. There can be no dispute about the proposition that an adhoc employee cannot be replaced by another adhoc employee. It is expounded by several decisions of the Apex Court and High Courts. Eventhough not relied upon by Mr. Kulkarni, we may make reference to decision of the Apex Court in **Mohd. Abdul Kadir v. Director General of Police**, (2009) 6 SCC 611 in which it is held as under:

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and reappointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminous with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed.

16. The principle of 'ad hoc employee not to be replaced by ad hoc employee' is founded on State's obligation to resort to regular engagements. The sanctioned vacant posts must be filled on regular basis rather than engaging ad hoc employees thereon. In rare cases where regular appointments are delayed, the Government is justified in resorting to ad hoc engagements. For such stop-gap arrangement, whether Government is justified in engaging multiple ad hoc employees by resorting to terminations and replacements is the question which finds its answer in the principle of 'ad hoc employee not to be replaced by ad hoc employee'. However, what happens when the Government wishes to outsource the work by contracting the same out by engaging a contractor for supply of manpower for performance of specific work, eg. housekeeping or cleaning. Whether the principle of 'ad hoc employee not to be replaced by ad hoc employee' can be extended to such a situation also? We find the answer to this question in the negative. In such a situation, there is no stop gap arrangement as the Government does not propose to fill up any posts on permanent basis for manning the work

which is outsourced to a contractor. Therefore the principle will have no application in such a case.

17. Petitioners are admittedly not adhoc employees. They are employees engaged by the contractor, with whom the contract is entered into by the Zilla Parishad. In the instant case, the State Government has directed the Zilla Parishads to hire manpower on contract basis instead of engagement of the permanent staff in specified areas. Therefore, there appears to be no possibility of Zilha Parishad taking up regular recruitment process to appoint permanent ambulance Drivers. Contractual engagements are thus not by way of stop gap arrangement.

18. However, the expression 'contractual employees' is loosely used to describe different kinds of engagements. Like in present case, there can be outsourcing of work to a contractor, whose employees are referred to as contract employees. However, Governments in some case do hire employees on direct contract basis, without involvement of any contractor. In that case there is direct relationship between the Government and the employee whose salaries are paid and conditions of service determined by the Government, as per terms and conditions of contract and not as per Rules applicable to permanent employees. Use of the expression 'contract employee' in such cases is often a semantic exercise, where the employees could also be referred to as ad hoc, temporary, daily wage, etc. In such cases, it may be possible to extend the

principle of 'ad hoc employee not to be replaced by ad hoc employee' in a given fact situation. However where the entire work is outsourced to a contractor who brings in his own workforce for execution of a contract, the principle of 'ad hoc employee not to be replaced by ad hoc employee' would have no application.

19. In the instant case, there is no direct engagement of petitioners by the Zilla Parishad in any manner. From the chart produced by Mr. Bondar, it is clear that different contractors have been engaged by the Zilla Parishad for different periods of time. The chart is reproduced below :

Sr. No .	Name of the Supplier	Period
1.	Kirti Swayanrojagar Sanstha, Auangabad.	15.04.2015 to 17.04.2017
2.	Chatrapati Security Force, Borwati, Tq. & Dist. Latur.	18.04.2017 to 15.09.2019
3.	Frontier Ex-Servicman , Association, latur	16.09.2019 to 14.05.2021
4.	CSC e-Governance India Ltd., New Delhi.	15.05.2021 till date.

The above chart, contents of which are undisputed, leaves no matter of doubt that the Petitioners have been performing the duties of ambulance Drivers as employees of different contractors. Therefore the principle of 'ad hoc employee not to be replaced by ad hoc employee' would have no application to them.

20. Reliance of Mr. Kulkarni, on the decisions of this Court in **Dhiraj** (Supra) and **Nagendrayya** (supra) is of no avail, as this Court only extended the benefit of principle of 'equal pay for equal work' in those cases. The protection from termination is not extended in the those cases. In **Ritesh @ Jeetu** (supra), this Court was essentially dealing with the issue of 'equal pay to equal work. It relied on various previous decisions of this Court including the decision in **Dhiraj Wankhede** (supra) and has granted the relief of wages at the minimum of the pay scales to the petitioners therein. Even though, a direction has been issued to the contractors therein not to replace the petitioners therein with other contractual employees, we find that the direction is again of no avail to the petitioners. The petitioners have failed to implead their contractor in the present petitions. They do not seek the relief of protection of termination against their contractor. In **Ritesh** (Supra) a direction not to replace the petitioners therein with other contractual employees is not issued to the Zilla Parishad but the same is issued to the contractor. Therefore relying on the decision in **Ritesh** (Supra), Petitioners cannot seek direction against Zilha Parisahd to continue their services. Reliance of Mr. Kulkarni, on the decision of **Ritesh** (supra) is therefore misplaced.

21. Now we deal with the last contention of Mr. Kulkarni that the defence of absence of employer and employee relationship was specifically raised in the earlier round of litigation. He relies upon the affidavit-in-reply filed by the Zilla Parishad in Writ Petition No. 6762 of 2020, in

which, such defence appears to have been taken. He submits that despite such defence, this Court granted relief of wages at minimum of pay scales by its order dated 13.01.2021. He has submitted that one such similar decision has been upheld by the Apex Court in **The Chief Executive Officer Zilla Parishad Solapur Vs. Ashok Dhondiba Meher & Ors.** Special Leave Petition (C) No. 8395 of 2021 decided on 23.03.2022. However we find that this court, in its various decisions relating to 'equal pay for equal work' has decided the issue of applicability by principles enunciated in **State of Punjab Vs. Jagjit Singh**, in which, it has been directed that all temporary employees (with whatever nomenclature such as adhoc, contractual, daily wagers) etc. are entitled to be paid minimum pay in the pay scale applicable to regular employees. Thus, in **Jagjit Singh (supra)** the benefit of wages in the minimum of pay scales has been extended to the contracted employees as well. Therefore, merely because the benefit minimum of pay scales is granted to them, it would not mean that the petitioners have become direct employees of the Zilla Parishad in any manner. Therefore, the contention of absence of employer-employee relationship being considered in altogether different context would not mean that there indeed exists such a relationship for seeking relief of continuation of services.

22. The reliance of Mr. Kulkarni on the documents filed along with additional rejoinder dated 19.09.2022 is again misplaced. Mr. Bondar, has successfully demonstrated that the payments were directly

deposited in the bank accounts of the petitioners towards wages arising out of the order passed by this Court to grant minimum of pay scales to the petitioners. Since the tenure of the earlier contractors had ended, the Zilla Parishad was not able to make payments of such arrears through those contractors and therefore, an exception was made to deposit the payments directly in their bank accounts. In our opinion, this would not make the petitioners as direct employees of the Zilla Parishad, in any manner. The reliance of Mr. Kulkarni on muster roll is also misplaced as mere certification thereof by the Medical Officer of Zilla Parishad would not mean that the muster roll is maintained by the Zilla Parishad or that the petitioners became the employees of the Zilla Parishad.

23. We therefore, do not find any merit in the petitions. All Petitions are dismissed with no orders as to costs. Interim order granted earlier stands vacated. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

24. After the judgment was pronounced, Mr. Kulkarni the learned Advocate appearing for the petitioner prays for continuation of interim relief in order to enable the petitioner to approach the Supreme Court.

25. Considering the reasons recorded by us for dismissing the petition, we are not inclined to continue the interim relief. The prayer is rejected.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

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