IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CONT. PETITION NO. 147 OF 2024

SUBHASH CHANDAR SAPATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

AND
904 CONT. PETITION NO. 183 OF 2024
IN RA/137/2023

SHAM UMARAV PATIL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY

AND

CONT. PETITION NO. 131 OF 2024

AND

CONT. PETITION NO. 127 OF 2024

AND

CONT. PETITION NO. 136 OF 2024

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CONT. PETITION NO. 137 OF 2024

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CONT. PETITION NO. 132 OF 2024

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CONT. PETITION NO. 144 OF 2024

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AND

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IN RA/139/2023

AND

CONT. PETITION NO. 226 OF 2022
IN WP/6231/2020

AND

CONT. PETITION NO. 232 OF 2022
IN WP/6232/2020

AND

CONT. PETITION NO. 231 OF 2022
IN WP/5445/2020

AND

CONT. PETITION NO. 197 OF 2023
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CONT. PETITION NO. 535 OF 2022
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CONT. PETITION NO. 534 OF 2022
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IN WP/4495/2021

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IN WP/5426/2020

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IN WP/4496/2021

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CONT. PETITION NO. 536 OF 2022
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CONT. PETITION NO. 538 OF 2022
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CONT. PETITION NO. 541 OF 2022
IN WP/4892/2020

AND

CONT. PETITION NO. 545 OF 2022
IN WP/4473/2020

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CONT. PETITION NO. 540 OF 2022
IN WP/5809/2020

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CONT. PETITION NO. 539 OF 2022
IN WP/5427/2020

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AND

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CONT. PETITION NO. 517 OF 2023
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CONT. PETITION NO. 514 OF 2023
IN RA/51/2023

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CONT. PETITION NO. 515 OF 2023
IN RA/32/2023

AND

CONT. PETITION NO. 800 OF 2022
IN WP/4478/2021

AND

CONT. PETITION NO. 652 OF 2023
IN RA/17/2023

AND

CONT. PETITION NO. 653 OF 2023
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CONT. PETITION NO. 654 OF 2023
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CONT. PETITION NO. 655 OF 2023
IN RA/37/2023

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CONT. PETITION NO. 645 OF 2023
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CONT. PETITION NO. 644 OF 2023
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CONT. PETITION NO. 642 OF 2023
IN WP/7252/2020

AND

CONT. PETITION NO. 648 OF 2023
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CONT. PETITION NO. 643 OF 2023
IN RA/141/2023

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CONT. PETITION NO. 656 OF 2023
IN RA/145/2023

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CONT. PETITION NO. 651 OF 2023
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CONT. PETITION NO. 646 OF 2023
IN RA/74/2023

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IN RA/33/2023

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CONT. PETITION NO. 733 OF 2023
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IN RA/135/2023

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IN RA/63/2023

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IN RA/138/2023

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IN RA/140/2023

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CONT. PETITION NO. 748 OF 2023
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CONT. PETITION NO. 719 OF 2023
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CONT. PETITION NO. 757 OF 2023
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CONT. PETITION NO. 732 OF 2023
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IN RA/30/2023

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CONT. PETITION NO. 754 OF 2023
IN RA/67/2023

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CONT. PETITION NO. 755 OF 2023
IN RA/152/2023

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CONT. PETITION NO. 756 OF 2023
IN RA/144/2023

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CONT. PETITION NO. 720 OF 2023
IN RA/69/2023

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CONT. PETITION NO. 751 OF 2023
IN RA/65/2023

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CONT. PETITION NO. 752 OF 2023
IN RA/20/2023

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CONT. PETITION NO. 721 OF 2023
IN RA/329/2022

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CONT. PETITION NO. 722 OF 2023
IN RA/327/2022

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CONT. PETITION NO. 715 OF 2023
IN RA/62/2023

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CONT. PETITION NO. 714 OF 2023
IN RA/59/2023

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CONT. PETITION NO. 713 OF 2023
IN RA/325/2022

AND

CONT. PETITION NO. 718 OF 2023
IN RA/57/2023

AND

CONT. PETITION NO. 746 OF 2023
IN RA/328/2022

AND

CONT. PETITION NO. 186 OF 2024
IN WP/6235/2023

AND

905 CONT. PETITION NO. 354 OF 2024

RITESH ALIAS JEETU BABULAL CHAKRAVARTY AND OTHERS
VERSUS
SMT. SOMYA SHARMA CHIEF EXECUTIVE OFFICER AND OTHERS

AND

906 CONT. PETITION NO. 763 OF 2024
IN WP/1446/2024

RAMESH KESHAV KAJALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE

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Advocate for the Petitioners : Mr. Kulkarni Pramod Ambadasrao
Advocate for the Petitioner in CP/354/2024 : Mrs. Sharda S. Wandile
Special Counsel for the Respondents/State : Mr. Ashutosh Kulkarni a/w. Shri M.M. Nerlikar, Addl. G.P. and S/Shri S.K. Tambe, V.M. Kagne, N.D. Batule, N.S. Tekale, S.R. Wakale and Ms. Neha Kamble, AGPs in respecive Petitions

Advocate for Resp. / Z.P. Nashik : Mr. U.B. Bondar
Advocate for Resp. / Z.P. Jalgaon : Mr. V.V. Gujar
Advocate for Resp. / Z.P. Sangli : Mr. H.V. Patil
Advocate for Resp. / Z.P. Raigad : Mr. A.D. Aghav
Advocate for Resp. / Z.P. Palghar : Mr. Shrikant Veer
Advocate for Resp. / Z.P. Dhule : Mr. N.N. Desale
Advocate for Resp. / Z.P. Dharashiv : Mrs. S.S. Renge

Advocate for Resp. / Z.P. Nandurbar : Mr. Rakesh N. Jain in CP/226/2022, CP/232/2022, CP/231/2022, CP/197/2022, CP/531/2022, CP/544/2022, CP/535/2022, CP/534/2022, CP/533/2022, CP/543/2022, CP/536/2022, CP/542/2022, CP/538/2022, CP/541/2022, CP/545/2022, CP/540/2022, CP/539/2022, CP/537/2022 and CP/610/2022

Advocate for Resp. Aurangabad Z.P.: Mr. S.B. Pulkundwar in CP 515/2023 in RA 32/2023, CP 652/2023 in RA 17/2023, CP 653/2023 in RA 31/2023, CP 654/2023 in RA 16/2023, CP 655/2023 in RA 37/2023, CP 658/2023 in RA 27/2023, CP 738/2023 in RA 22/2023, CP 750/2023 in RA 29/2023, CP 752/2023 in RA 20/2023, CP 737/2023 in RA 14/2023, CP 729/2023 in RA 33/2023, CP 740/2023 in RA 24/2023, CP 758/2023 in RA 25/2023, CP 759/2023 in RA 15/2023, CP 747/2023 in RA 34/2023, CP 745/2023 in RA 23/2023, CP 741/2023 in RA 18/2023, CP 734/2023 in RA 35/2023, CP 732/2023 in RA 36/2023, CP 731/2023 in RA 38/2023, CP 726/2023 in RA 21/2023, CP 725/2023 in RA 30/2023

Advocate for Resp. Nanded Z.P. : Mr. S.B. Pulkundwar in CP 518/2023 in RA 324/2022, CP 713/2023 in RA 325/2022, CP 721/2023 in RA 329/2022, CP 722/2023 in RA 327/2022, CP 746/2023 in RA 328/2022,CP 730/2021 in RA 326/2022

Advocate for Resp. Nagpur Z.P.: Mr. S.B. Pulkundwar in CP 354/2024

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CORAM : RAVINDRA V. GHUGE & Y.G. KHOBRAGADE, JJ.
DATE : 27th September, 2024

P.C. :-

1. We have considered the submissions of the learned advocates for the Petitioners and the Special Counsel for the State Government, Shri Ashutosh Kulkarni, along with the learned Addl. G.P. and the learned AGPs.

2. All these matters pertain to the Contempt Proceedings initiated against the Respondents. The learned advocates for the Petitioners submit that since this Court has delivered an extensive order on 30.08.2024, in a large group of Writ Petitions, viz. **Writ Petition No.1446/2024 (Ramesh Keshav Kajale and Ors. V/s. State of Maharashtra & Ors.)** and group of cases, these Petitioners pray that the Respondent-State Authorities be put to terms in accordance with the conclusions drawn by this Court in the order dated 30.08.2024. If the State Government obeys the order of the Hon'ble Supreme Court and of the various Benches of this Court, the Petitioners would pray for the disposal of these Contempt Petitions.

3. The learned Special Counsel Shri Ashutosh Kulkarni, submits on instructions from certain officers of the State Government that the State Government has already commenced an exercise of verifying each and every case, as regards the engagement agency of these Petitioners, the

Principal-Employer and as to what would be the ultimate burden on the State Government, to pay the salaries as have been directed by the Hon'ble Supreme Court and by this Court. He further submits that some of the Zilla Parishads have not tendered the details about such Ambulance Drivers. If they are directed to submit the details within a specific timeline, the State Authorities would be able to scrutinize each of the cases and after obtaining appropriate sanction from the Finance Department, further steps can be initiated.

4. The learned advocates appearing for various Zilla Parishads submit that in many of the cases, the Zilla Parishads are the Principal-Employer. In a few cases, the Zilla Parishads have directly engaged Ambulance Drivers. In some cases, the District Civil Surgeon has also engaged the Ambulance Drivers as an Agency / Principal-Employer.

5. We are not required to go into all these aspects for the reason that, much water has flowed under the bridge in the last four years of the litigation initiated by Ambulance Drivers. While considering a large group of Writ Petitions on 30.08.2024, we have recorded three situations in paragraph no.2, which read as under:

> *"2. All these Petitioners are identically placed Ambulance Drivers. Considering the pleadings and the affidavit-in-reply filed by the Deputy Director, Health Services, Chhatrapati Sambhajinagar Circle, dated*

04/07/2024, which is treated as a common reply in all these Writ Petitions, the record would indicate three situations, as under :-

(a) In most of these matters, the Zilla Parishads have engaged contractual services of Ambulance Drivers directly;

(b) In some cases, the Zilla Parishads have appointed the 'Rugna Kalyan Samiti' (especially Nandurbar and Jalgaon).

(c) In some cases, these Ambulance Drivers have been engaged on contractual basis directly by the Chief Executive Officer of the Zilla Parishad or through a Contractor."

6. We then considered several orders and judgments delivered by this Court at the Principal Seat, at the Aurangabad Bench and the Nagpur Bench. Several Contempt Petitions were also filed before the Nagpur Bench. We, therefore, perused various orders passed by this Court and we recorded in paragraph 4 of our order dated 30.08.2024, as under:

"4. In several hundreds of cases, this Court has concluded on the following issues :-

(a) None of these contractual Ambulance Drivers would be entitled to claim regularization or permanency in the service, either in the State Government or in the Zilla Parishads. Of course, it would be open to the State Government, if they desire, to introduce a policy in the light of the Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, [(2006) 4 Supreme Court Cases 1];

(b) The manner of payment of salaries of these contractual Ambulance Drivers would be continued as per the prevailing contractual arrangement between the Zilla Parishads and the Contractors or directly by the Zilla Parishads, as the case may be.

(c) These contractual Ambulance Drivers would be continued on contractual basis and would not be replaced by other contractual Drivers, in short, a contractual Ambulance driver would not be replaced by another contractual Ambulance Driver."

7. A group of matters wherein orders were passed by this Court with regard to payment of monthly wages, reached the Hon'ble Supreme Court in Special Leave Petition (Civil) No.8395/2021 **(C.E.O., Zilla Parishad, Solapur V/s. Ashok Dhondiba Meher & Ors.)**, wherein the Hon'ble Supreme Court delivered a verdict on 23.03.2022, concluding that the only relief granted by the High Court to the contractual Ambulance Drivers was that they should 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 posts. This has been the last word of the Hon'ble Supreme Court on the litigation journey between the Ambulance Drivers vis-a-vis the Contractors / Principal-Employer.

8. The Hon'ble Supreme Court dealt with the judgment dated 20.11.2019, delivered by the Nagpur bench in **Dhiraj Sudhakarrao Wankhede & Ors. V/s. The Zilla Parishad, Chandrapur and Ors. (Writ Petition No.2247/2014)** and sustained the said judgment in Special Leave Petition (Civil) bearing Diary No.12195/2020. By the order dated 22.02.2021, the Special Leave Petition was dismissed.

9. As such, the issue that has been put to rest in this litigation journey is that none of the Ambulance Drivers can seek regularization in service with the Principal-Employer, either it be the Zilla Parishads or the

District Civil Surgeon and that the best benefit that they can derive is that they would be entitled for the minimum of the pay scale in the lowest grade, in the regular pay scale extended to the regular employees holding the same posts.

10. In our order dated 30.08.2024, we have noted that it is only after the State Government introduces a scheme akin to the scheme that was introduced under the orders of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others v/s Umadevi (3) and others, (2006) 4 Supreme Court Cases 1**. If such a scheme is introduced by the State Government, the situation is likely to assume a new dimension. Until such a scheme is introduced, none of these Ambulance Drivers would be able to seek regularization since the claim for regularization has been rejected in **Dhiraj Sudhakarrao Wankhede** (supra), and this judgment has been sustained by the Hon'ble Supreme Court by the order dated 22.02.2021, in Special Leave Petition (Civil) bearing Diary No.12195/2020.

11. While dealing with these Contempt Petitions, on the one hand, the Petitioners submit that they do not derive any advantage even if the Petitions are taken to a logical end leading to awarding of punishment to any Government Officer. They would be happy if this Court issues certain

directions giving sufficient time to the State Government to make the payment of arrears of salaries and more importantly, for the payment of regular monthly salaries, since they are all presently in a state of poverty. The learned Special Counsel Shri Kulkarni submits that it is anybody's guess and it is a view of the State, that as a model employer, the State would never disobey any order of any Court. In the present cases, the State does not desire to disobey any order. It is only that the State is under a severe financial crunch due to which the State is unable to immediately dole out sufficient funds for an urgent clearing of the arrears of pay scale of the Petitioners. He reiterates, as is recorded in the earlier paragraphs, that the State Government will carefully scrutinize each of the cases of Ambulance Drivers and after assessing the total financial burden, would initiate further steps.

12. We are of the view that keeping these Contempt Petitions pending in the above peculiar facts of the case, may not serve anybody's purpose. Ends of justice would be met if we call upon the Petitioners to suggest as to whether we could put the State Government to certain terms. The learned advocates for the Petitioners submit that primarily, the first and foremost step to be taken by the State Government is to abide by the directions of the Hon'ble Supreme Court and of the Bombay High Court, in

granting wages at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regularly appointed employees. Secondly, the State Government can enter into a verification exercise as regards the exact number of Ambulance Drivers, those who are in employment and the arrears to be paid.

13. According to the Petitioners, the verification exercise can be done in a short period and the arrears can be cleared in two installments. Regular payment of monthly salaries will have to be done without an exception. The learned advocate Mrs. Sharda Wandile appearing on V.C. mode from Nagpur, representing one Petitioner, submits that the Zilla Parishads as also the State are laboring under a misconception that what has been directed by this Court and which has been affirmed by the Hon'ble Supreme Court, is only payment of basic wages. They need to keep in mind that the minimum wages comprise of basic as well as the dearness allowance. These components put together constitute the minimum wages.

14. While dealing with the issue raised by learned advocate Mrs. Wandile, we have no hesitation in reminding the Zilla Parishad / Principal-Employers that the minimum wages are defined under the Minimum Wages Act, 1948. The dearness allowance is revised every six months and

in peculiar circumstances, the revision occurs even on a third occasion in a calendar year. The minimum wages include the basic and the dearness allowance component, though other allowances in private industrial sector in peculiar circumstances, could be a part of the minimum wages. Hence, when this Court has directed that the wages payable to these Ambulance Drivers would be at the minimum of the pay scale at the lowest grade in the regular pay scale extended to the regular employees holding the same posts, it would mean the basic as well as the dearness allowance. Hence, this would be the package payable to each of the Ambulance Drivers.

15. In the light of the submissions of the learned advocates for the Petitioners and the learned Special Counsel for the State of Maharashtra and to render a quietus to this litigations by consent, we find that the submissions of the learned advocates for the Petitioners can be tweaked and the following directions can be issued to the litigating parties before us;-

a) Those Zilla Parishads who have still not tendered the details of the Ambulance Drivers who are in service, to the Public Health Department of the State Government, they shall issue an e-mail communication to these Zilla Parishads within ten days from today, reminding them for tendering the details of the Ambulance Drivers to the said Department.

b) All those Zilla Parishads (we are told that they are only five in numbers), shall ensure that the details of the Ambulance Drivers would be conveyed to the Public Health Department, Mantralaya, Mumbai, within 30 days from the date of the receipt of the e-mail.

c) After these details are available with the said Department (as we are told that except five, all others have furnished the details), the concerned Department of the State Government shall commence a verification exercise in right earnest and complete the exercise within 60 days.

d) After the above exercise is completed, the said Department, in co-ordination with the Finance Department, would assess the total burden of the arrears of wages, which shall be paid to the Ambulance Drivers within a period of 90 days.

e) After the above exercise is completed, the State Government shall bifurcate the arrears of wages, with interest as is statutorily paid, into four equated installments and these four installments would be paid from the month excluding the following month in which the calculations are made. For example, if the quantification of the liability is done in the month of April 2025, by excluding the following month of May, the first installment would be paid on or before the 10th day of June 2025. It be kept in mind that this is purely an illustration.

f) If the above time schedule is followed, the State gets a time frame of approximately six months for calculations and assessment of liability. Thereafter, excluding the intervening month, they can pay the dues to the Ambulance Drivers in four equated monthly installments. This whole exercise would, therefore, require around eleven months which could be

sufficient time to the State Government to implement the orders of this Court and of the Hon'ble Supreme Court.

16. The learned advocates for the Petitioners are satisfied with the above formula. We, therefore, record that the above time schedule shall be strictly followed by the State Government and whether the Model Code of Conduct is introduced or whether there are elections, would not be an impediment for completing such exercise.

17. In so far as the payment of regular salaries of these Ambulance Drivers is concerned, we have considered one peculiar grievance in our order dated 30.08.2024, in paragraph 21 (c) which reads as under:

> *"21 (c): Considering the grave and serious complaints about Contractors not paying the wages to these Petitioners on the principle laid down by the Hon'ble Supreme Court in Ashok Dhondiba Meher (supra), we deem it appropriate to direct the Principal Employer to directly make the payments of these contractual Ambulance Drivers, vide Bank transactions in their salary Bank Accounts. Such payment shall not be a ground for alleging that the contract is sham and bogus and no employer/employee relationship would be deemed to be established between such Ambulance Drivers vis-a-vis the Zilla Parishad or the Principal Employer."*

18. In view thereof, it goes without saying that because these drivers have been engaged to perform duties with the Zilla Parishads, it is the look out of the Zilla Parishads to ensure that their monthly salaries as per the directions of this Court in **Ashok Dhondiba Meher** (supra) which

judgment has been sustained by the Hon'ble Supreme Court, are paid at the minimum of the pay scale at the lowest grade, in the regular pay scale extended to the regular employees holding the same posts. Such regular payments of the minimum wages shall commence from the pay day in the month of October 2024 and shall be continued uninterruptedly, failing which, the Petitioners would be at liberty to initiate Contempt of Court proceedings and in which case, we would be treating it to be aggravated contempt proceedings.

19. Needless to state, the payments being made either by the Principal-Employer or the State, directly to the Ambulance Drivers as the case may be, would not mean that an Employer-Employee relationship has been created between the Ambulance Drivers and the Zilla Parishads or the District Civil Surgeon. So also, the Principal-Employer in terms of the Contract Labour (Regulation and Abolition) Act, 1970, would be legally entitled to recover the said amounts from the charges that have been agreed to be paid to the Contractors.

20. With the above directions by consent of the parties, **all these Contempt Petitions are disposed off**.

[Y.G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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