



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 7935 OF 2013

SAVITA PARSHURAM PARATWAD

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondents

.....

Mr. Sanjay D. Kotkar a/w Mr. Shailendra S. Kulkurni, Advocates for the
Petitioner

Mr. S. K. Tambe, AGP for Respondents State

Mr. S. B. Pulkundwar, Advocate for Respondent Nos. 3 to 5

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRADE, JJ.

DATE : 14th August, 2024

ORDER:

1. The Petitioner has put forth prayer clauses (B), (C) and (D) as
under:

"(B) By issue of an appropriate writ, order or direction, the
respondents No. 3 to 5 may kindly be directed to continue the
services of Auxiliary Nurse Midwife after the expiry of her
bonded period and continue her service by giving one day
technical break to the petitioner.

(C) The relieving order dated 19.09.2013, issued by the respondent
No. 5 may kindly be quashed and set aside.

(D) Pending hearing and final disposal of the writ petition, the
respondents No 3 to 5 may kindly be directed to permit the
petitioner to continue the services after completion of her bonded
period."

2. The learned Advocate for the Petitioner submits that though the Petitioner was relieved from the contractual bond on 19.09.2013, thereafter, she is still working with the Zilla Parishad on contractual bond, in view of the interim order passed by this Court dated 26.03.2015. The learned Advocate for the Zilla Parishad confirms the said statement. As a consequence, the Petitioner has been working on contractual bond service from March, 2012.

3. We have considered the law laid down by this Court in **Municipal Council Tuljapur Vs. Baban Hussain Dhale & ors.**, dated 26.02.2015 (Writ Petition No. 1843 of 2015 and connected matters). It is concluded that as the Industrial Employment Standing Orders Act and the concept of completion of 240 days would not be applicable to Government and State Instrumentalities, as a foundation for granting permanency, the proposals will have to be prepared by the employers of all identically placed employees and the same will have to be forwarded to the appropriate authorities for considering the number of vacancies available and as to whether such candidates can be regularized in service.

4. We have also considered the law laid down by the Reference Bench (Division Bench) of this Court at Nagpur in **Municipal Council, Tirora and others Vs. Tulsidas Baliram Bindhade & ors.**, 2016 (III) CLR 569, wherein the Reference Bench dealt with contradictory orders

passed by the two learned Single Judge Bench and concluded that in the absence of vacant sanctioned post, the Municipal Council cannot grant regularization to a workman only because he has put in 240 days in continuous employment and Standing Order 4(C) of the Model Standing Orders cannot be invoked for granting permanency or regularization.

5. We have also considered the view taken by this Court in Writ Petition No. 5252 of 2020 (**Sunita Suresh Mandole and others Vs. The State of Maharashtra**), decided on 24.11.2021. It was held in Paragraph Nos. 10, 11 and 12, as under:

"10. In the present case, it would appear that the petitioners are appointed by following selection process under the project and the said project is being continued for a long time i.e. for more than 15 years. In such a scenario, the State Government may take appropriate decision for regularization of the services of these petitioners. It also needs to be considered that as the petitioners are working for 10-15 years as ANM/Health Workers under the project, they have crossed the age for participating in the fresh selection process. Extracting services of the petitioners on consolidated salary for years together also would be inappropriate.

11. In the light of that, we direct the State Government to consider the cases of the petitioners for regularization either on the posts they are working under the RCH or some other posts under the State Government considering the length of

service. The State Government can also fix the cut off date viz. that the persons working for a minimum period of particular years may be considered for regularization.

12. The State Government may take decision upon the aforesaid aspect i.e. the regularization of the services of the petitioners as discussed above on its own merits, expeditiously and preferably within a period of six (06) months from today. Depending upon the decision taken by the State Government, the parties may take appropriate steps."

6. In **Nirmala Suthar Vs. State of Rajasthan & ors.**(Writ Petition No. 6846/2024), the learned Single Judge of the Rajasthan High Court has concluded, as under:

"If such a large number of schemes under the flagship programme of NRHM which is continuing perennially, the respondent State cannot contend that the employment of the present petitioners will be co-terminus with the said RCH project or scheme and, therefore, the hanging sword of Damocles' cannot be kept on the head of these petitioners. This court has already observed above, that the State was bound to determine the vacancies and create more encadred posts for providing the medical health care to its residents and citizens which is a constitutional mandate under Article 21 of the Constitution of India and their failure to do so cannot furnish any basis of exploiting the present petitioners by putting them on a minimal sum and by keeping their employment perennially ad-hoc on renewable contract basis."

7. In view of the above, **this Writ Petition is disposed off** with the following directions:

- (a) The Zilla Parishad, Nanded, through its Chief Executive Officer, in consultation with Respondent Nos. 4 and 5, shall prepare a proposal of all Auxiliary Nurse Midwife (ANM), working on contractual bond with the Zilla Parishad stating clearly, the first date of the first bond contract, the number of days worked by each of such ANM during the period of their contractual bonds
- (b) The list of such ANM would be in order of seniority by reckoning the first date of the contractual bond.
- (c) The proposals of all such ANM shall be prepared within 45 days from today. The proposal shall be forwarded to Respondent No.1 within 15 days of its preparation.
- (d) Respondent No.1 would follow the due procedure laid down in law and would consider as to whether these candidates can be considered for granting regularization. Since this is a policy decision to be taken by the State Government and which would govern all the Zilla Parishads in the State of Maharashtra, we grant 180 days time to Respondent No.1 to take a decision, since we are aware that the State will have to collate information from all the Zilla Parishads in the State of Maharashtra with regard to such ANM, who are working on contractual service bonds. Necessary directions be issued by the State to all the CEO of all the ZPs in the State to forward their proposals.
- (e) If the State Government takes a policy decision to regularize the services of such ANM, the same shall be done by considering the

overall seniority of all ANM in the State of Maharashtra, in their respective ZPs and depending upon vacancies available with such ZPs, such regularization can be granted. If there is any shortfall in sanctioned vacant posts, the proposals of those candidates who are in queue, shall not be rejected and shall be kept pending to be considered in a staggered manner, as and when the sanctioned posts become available.

- (f) We make it clear that we have not issued a direction to the State Government to compulsorily regularize the services of the ANM. What we have directed is that the Government will take a policy decision considering the perennial need of ANM, in view of the law laid down in **Secretary, State of Karnataka and others Vs. Uma Devi, (2006) 4 SCC 1.**
 - (g) Needless to State, unless there is a strong reason to disengage any ANM, these ANM shall not be disengaged to be replaced by contractual bonded ANM.
 - (h) In the event of any disciplinary proceeding, this order would not be an impediment.
8. Rule is made partly absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan