

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

WRIT PETITION NO.4485 OF 2021

Mohamad Harun Chunnuniya Shaikh,
Age : 36 years, Occu.: Driver,
R/o.: Karepur, Tq. Karepur,
District : Latur

.... PETITIONER

Versus

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

.... RESPONDENTS

....

Advocate for the Petitioner : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondents-State : Mr. A. S. Shinde
Advocate for Respondent Nos. 4 & 5 : Mr. U. B. Bondar

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AND

WRIT PETITION NO.8104 OF 2021

Sanjay Dhanraj Zagade,
Age : 37 years, Occu.: Driver,

R/o.: Patonda, Tq. Chalisgaon,
District : Jalgaon

.... PETITIONER

Versus

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 Chief Executive Officer,
Zilla Parishad, Jalgaon

5. The Medical Officer,
Primary Health Centre Patonda,
Zilla Parishad, Jalgaon

.... RESPONDENTS

....

Advocate for the Petitioner : Mr. M. C. Syed h/f Mr. P. A. Kulkarni

AGP for Respondents-State : Mr. A. S. Shinde

Advocate for Respondent Nos. 4 & 5 : Mr. M. S. Sonawane

...

AND

WRIT PETITION NO.8111 OF 2021

Sudhir Sambhaji Mhaske,
Age : 42 years, Occu.: Driver,
R/o.: Rajapuri Galli, Paranda,
District : Osmanabad

.... PETITIONER

Versus

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 Civil Surgeon,
Civil Hospital, Osmanabad
 5. The Chief Executive Officer,
Zilla Parishad, Osmanabad
- RESPONDENTS

....
Advocate for the Petitioner : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Mr. A. S. Shinde
Advocate for Respondent Nos. 4 & 5 : Mr. P. P. More

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AND
WRIT PETITION NO.10493 OF 2021

Kisan Laxman Borkar,
Age : 37 years, Occu.: Driver,
R/o.: Jaldhara Tanda
Tq- Kinwat, Dist. Nanded

.... PETITIONER

Versus

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 Civil Surgeon Nanded,
District : Nanded
5. The Chief Executive Officer,
Zilla Parishad, Nanded RESPONDENTS

....

Advocate for the Petitioner : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Mr. A. S. Shinde
Advocate for Respondent No.5 : Mr. S. B. Pulkundwar

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**WITH
WRIT PETITION NO.10494 OF 2021**

1. Akshay Govind Jadhav
Age : 22 years, Occu.: Driver,
R/o.: Chandolatanda,
Tq- Mukhed, Dist. Nanded
2. Suresh Naroji Jadhav.
Age : 53 years, Occu.: Driver,
R/o.: Bamni, Tq. Loha,
District : Nanded PETITIONERS

Versus

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, Nanded
5. The Chief Executive Officer,
Zilla Parishad, Nanded RESPONDENTS

....
Advocate for the Petitioners : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Mr. A. S. Shinde
Advocate for Respondent Nos.4 & 5 : Mr. S. B. Pulkundwar

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WITH
WRIT PETITION NO.10541 OF 2021

Indrasing Gulabsingh Pandhare,
Age : 31 years, Occu.: Driver,
R/o.: Nandgaon Tanda, Tq. Kinwat,
Dist. Nanded PETITIONER

Versus

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 : Nanded
5. The Chief Executive Officer,
Zilla Parishad, Nanded RESPONDENTS

....

Advocate for the Petitioner : Mr. M. C. Syed h/f Mr. P. A. Kulkarni

AGP for Respondent-State : Mr. A. S. Shinde

Advocate for Respondent Nos. 4 & 5 : Mr. S. B. Pulkundwar

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WITH

WRIT PETITION NO.10546 OF 2021

1. Gajanan Bajirao Pavade,
Age : 32 years, Occu.: Driver,
R/o.: Mugat, Tq. Mudakhed,
Dist. Nanded
2. Ramaji Maroti Landge,
Age : 29 years, Occu. Driver,
R/o.: At Rahati (RH) Post : Maoor
Tq. Umri, District : Nanded
3. Yadav Bhujang Khandare,
Age : 35 years, Occu.: Driver,
R/o.: Chikna, Tq. Dharmabad,
District : Nanded PETITIONERS

Versus

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, Nanded
5. The Chief Executive Officer,
Zilla Parishad, Nanded RESPONDENTS

....
 Advocate for the Petitioners : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
 AGP for Respondent-State : Mr. A. S. Shinde
 Advocate for Respondent Nos.4 & 5 : Mr. S. B. Pulkundwar

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WITH
WRIT PETITION NO.10553 OF 2021

1. Dinesh Babarao Hambarde,
Age : 37 years, Occu.: Driver,
R/o.: Bijegaon, Tq. Umri,
District : Nanded
2. Satish Shesherao Dhere,
Age : 32 years, Occu.: Driver,
R/o.: Waghawada, Tq. Umri,
District : Nanded PETITIONERS

Versus

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 Civil Surgeon
Civil Hospital Nanded
5. The Chief Executive Officer,
Zilla Parishad, Nanded RESPONDENTS

....

Advocate for the Petitioners : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Mr. A. S. Shinde
Advocate for Respondent No.5 : Mr. S. B. Pulkundwar

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AND
WRIT PETITION NO.10495 OF 2021

1. Natin Kashinath Swami,
Age : 43 years, Occu.: Driver,
R/o.: Chambhar Galli Andur,
Tq. Taljapur, Dist : Osmanabad
2. Shail Allabakssh Sayyed,
Age : 37 years, Occu.: Driver,
R/o.: Buruj Pohener,
Tq. & Dist : Osmanabad
3. Haresh Abumahamad Patel,
Age : 46 years, Occu.: Driver,
R/o.: Salgara, Divit, Tq. Tuljapur,
District : Osmanabad PETITIONER

Versus

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, Osmanabad
 5. The Chief Executive Officer,
Zilla Parishad, Osmanabad
- RESPONDENTS

....
Advocate for the Petitioners : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Ms. R. P. Gaur
Advocate for Respondent Nos.4 & 5 : Mr. P. P. More

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AND
WRIT PETITION NO.10540 OF 2021

1. Netaji Mahadev Salunke,
Age : 36 years, Occu.: Driver,
R/o.: Bavi, Tq & Dist. Osmanabad
 2. Sanjay Tanaji Rupanar,
Age : 43 years, Occu.: Driver,
R/o.: Swargaon, Tq. & Dist.
Osmanabad
- PETITIONERS

Versus

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 Chief Executive Officer,
Zilla Parishad, Nanded

....

RESPONDENTS

....

Advocate for the Petitioners : Mr. M. C. Syed h/f Mr. P. A. Kulkarni
AGP for Respondent-State : Ms. V. N. Patil Jadhav
Advocate for Respondent No.4 : Mr. S. B. Pulkundwar

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**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 6 JULY 2022.

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ORAL JUDGMENT (PER : C. V. BHADANG , J.) :

Rule. Rule made returnable forthwith. Learned AGP for the respondents-State waives service. Heard finally by consent of the parties.

2. All these petitions involve a common issue about payment of salary / wages to the drivers employed to work on the ambulance service by the Health Department of respondent Zilla Parishads. The issue is no longer *res integra*, as it is covered by several decisions of this court and therefore, may not detain us long.

3. It is undisputed that respondent Zilla Parishads had floated tenders calling upon contractors for providing drivers to be placed at the disposal

of the Zilla Parishads in the Health Department to look after the essential service of driving ambulance.

4. There are several petitions filed before this court, in which such drivers had sought parity in the matter of payment of wages at the minimum of the pay scale at the lowest grade of the regular employees holding same / similar post.

5. The learned counsel for the petitioner has pointed out the order dated 8 December 2020 passed by the Division Bench of this court in a batch of writ petitions bearing *Writ Petition (ST)No. 92250 of 2020 and others, (Nagendrayya P. Hiremath and others vs. The State of maharashtra and others)* in which the Division Bench at the Principal Seat taking note of the decision in *Dhiraj S. Wankhede and others vs. The Zilla Parishad, Chandrapur and others in Writ Petition No. 2247 of 2014* dated 20 November 2019 (Nagpur Bench), has granted similar relief. It is pointed out that the said decision was carried to the Hon'ble Supreme Court in a batch of Special Leave Petitions bearing SLP (Civil) No. 8395 of 2021 and others and Supreme Court has refused to interfere in the order passed by this court as per the judgment and order dated 23 March 2022. Yet another Division Bench of this court sitting at Aurangabad in Writ Petition No. 6899 of 2020 and others by order dated 13 January 2021 and taking note of the decision in the case of *Dhiraj S. Wankhade* (supra), has granted similar reliefs.

6. The only contention raised on behalf of respondent Zilla Parishads, is that the drivers were employed through contractors and as such there is no relationship of master and servant between the Zilla Parishads and the

said drivers. The learned counsel for the Zilla Parishads strenuously urged that this is a distinguishing feature and in as much as the drivers were employed by the independent contractors, whose services have been placed at the disposal of Zilla Parishads, Zilla Parishads are not liable to pay the wages as per the minimum of the pay scale. The learned counsel pointed out that under the contract between the Zilla Parishads and the concerned contractors, there is a lump-sum payment agreed upon and the respondents Zilla Parishads are only liable to pay the same. It is also submitted that there are review applications filed in so far as the judgment of this court are concerned. Except these, there are no other contentions raised.

7. We have carefully considered the circumstances and submissions made.

8. This court in ***Dhiraj S. Wankhade*** (supra) has 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 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 domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

11. *It is clear that 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."*

9. Placing reliance on the said judgment, the Principal Seat as well as the Division Bench sitting at Aurangabad, has granted similar reliefs to the drivers working with the various Zilla Parishads. As noticed earlier, the judgment at the Principal Seat was carried to the Supreme Court,

where the Supreme Court has refused to interfere with the said judgment. The contention about the drivers being employed by the contractors and therefore refuting liability to pay the wages at minimum pay scale, also cannot be accepted as the said aspect has also been considered by the Hon'ble Supreme Court in its order dated 23 March 2022. The following observations in para 10 of the order are relevant for the purpose:

"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 Panchayat 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. Wankhade (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.*"

(Emphasis supplied)

10. It can thus be seen that the Supreme Court after taking note of the fact that the private respondents (original petitioners) although were employed through contractors, were discharging the onerous duties of driving the ambulance, which was operated to provide the benefit of public health to the citizens in the Primary Health Centers (PHC's under the various Zilla Parishads), which in turn, is for discharging the obligation of the State, has refused to accept a similar contention.

11. It is not necessary to multiply authorities on the point considering that a similar view has been consistently taken by this court, we also propose to follow suit. In such circumstances, the petitions are allowed. The petitioners be paid wages at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regular employees of the Zilla Parishads holding same post with effect from the date of the petition.

12. The respondent - Zilla Parishads are directed to comply with this order within a period of six months from today.

143 Rule is made absolute in the aforesaid terms with no order as to costs.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

VS Maind/-