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

924 WRIT PETITION NO.13847 OF 2021
WITH CA/178/2022 WITH CA/13314/2021
WITH CA/13315/2021 WITH CA/13317/2021
IN WP/13847/2021

KAPIL KISAN GUJAR AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

AND
WRIT PETITION NO.3935 OF 2021

GRAMVIKAS SHASKIYA KANTRATHI KARMACHARI
SANGHATHANA, SHAHUNAGAR, GODOLI, SATARA AND
OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND
WRIT PETITION NO.4762 OF 2020

VINAYAK SUMANTRAO WARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND
WRIT PETITION NO.4765 OF 2020

UBALE SUNIL SURESH AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

AND
WRIT PETITION NO.5233 OF 2020

PRALHAD KHANDU UGALE
VERSUS
THE UNION OF INDIA AND OTHERS

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AND
WRIT PETITION NO.5591 OF 2020

PRAVIN VITTHALRAO HADADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND
WRIT PETITION NO.5588 OF 2020

SMT. SONALI SURYAKANT BHOSALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

AND
WRIT PETITION NO.5592 OF 2020

SMT. SUREKHA KESHAVRAO WANI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND
WRIT PETITION NO.7243 OF 2020

MAHARASHTRA STATE CONTRACTUAL EMPLOYEES
FEDERATION, THR. ITS WORKING PRESIDENT SHRI.
SACHIN SAHEBRAO JADHAV
VERSUS
CHIEF SECRETARY, STATE GOVERNMENT OF
MAHARASHTRA, MUMBAI AND OTHERS

....

Mr A. S. More, Mr Suresh Mane a/w Mr R. M. Jade, Mr Sachin S. Deshmukh, Mr Sayyed Tauseef Y., Mr S. S. Thombre, Mr S. S. Jadhavar, Mr K. P. Rodge, Mr S. A. Nagarsoge, Advocates for petitioners in respective petitions;

Mr Ashutosh M. Kulkarni, Special Counsel a/w Ms Akanksha Helaskar and Mr S. G. Karlekar, A.G.Ps. for respondents/State

Mr U. S. Mote, Advocate for respondent/Z.P. Beed

Mr R. R. Bangar, Ms. Sudha Chintamani, Counsel for respondent/ Union of India

Mr S. B. Pulkundwar, Advocate for respondent/Z.P. Nanded

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**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 7th January, 2023

PER COURT:

1. All these petitions have been placed before this Court in the light of an order passed by the Hon'ble The Chief Justice of the Bombay High Court. This statement, made by the learned Advocates for the petitioners and the learned A.G.P., was recorded in paragraph No.1 of our order dated 08/12/2022.

2. In the first petition (Writ Petition No.3689/2021), which was taken up for hearing at the Principal Seat on 11/08/2021, the Court directed that "*no coercive steps to be taken against the petitioner till 3rd September 2021*". Such protection, therefore, continued and as the petitions started being filed at the Aurangabad Bench and the Nagpur Bench as well as at the Principal Seat, the orders protecting the services of the petitioners were passed. It is on these premises, that all these petitioners, who are admittedly contractual employees working under a scheme, which is implemented by the State Government in coordination with the Union of India, have continued in the contractual employment under the scheme.

3. In the order dated 17/11/2021, passed in Writ Petition No.3689/2021, filed by Kapil Kisan Gujar and others Vs. Union of India and others, at Bombay, it was recorded that the Government Resolution dated 04/09/2020 was issued by the State Government in relation to the subject matter of the petition and the said Government Resolution is germane to the cause of action raised in the petition. Based on the said Government Resolution, the petitioner had sought leave to amend the petition for incorporating additional grounds and put forth consequential prayers.

4. On 12/01/2022, when this Court took up these petitions, it was recorded that the petitioners are working under the Scheme which was operated by the State Government and which has now been renamed as 'Jaljeewan Mission' and 'Swachh Bharat Mission (Gramin-II)' as per the directives issued by the Central Government. As such, it was also recorded that, additional funds would be made available from the Central Government. The submissions of the learned A.G.P. were also recorded that now the petitioners will not get monetary compensation and remuneration arising out of their respective contracts executed by them with

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respondent No.4, which is the Director, Bhujal Sarvekshan Vikas Yantrana.

5. Vide our order dated 08/12/2022, we had placed all these matters on 06/01/2023 with the understanding that, if the arguments in these matters, to be considered finally at admission stage, are to commence, the hearing would continue even on 07/01/2023.

6. There is no dispute that all the petitioners before us, desire continuance in employment, security of employment and all benefits incidental and consequential to such employment. They also desire that their services should be regularized with the Government of Maharashtra, since they are working under a contractual employment, to which the State Government is a party and their salaries are being paid by the State Government through funds, generated by the Government of India as well as by the State Government.

7. In the above backdrop, all these petitioners, who are admittedly now working under the 'National Rural Drinking Water Quality Programme', introduced in 2009 and operated by the State of Maharashtra in co-ordination with the Government of

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India, have continued in employment till today. The said programme is now renamed as 'National Jaljivan Mission'. The petitioners are in contradiction with the respondents as regards the tenure of the programme being limited until 2024. The petitioners contend that this is a never ending programme since it deals with supplying drinking water/providing potable water to the Rural parts of the State. The respondents, for the present, submit on instructions that the programme is to continue at least till 2024. The learned Special Counsel for the State of Maharashtra submits that, a statement off the cuff that this programme would continue in perpetuity, cannot be made by him at this stage.

8. From the pleadings of the parties, which are complete, it is obvious that the petitioners seek regularization and absorption in the service of the State Government. If all these petitions are founded on such prayers, we find that the view taken by this Court [Coram : Dipankar Datta, C.J. (as His Lordship then was) and M. S. Karnik, J.] in **Gaurav Ganesh Das Daga and others Vs. Maharashtra Public Service Commission and another, 2022 (2) Bom. C.R. 646**, would be applicable to all these cases. The learned Special Counsel has relied upon this judgment to canvass that, if, eventually, the issue, as to whether these

petitioners will have to be absorbed/regularized in the service of the Government of Maharashtra, is to be dealt with, Section 15 read with Section 3(q) of the Administrative Tribunals Act, 1985, would not permit this Court to exercise jurisdiction as an efficacious statutory remedy is available.

9. The learned Advocates for the petitioners unitedly submit that, they are keen that the High Court should deal with these matters. However, they submit that, if the matters are to be transferred to the learned Maharashtra Administrative Tribunal at the Aurangabad Bench, they are willing to appear before the said Tribunal. However, they make a two fold request to this Court. Firstly, that the interim protection granted by this Court to all the petitioners, which continues to protect them for more than two years, be continued till the Tribunal decides the petitions within a time frame. Secondly, that these matters, after being disposed off from the file of the High Court, be transferred to the Tribunal at Aurangabad, so as to be heard within a time frame, since the pleadings are complete and it would only be the recording of oral submissions of the parties, on the basis of which, the Tribunal can proceed to decide these petitions.

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10. The learned Special Counsel assisted by the learned A.G.P. on behalf of the State, though oppose the continuation of the interim relief, are agreeable for a decision by the Tribunal within a time frame.

11. We find that, this Court has concluded in Gaurav Ganesh Das Daga (supra), that a decree passed by this Court without jurisdiction, would be a nullity. Catena of reported judgments were considered by this Court. It was concluded in paragraph Nos.20 to 28 of the judgment in Gaurav Ganesh Das Daga (supra), as under :-

“20. For the reasons, as above, we hold that the decision in Sanjay (supra) does not lay down correct law. We are conscious that the decision in Sanjay (supra) has been rendered by a coordinate bench of this Court and in keeping with judicial decorum, discipline and comity, the matter ought to be referred to a larger bench for a decision; however, we have also found that the co-ordinate bench in Sanjay (supra) did not have the benefit of looking into the decision in Vijay Ghogare (supra) which, in turn, was rendered looking into other decisions of the Supreme Court. The decision in Rajeev Kumar (supra) too was not placed before the coordinate bench for consideration. Since we are inclined to accept the reasoning of the co-ordinate bench in

Vijay Ghogare (supra), we see no need to make a reference to a larger Bench.

21. Insofar as the decision in *Rajendra Prasad Sharma (supra)* is concerned, the coordinate Bench of the Delhi High Court also did not have the benefit of considering the decision in *Rajeev Kumar (supra)*. It proceeded to decide a writ appeal based on its own appreciation of the decision in *T.K. Rangarajan (supra)*. We need not remark as to whether the bench was right or wrong in its appreciation of the said decision. Suffice it to note, the decision in *Rajendra Prasad Sharma (supra)* is not an original decision but was rendered while hearing an intra-Court appeal and in course of such Appellate proceedings, the considerations are not quite the same as deciding a writ petition. However, the perception of the bench that the remedy available under section 14 of the Act is an alternative remedy to the writ remedy does not commend to us to be the correct view for reasons assigned above.

22. Now, we need to come back to *Kiran Singh (supra)* and say why it is relevant for the present purpose. In our considered opinion, a decision rendered by the High Court on a challenge of the present nature (which is covered by the provisions of the Act and MAT being the forum required to be approached for relief) would be a nullity in view of the decision in *Kiran Singh (supra)* read with *L. Chandra Kumar (supra)*. Knowing and understanding what the law is, straining ourselves to look into the merits of the

challenge and rendering a decision which we know would be a nullity should not at all be attempted.

23. We ought to deal with one other side argument of Mr. Deshmukh before recording our conclusion. He has submitted that since the GRs under challenge in this batch of writ petitions are also under challenge in a separate batch of writ petitions concerning recruitment of engineers in the Maharashtra State Electricity Distribution Company Ltd. (hereafter “MSEDCL”, for short), the MAT has no jurisdiction to try such writ petitions and the same would be required to be heard and decided on merits by this Court. However, driving one set of petitioners to move the MAT while allowing another set of petitioners to have their claim decided by the High Court could lead to divergent opinions being rendered. He, therefore, submits that it is desirable that this Court hears all the writ petitions analogously.

24. What Mr. Deshmukh says about pendency of other writ petitions is correct but his anxiety is based on assumptions; hence, we find no reason to accept his submission. If the decision on the claim of the petitioners aspiring for appointment in the MSEDCL is decided earlier in point of time to the decision being given by the MAT, this Court's decision would be binding on such tribunal; on the contrary, if the MAT decides the petitioners' application(s) earlier, this Court would have the benefit of such decision and thereafter decide whether to confirm or reverse the same based on the Court's understanding of the legal

issues. Therefore, the question of any divergent opinion being rendered and/or the same having the effect of prejudicing the result of the other writ petitions is too remote to call for any consideration now.

25. For the reasons aforesaid, all these writ petitions must fail on the ground of lack of jurisdiction of this Court to try the same. The writ petitions are disposed of, granting liberty to the petitioners to approach the MAT in accordance with law. Since these writ petitions have been pending on the file of this Court for quite some time, we are certain that if the MAT is approached, it will bear in mind the provisions of section 14 of the Limitation Act, 1963. Also, it shall proceed to decide the issues uninfluenced by the refusal of the Court to entertain the writ petitions. All contentions on merits are left open. No costs.

26. In view of the above, all pending interim applications do not survive and stand disposed of as such.

27. Mr. Deshmukh has, at this stage, prayed for an order on the MPSC not to proceed further with the selection process. Since we have found the writ petitions not to be maintainable, question of passing such restraining order does not also arise in view of the decision of the Supreme Court in ([State Of Orissa Vs. Madan Gopal Rungta](#)), 1951 DGLS(SC) 59 : A.I.R. 1952 S.C. 12. The prayer is, therefore, refused. However, we record the submission of

Mr. Kulkarni that for two weeks no action adverse to the petitioners' interest shall be taken.

28. Finally, Mr. Deshmukh has prayed that the MAT may be directed to dispose of the applications filed before it expeditiously. Since the petitioners are yet to approach the MAT, any direction as prayed is not called for at this stage. However, we have no doubt in our mind that the MAT, if approached, will proceed to give a decision in accordance with law as expeditiously as possible, subject to its convenience.”

12. It is noteworthy that the petitioners are not questioning or assailing the vires or legality of any provision of law. Relying upon **Secretary, State of Karnataka and others v/s Umadevi (3) and others, (2006) 4 Supreme Court Cases 1**, it is their contention that, as they are working under a programme which is a part of the sovereign functions of the State Government and are in employment for almost more than a decade, absence of protection of service would leave them in the lurch, and without service protection and retiral benefits, they would be rendered to misery and starvation.

13. In the matter of **Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and others, (2019) 419**

ITR 440, the Hon'ble Supreme Court has held that the High Court should practice restraint and should not entertain a petition, which is legally maintainable before a Statutory Forum. The Hon'ble Supreme Court has concluded that if a statutory remedy is available, the party should be relegated to the said remedy. **So also, in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Educational Society, 2019 SCC Online SC 1292**, the Hon'ble Supreme Court has held that this Court should refrain from entertaining a petition when statutory remedy is available.

14. In view of the above, all these petitions are disposed off from the file of the High Court. The Registry is directed to transfer these files to the learned Maharashtra Administrative Tribunal, Aurangabad Bench. Since the pleading are complete, by the consent of all the parties, we request the learned Tribunal to proceed with these matters as they are ready for a final hearing. The learned Advocates representing the petitioners as well as on behalf of the State, submit that the matters can be posted before the learned Tribunal on 30/01/2023. Thus, we request the learned Tribunal to place these matters for hearing on 30/01/2023. Notices to the parties are dispensed with.

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15. Considering the request of the learned Advocates for the petitioners and the objections raised by the respondents, the ad-interim protection granted by this Court would continue till the decision of the learned Tribunal. We request the learned Tribunal to decide these proceedings, on or before 30/06/2023. We are assured by the learned Advocates representing the petitioners that they would refrain from seeking adjournments before the Tribunal and co-operate for the expeditious disposal of these cases.

16. In view of the above, the pending civil applications also stand disposed off.

17. The learned Advocate for the petitioners in Writ Petition No.3935/2021 voiced a grievance that Dr. Nandlal Kishanrao Lokade, the Information, Education and Communication Advisor, Jal Jivan Mission and District Water Mission, Zilla Parishad, Nanded, who is the petitioner, is prevented by the Chief Executive Officer, Zilla Parishad, Nanded from reporting for duties. A grievance has been voiced by him vide communication dated 02/01/2023.

18. Shri. Pulkundwar, the learned Advocate appearing for Zilla Parishad, Nanded, submits that firstly, the Zilla Parishad, Nanded

is not a party to this proceeding. Secondly, the Deputy Chief Executive Officer Shri. Narayan Misal was present in the Court Hall in the morning session, but since he hails from Beed, he has left for Beed. However, he instructed Shri Pulkundwar to state to the Court that Dr. Lokade is not discontinued or suspended from service. He is still in service and notice is issued to him, for being a non-performer, and a particular procedure would be followed before taking any action against him. The learned Advocate representing Dr. Lokade submits that, no notice has been received by him, inasmuch as, the order of this Court protects the petitioner from unlawful termination.

19. We find that, this issue needs no adjudication since the petitioner Dr. Lokade is said to be still in employment. It is a separate cause of action in view of the submissions of Shri. Pulkundwar, which are not addressed to the Court. Therefore, we need not adjudicate this dispute and we leave the parties at liberty to avail of the remedies, as are permissible in law.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)