

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

MISC. CIVIL APPLICATION NO. 711 OF 2022

IN

WRIT PETITION NO. 2247 OF 2014 (D)

(Zilla Parishad, Chandrapur, through CEO ..vs.. Dhiraj s/o Sudhakar Rao Wankhede and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V. Sohoni and Mr. A.Y. Kapgate, Counsel for the applicant,
Mrs. S.S. Wandile, Counsel for respondents 1 to 9, 12 to 16, 19 to 21 and
23 to 26,
Mrs. K.R. Deshpande, AGP for respondents 27 to 30.

**CORAM : ROHIT B. DEO &
M.W. CHANDWANI, JJ.**

DATED : 30-06-2023

Zilla Parishad, Chandrapur is seeking review
of the judgment dated 20-11-2019 in Writ Petition
2247/2014.

2. The review applicant did challenge the
judgment supra by preferring petition for Special
Leave to Appeal which came to be dismissed by the
Supreme Court vide order dated 22-2-2021.

3. Broad facts which are considered by this
Court while partly allowing Writ Petition 2247/2014
are that the petitioners (respondents herein) are

working as contractual drivers since 2004-05. The petitioners sought regularization on the ground that having rendered more than ten years of continuous service as contractual drivers, and the Standing Committee of the Zilla Parishad having recommended their regularization, treating them as contractual drivers is violative of Article 14 of the Constitution of India.

4. By the judgment under review, the claim of the petitioners for regularization in service is rejected. However, in view of the protection granted to similarly situated employees in Writ Petition 6025/2015, this Court directed that the petitioners shall not be terminated till the permanent posts in clear vacancies are filled up by following due procedure. Relying on the decision of the Supreme Court in *State of Punjab and others v. Jagjit Singh and others*, (2017) 1 SCC 148 this Court directed that the petitioners be paid wages at the minimum of

the pay scale (at the lowest grade, in the regular pay scale) which is applicable to regular employees holding the same post with effect from the date of the petition.

5. We may extract the relevant passages in the judgment under review.

*“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 ..vs.. 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 dependents 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

discharge/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."

6. Mr. S.V. Sohoni and Mr. A.Y. Kapgate who appear on behalf of the review applicant would submit that the direction issued supra is an error apparent on the face of the record inasmuch as the nature of duties discharged by regular drivers and contractual drivers is not identical.

7. Mrs. S.S. Wandile who appears on behalf of the petitioners-contractual drivers, would emphasize

that while two affidavits-in-response are filed by the Zilla Parishad in Writ Petition 2247/2014, the Zilla Parishad, Chandrapur did not contend that the nature of work performed by contractual drivers and regular drivers is different. Mrs. S.S. Wandile would submit that *au contraire*, the contractual drivers are required to be on duty for twenty-four hours without holidays while the regular drivers have fixed eight working hours daily and enjoy holidays.

8. Mrs. S.S. Wandile submits that similar order is passed by the Principal Bench in petitions preferred by Ambulance Drivers working on contractual basis on the establishment of Solapur and Kolhapur Zilla Parishads, following the judgment under review. Solapur and Kolhapur Zilla Parishads approached the Supreme Court in Special Leave Petition (C) 8395/2021 which is dismissed by speaking order dated 23-3-2022.

9. The Supreme Court noted that the Principal Bench followed the judgment in Writ Petition 2247/2014, Dhiraj s/o Sudhakar Rao Wankhede and others v. Zilla Parishad, Chandrapur (judgment under review) and observes thus -

*“10. In the above circumstance, it is noticed that in the present facts the only relief granted by the High Court to the private respondents herein is to be paid the 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. The said benefit ordered to be extended is in tune with the observations of this Court in **Jagjit Singh** (supra). Further, in the instant facts what cannot be overlooked is also that the private respondents though employed through the contractors are discharging the onerous duties of driving the ambulance which is operated to provide the benefit of public health to the citizens in the PHC's under the Zilla Parishad which in turn is for discharging the obligation of the State. Therefore, in such circumstances, the minimum relief that has been granted by the High Court would not call for interference.*

*We at this juncture also take note of the fact that the judgment dated 20.11.2019 passed by the coordinate bench of the High Court in **Dhiraj S. Wankhede** (supra), relied upon by the High Court in the instant case had been assailed before this Court in a Special Leave Petition (Civil) bearing Diary No.12195/2020. However, the Special Leave Petition came to be dismissed by this Court on 22.02.2021.”*

10. We note that while the Special Leave Petition preferred by the review applicant is dismissed by non speaking order, the judgments rendered by the Principal Bench which follow the judgment under review are confirmed by the Supreme Court by dismissing the Special Leave Petition by speaking order.

11. We see no error, muchless error apparent, in the judgment under review.

12. The review application is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand) which shall

be deposited by the review applicant with the registry within two weeks from the date this order is uploaded on the High Court website. The petitioners-contractual drivers, who have entered appearance in the review application, are permitted to withdraw the said amount equally.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

adgokar