



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.2608 OF 2024

(Sudhir Sopanrao Patil Vs. Sports Secretary, Government of Maharashtra, Mumbai and others)

WRIT PETITION No.2609 OF 2024

(Baburao Narayan Kale Vs. Sports Secretary, Government of Maharashtra, Mumbai and others)

WRIT PETITION No.2610 OF 2024

(Vinod Shriram Shegokar Vs. Sports Secretary, Government of Maharashtra, Mumbai and others)

WRIT PETITION No.2611 OF 2024

(Sagita Wasudeorao Nerkar Vs. Sports Secretary, Government of Maharashtra, Mumbai and others)

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

Court's or Judge's orders.

Mr. A.S. Deshpande, Advocate for petitioner.

Mr. Bhagwan Lonare, AGP for respondent Nos.1 to 3.

CORAM : R.M. JOSHI, J.

DATE : 4th JULY, 2025.

P.C.

1. By consent of both sides heard finally.

2. A short point involved in this petition is as to whether the learned Labour Court was justified in refusing the relief of reinstatement to the employees after holding that the termination is illegal and that they are working against the sanctioned posts only for the reason that on account of their reinstatement there would be termination of services of the employees who are doing work through a contractor to whom the work is outsourced.

2. Learned counsel for the petitioner has drawn attention of the Court to the findings recorded by the Labour

Court to the effect that the employees are working since the year 2003 to 2015 and during the said period of 12 years they have continuously worked with the respondent. It is his further submission that a finding is recorded by the Labour Court that the employees were allowed to serve even without agreement between 31.5.2014 till 28.2.2015. After it is held that this is a case for setting aside the order of termination, the relief of reinstatement has not been granted for the reason that the issue of permanency/regularization is pending before the Industrial Court and that if the reinstatement is granted the employees employed through outsourcing will have to be terminated, which according to him is not sustainable order. To support his submission he placed reliance on the judgment in the case of **Jaggo Vs. Union of India and others**, reported in **2024 DGLS(SC) 1314** and case of **Vinod Kumar and others Vs. Union of India and others**, reported in **2024 DGLS(SC) 803**.

3. Learned Assistant Government Pleader attempted his best to support the impugned order.

4. Admittedly, the respondents have not taken exception to the order impugned or the findings recorded by the Labour Court. Even during the course of hearing the respondents were not able to point out that the findings recorded by the Labour Court are perverse and not in consonance with the material on record. The Labour Court has categorically held that the employees are working continuously for a period of 12 years and that even without any agreement they were permitted to work. Apart from that there is specific finding recorded with regard to the regularization of 25

contractual employees working on the similar posts. A finding is also recorded to the effect that the posts were sanctioned by the State Government till 30.9.2017. This means that when the petitioners were working, there were sanctioned posts available. The Labour Court also has held that the termination is illegal and deserves to be set aside.

5. Labour Court however did not grant relief of reinstatement only for the reason that the issue of permanency is pending before the Industrial Court. Even if the issue of permanency is pending before the Industrial Court, once it is held that termination is illegal the only consequence thereof would be reinstatement of the complainant employees in the service. This would be inevitable in view of the fact that there were sanctioned posts available in the establishment. Lastly, Labour Court decided not to grant reinstatement for the reason that the State Government has taken decision the employees through out sourcing agencies and in case of reinstatement there would be termination of outsource employees. By any stretch of imagination this cannot become a ground for refusing the reinstatement to those workers employees who have worked continuously for 12 years against vacant sanctioned posts and who have performed regular nature of work.

6. The Labour Court, therefore, has committed serious error in law in refusing reinstatement and granting compensation. The impugned order, therefore, deserves interference.

7. In the result impugned order is set aside.

8. Reference ID Nos.13/2018, 14/2018, 12/2018 and

11/2018 stand allowed.

10. The termination of the employees is held to be illegal. They need to direct to be reinstated in service.

11. As far as back-wages is concerned, in the statement of claim the employees have specifically stated about they being not employed during the intervening period.

12. In view of the Judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324** once a statement is made by the employee before the Court at first instance about he being not gainfully employed the onus shifts upon the employer to prove otherwise. Here, in this case no evidence is led by the respondent to show that the employees were gainfully employed. As a result of the discussion, the employees are entitled for reinstatement with full back-wages and continuity of service.

13. In the result, petition stands allowed in following terms :

- (i) Termination of employees is declared as illegal.
- (ii) Respondent No.3 is directed to reinstate petitioner in service with full backwages and continuity of service.

(R.M. JOSHI, J.)