



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.1498/2024

Chief Executive Officer, Zilla Parishad, Wardha and another V Surendra and another)

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

Court's or Judge's orders

Mr. D.R. Bhoyar, Advocate for petitioners.

Mr. P.A. Kulkarni, Advocate for respondent no.1.

CORAM : N.R. Borkar, J.

DATE : 27-09-2024.

This petition takes exception to the judgment and order dated 02-08-2023 passed by the learned Industrial Court, Nagpur in Complaint (ULP) No.131/2018.

ii. The respondent no.1 herein had filed the complaint against the petitioners under Section 28 r/w Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

iii. By the order impugned, the learned Industrial Court has allowed the complaint. The operative part of the order passed by the learned Industrial Court reads thus :-

“(1) The Complaint is partly allowed.

(2) It is declared that the Respondent No.2 & 3 have engaged in unfair labour practices under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, as discussed above.

(3) The Respondent No.2 and 3 are directed to cease and desist from engaging into any such unfair labour practice.

(4) The Respondent No.2 and 3 are directed to pay the Complainant wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale) extended to the regular Drivers of the Respondent Zilla Parishad with effect from October 2023.

(5) The Respondent No.2 and 3 are further directed to approach the State Government of Maharashtra with a request for regularization of the Complainant to consider as a one time measure of granting regularization to the complainant, who has completed more than 10 years services with the Respondent Zilla Parishad.

(6) No order as to costs.”

iv. In respect of similarly placed employees like respondent No.1 the Division Bench of this Court in Writ Petition No.1913/2024 with the other connected petitions, by

judgment and order dated 30-08-2024 has issued the following directions :-

“(a) The service conditions applicable to these Petitioners would be maintained as long as the scheme lasts.

(b) The contractual employees shall not be replaced by new contractual employees, either by the Contractor or by the Principal employer. These directions of not to be replaced with another contractual employee, would be restricted only to the contractual working of such Drivers, and in the event of any misconduct/misdemeanor/death of the employee or any such reasons, the Principal Employer/the Contractor would be at liberty to seek services of new Ambulance Drivers, who have earlier worked, and are not engaged as on date, preference may be granted to them, if any replacement is to be effected.

*(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.

*(d) If any of the contractual Ambulance Drivers have been terminated or disengaged, they are at liberty to raise an industrial dispute under the provision of the Industrial Disputes Act, 1947 and carry a reference to the Industrial Tribunal/Labour Court, as the case may be, in the light of the law laid down in **Vividh Kamgar Sabha vs. Kalyani Steels Ltd. And Anr., [2001 (2) SCC 381]; Cipla Ltd Vs. Maharashtra General Kamgar Union and Ors., [2001 (3) SCC 101]** and the judgment of the Hon'ble Supreme Court (5 Judges Bench) in **Steel Authority of India Ltd. and Others Vs. National Union Water Front Workers and Others**, dated 30/08/2001, reported in [AIR 2001 SC 3527].*

*(e) The conclusions of this Court in **Dhiraj Sudhakarao Wankhede** (supra), which have been sustained by the Hon'ble Supreme Court, would not come in way of the State Government in framing a scheme in view of the judgment of the Hon'ble*

Supreme Court in Secretary, State of Karnataka v/s Umadevi (supra), if so desired by the State Government.

(f) Since we have directed the Zilla Parishads or the State Government or the Rugna Kalyan Samiti (Medical Board), as the case may be, to directly pay the salaries to these contractual employees, it would be within the domain of the Principal Employer, to adjust these amounts as against the bills of the Contractors and also by adjusting the service charges.”

v. The petition is, thus disposed of in terms of above direction. Needless to mention that the impugned judgment and order passed by the learned Industrial Court, shall stand modified accordingly.

(N.R. Borkar, J.)

Deshmukh