



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3492 OF 2024

Chandrasekhar s/o Bhojlal Patle	...	Petitioner
- Versus -		
State of Maharashtra and others	...	Respondents

Shri Shekhar Dhengale, Advocate for Petitioner.

Shri D.V. Chauhan, Government Pleader a/b Shri J.Y. Ghurde,
Assistant Government Pleader for Respondent Nos.1, 3 and 6.

Shri N.S. Deshpande, Deputy Solicitor General of India for
Respondent No.9.

**CORAM : NITIN JAMDAR AND
NITIN W. SAMBRE, JJ.**

DATE : 12 September 2024.

P.C. :

Heard learned counsel for the parties.

2. The Petitioner is seeking a direction to the respondents to continue the Petitioner under National Health Mission. The Petitioner is working as an Ambulance Driver.

According to the Petitioner, the Petitioner is similarly situated as Petitioners in a group of petitions, which were decided by the Division Bench at Aurangabad i.e. Writ Petition No.1913/2024 and others on 30 August 2024. The Division Bench 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. If there are certain contractual 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 provisions 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 Sudhakar Rao 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.

3. The learned counsel for the Petitioner on the ground of parity seeks similar directions.

4. The learned Government Pleader points out that to avail of the benefits of aforesaid direction, the Petitioner must demonstrate that on facts the Petitioner's case is comparable and more particularly whether the Petitioner is in service as on date.

5. The exercise will have to be carried out by the Respondent nos.4 and 5-Zilla Parishad. Accordingly, we dispose of the writ petition permitting the Petitioner to apply to the Chief Executive Officer-Respondent no.4 annexing the copy of this order and the order passed by the Division Bench at Aurangabad in Writ Petition No.1913 of 2024 seeking for similar relief as directed by the Division Bench. The Chief Executive Officer thereupon shall examine the case of the Petitioner and if found comparable, proceed to issue necessary directions. If it is distinguishable, then Chief Executive Officer will pass an order giving reasons. However, if the reasons and the distinguishing features are found to be frivolous, consequences would ensue.

6. Since we have not issued notice to the Zilla Parishad, we make it clear that the action would be taken by the Chief Executive Officer on its own merits as above.

7. The writ petition is disposed of.

(NITIN W. SAMBRE, J.)

(NITIN JAMDAR, J.)