



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2017 OF 2021

Supriya Parshuram Saynod
Age : 28 years, Occ : Service,
R/o At Post Shimpala, Post Sagroli,
Tq. Kandhar, Dist. Nanded.

... PETITIONER

...VERSUS...

1. The Union of India
Through its Additional Secretary,
Ministry for Rural Development,
New Delhi
2. The State of Maharashtra
Through Secretary,
Rural Development and Department,
Mantralaya, Mumbai 400 032
3. Maharashtra Rural Road Development
Association, Through its Empowered
Officer / Chief Engineer,
Maharashtra Rural Roads Development Association
Rural Development and Water Conservation Dept.
(Government of Maharashtra)
Bandhkam Bhavan, 7th Floor,
25 Marzban Road,
Fort, Mumbai – 400 001
- 3-A) Chief Engineer (P.M.G.S.Y.)
Maharashtra Rural Roads Development Association,
New Administrative Building,
Third Floor, In front of Vidhan Bhavan
Camp-Pune
- 4) Maharashtra Rural Road Development
Superintending Engineer (P.M.G.S.Y.)
Aurangabad Region, Plot No.3,
Block No.107, First Floor,

Above SBH Branch, Satara Area,
Near Renuka Mata Mandir Gate,
Beed Bye Pass road, Aurangabad – 431 002

5. Executive Engineer
(Pradhan Mantri Gram Sadak Yojana)
Maharashtra Rural Development Association,
Behind Zilla Parishad Shopping Complex,
Near City Police Station Road,
Osmanabad, Tq. & Dist. Osmanabad.
6. The Chief Executive Officer,
Zilla Parishad, Railway Station Road,
Osmanabad.

... RESPONDENTS

WITH/AND
WRIT PETITION NO. 12150 OF 2022

Vasant Babanrao Khemade
Age : 37 years, Occ : Service,
R/o At Post Dhanora Palwan,
Dist. Beed.

... PETITIONER

..VERSUS..

1. The State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai
2. The Secretary Rural Developments
Ministry Mantralaya, Mumbai
3. The Superintendent of Engineer
Maharashtra Rural Road Development
Association (PMGSY), Aurangabad
Division, Near Renukamata Kaman Mandir
on Top of Me and Mummy Hospital,
Plot No.3, Gat No.109,
Satara Parisar, Beed Bypass, Aurangabad
4. The Executive Engineer,
(Pradhan Mantri Gram Sadak Yojna
Aurangabad), Dist. Aurangabad.

5. The Nodal Executive Engineer,
(Pradhan Mantri Gram Sadak Yojna Beed)
Dist. Beed.
6. The Chief Executive Officer,
Zilla Pariahd, Beed.
7. The Union of India,
Through its Secretary,
Ministry of Rural Development,
Government of India,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi - 110 001.

... RESPONDENTS

WITH/AND

WRIT PETITION NO. 12247 OF 2022

1. Satish Madhukarrao Wagh
Age : 32 years, Occ : Service,
R/o Jijau Niwas, Sant Namdev Nagar (East),
Danora Road, Dist. Beed.
2. Rajesh Hariram Ghallal
Age : 32 years, Occ : Service,
R/o At Kolharwadi, Po. Ashok Nagar,
Dist. Beed
3. Nilesh Sureshrao Gadekar
Age : 35 years, Occ : Service,
R/o Shahu Nagar,
Dist. Beed.
4. Anand Madhukarrao Waghmode
Age : 31 years, Occ : Service,
R/o Sahyog Nagar,
Dist. Beed.
5. Paras Darebhan Pawar
Age : 32 years, Occ : Service,
R/o At Zapewadi, Po. Warni,
Tq. Shirur (K), Dist. Beed.

6. Pratik Harishchandra Vidyagar,
Age : 32 years, Occ : Service,
R/o Takshshila Nagar, Dhanora Road,
Dist. Beed.
7. Mahesh Narayanrao Rathod
Age : 32 years, Occ : Service,
R/o B & C Quarter, Kaij,
Dist. Beed.

... PETITIONERS

...VERSUS...

1. The State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai
2. The Secretary Rural Developments
Ministry Mantralaya, Mumbai
3. The Chief Engineer,
Rural Development
Ministry Mantralaya,
(Pradhan Mantri Gram Sadak Yojna)
Mumbai.
4. The Executive Engineer,
(Pradhan Mantri Gram Sadak Yojna
Aurangabad), Dist. Aurangabad.
5. The Nodal Executive Engineer,
(Pradhan Mantri Gram Sadak Yojna Beed)
Dist. Beed.
6. The Chief Executive Officer,
Zilla Pariahd, Beed.
7. The Union of India,
Through the Secretary,
Ministry of Rural Development,
Government of India,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi - 110 001

... RESPONDENTS

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- Mr. G.R. Syed, Advocate for petitioner in WP No.2017/2021
 - Mr.P.A. Kulkarni, Advocate for the petitioners in WP Nos.12150/2022 & 12247/2022
 - Mr. A.B. Girase, Government Pleader for Respondent/State.
 - Mr. R.B. Bagul, Advocate for respondent/UOI.
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CORAM : **ARUN R. PEDNEKAR AND
VAISHALI PATIL – JADHAV, JJ.**

DATED : **FEBRUARY 23, 2026**

JUDGMENT [Per Vaishali Patil – Jadhav, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. All the petitioners in these petitions are appointed on various posts on contractual basis from time to time under “*Pradhan Mantri Gram Sadak Yojna*” in the year 2012 and 2014, as per the dates and posts specifically mentioned in the respective Writ Petitions. The petitioners have now approached this Court seeking creation of posts and for permanency benefits with the contention that since the date of their appointment, they have been continuously working till date, except for technical breaks given only for the purpose of denying the benefits of permanency.

3. The counsel for the petitioners submits that the present petitions are covered by the judgment passed by this Court in ***Writ Petition No. 3489/2015, Mahesh S/o. Chandrakant Bhagat and others Vs. The State of Maharashtra and others, along with connected matters, dated 23.01.2026.*** The petitioners being similarly situated and as the issue involved is also same, the petitioners be granted same relief.

4. The learned Government Pleader appearing for the State does not dispute the factual assertion of the petitioners, that the petitioners are identically situated as the petitioners in above-noted Writ Petition No.3489/2015, however, he would submit that the issue involved in the Writ Petitions need to be referred to the Larger Bench as the judgment and order in ***Mahesh S/o. Chandrakant Bhagat (supra)*** is *per incuriam* and has been passed by ignoring the settled principle of law that the Courts do not direct the State to create post as creation of post is in exclusive domain of the executive or legislative function and status of permanency cannot be granted by the Court where no such post exists as has been held by the Hon'ble Supreme Court of India in various matters.

5. The learned Government Pleader has relied on the judgment in ***Mahatma Phule Agricultural University Vs. Nasik Zilla Seth***

Kamgar Union and others, (2001) 1 SCC 346, wherein it is held that, the status of permanency cannot be granted when there is no sanctioned post. The same ratio is reiterated in *State of Maharashtra Vs. R.S. Bhonde and others, (2005) 6 SCC 751*.

6. The learned Government Pleader further relied on the judgments in *Hari Handan Prasad and others Vs. Employer I/R Management, (2014) 7 SCC 190*, *Union of India Vs. Ilmo Devi and others, (2021) 20 SCC 290*, *the State of Gujrat Vs. R.J. Pathan, 2022 Live Law 313 and Chief Executive Officer, Z.P. Thane Vs. Santosh Tukaram Tiwari, (2023) 1 SCC 456* and would submit that in all these judgments, the Hon'ble Supreme Court has consistently held that merely because the worker had held the post for a long period of time will not mean that he is entitled to regularization of service. Merely because an employee is continued for a longer period on contractual basis, the order of regularization cannot be directed when there is no sanctioned post. In absence of any sanctioned post, directions for regularization of service cannot be issued. It is further held that the High Court, in exercise of the powers under Article 226, cannot issue a writ of mandamus to direct the Department to sanction and create the posts.

7. The learned Government Pleader relied on the judgments in *Indian Drugs & Pharmaceuticals Vs. Workmen Indian Drugs, (2007) 1 SCC 408, Divisional Manager Vs. Chander Hass and others, (2008) 1 SCC 683 and Maharashtra State Road Transport Corporation Vs. Casteribe Rajya Parivahan, (2009) 8 SCC 556* wherein it is consistently held that, the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts, also that, the Court cannot issue any direction to absorb or continue the employees in service or pay them salaries of regular employees, as these are purely executive functions. The High Court cannot arrogate to itself the powers of the executive or legislature. It is well settled that unless there exists some rule no directions can be issued by the Court for continuation in service or payment of regular salary to a casual, ad-hoc or daily rated employee. Such directions are executive functions and it is not appropriate for the Court to encroach into the functions of another organ of the State. The Courts must exercise judicial restraint in this connection.

8. The learned Government Pleader would submit that this Court by relying on the judgments in *Jaggo Vs. Union of India, 2024 SCC OnLine SC 3826, Sripal and others Vs. Nagar Nigam, Ghaziabad,*

2025 SCC OnLine SC 221 and Dharam Singh and others Vs. State of U.P., 2025 SCC OnLine SC 1735 has allowed the writ petition [*Mahesh S/o. Chandrakant Bhagat (supra)*] with directions to the State to create post and regularize the services of all the petitioners on the posts with effect from their respective initial dates of joining in service either in Zilla Parishad or the State Government or in the Society and to give consequential benefits and arrears of salary. The learned Government Pleader would submit that in *Jaggo (supra), Dharam Singh (supra) and Shripal (supra)*, which holds that benefits of regularization can be granted if the work is perennial in nature but these judgments do not taken into consideration earlier decisions in the matter of *Maharashtra State Road Transport Corporation (supra), Chief Executive Officer, Z.P Thane (supra), Hari Handan Prasad (supra), Union of India (supra)*, which hold that relief of regularization cannot be granted in absence of sanctioned posts and further that creation of posts is beyond province of Court of law.

9. The learned Government Pleader further relying on the judgment in *National Insurance Company Vs. Pranay Sethi, 2017 (16) SCC 680*, would submit that the Hon'ble Supreme Court in this judgment has held that when two judgments of the equal bench strength are pressed into service and the ratio thereof cannot be

reconciled, the judgment which is prior in point of time would be a good law and must be followed as binding precedent. He would therefore submit that the Court erred in not considering the settled principle of law held in earlier judgments which are prior in point of time.

10. We have heard and considered the submissions canvassed by the learned counsel for the respective parties.

11. It is a settled position of law that service jurisprudence is evolved by the Supreme Court from time to time and postulates that all employees similarly situated should be treated similarly. Large number of Writ Petitions were listed before the Co-ordinate bench are allowed in the case of ***Mahesh S/o. Chandrakant Bhagat (supra)***. However, few petitions are listed before this Bench. Only because these petitions have come up for consideration before a different Bench, would not mean that the persons similarly situated should be treated differently.

12. Similarly situated employees are required to be treated similarly. This view is reiterated in the recent judgment in ***Pawan Kumar and others Vs. Union of India and others in Civil Appeal No.1610/2026*** dated 13.02.2026, wherein the casual workers working with the office

of the Commissioner of Income Tax, Gwalior had approached the Central Administrative Tribunal for regularization of their services, which was dismissed by the Central Administrative Tribunal and the same fate was followed in High Court's decision. Thereafter, they approached the Supreme Court by filing Civil Appeal No.1610/2026. The appellants therein submitted that, services of similarly placed casual workers from the same department of the Commissioner of Income Tax were directed to be regularized pursuant to the decisions of the Supreme Court in *Ravi Verma and others Vs. Union of India and Others in Civil Appeal Nos.2795-2796/2018* and *Raman Kumar and others Vs. Union of India and others in Civil Appeal No.4146/2023*, appellants being similarly situated casual workers, should be treated similarly. The Supreme Court thereafter, directed for regularization of services of the appellants therein relying upon the decision in *Jaggo (supra)* holding that the appellants therein being similarly situated as in *Ravi Verma (supra) and Raman Kumar (supra)*, cannot be discriminated and deserve the same treatment.

13. Although the earlier judgments of the Supreme Court do indicate that there can be no directions to the executive to create post as it is exclusive within its domain, the later judgments of the Supreme Court particularly in *Dharam Singh (supra)* has taken a different path.

This Court in the case of *Mahesh S/o. Chandrakant Bhagat (supra)* has relied upon the later judgments of *Jaggo (supra)* and *Dharam Singh (supra)* and has allowed the writ petitions. Although, *Dharam Singh (supra)* dealt with a situation of judicial review of an executive decision not to sanction post, the Supreme Court held that the executive decision is not immune from judicial scrutiny. In the fact situation, the Supreme Court directed creation of post and accommodate/regularize the petitioners therein.

14. The judicial propriety and discipline requires that ordinarily a Co-ordinate Bench of the High Court should not take a different view than that taken by the earlier Bench when confronted with the same issue. The earlier decision of the Co-ordinate Bench is binding upon any later Co-ordinate Bench deciding the same or similar issue. Here, it will be apposite to refer the judgment in *Sant Lal Gupta Vs. Modern Co-operative Group Housing Society Ltd., [2010(262) E.L.T. 6 (S.C.)]*, wherein it is observed as under :-

"18. A coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide: Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel & Ors., AIR

1968 SC 372; Sub-Committee of Judicial Accountability v. Union of India & Ors., (1992) 4 SCC 97; and State of Tripura v. Tripura Bar Association & Ors., (1998) 5 SCC 637."

15. The same view is reiterated in the recent judgment of **Adani Power Ltd. and Ors. Vs. Union of India (UOI) and Ors, in Civil Appeal No.22/2026** arising out of the Special Leave Petition (Civil) No. 24729/2019, wherein, the Hon'ble Supreme Court has observed as under :-

"77. The discipline expected of coordinate Benches does not permit such an approach. This Court, in State of Uttar Pradesh v. Ajay Kumar Sharma MANU/SC/1379/2015 : 2015:INSC:868 : (2016) 15 SCC 289, has reiterated that once a coordinate Bench of a High Court has settled a question of law, a subsequent Bench of equal strength is bound to follow that view when confronted with the same issue. If the later Bench believes that the earlier view is so manifestly erroneous or inapplicable that it ought not to be followed, the later Bench must refer the matter to a larger Bench for reconsideration. What it cannot do is to sidestep or whittle down the earlier pronouncement by confining it artificially or by treating it as a fact-specific indulgence."

16. In ***Mahesh S/o. Chandrakant Bhagat (supra)***, this Court relied on the later judgment of the Supreme Court in ***Jaggo (supra)*** and ***Dharam Singh (supra)***. The view taken in ***Mahesh S/o. Chandrakant Bhagat (supra)*** being based on later judgment of the Supreme Court,

we cannot hold it to be based on erroneous application of law so as to refer the legal issue to the Larger Bench. This Court in ***Mahesh S/o. Chandrakant Bhagat (supra)*** has held as under and allowed the petition:

“41. At this stage, it is material to see that the present Society is also a “State” under Article 12 of the Constitution of India. The learned Advocate Mr. Deshmukh relied upon the judgment in the case of Ajay Hasia and Ors. (supra). It is held that when society is controlled by the State, it can be treated as an instrumentality of the State under Article 12 of the Constitution of India. In the present case, it is clearly seen that initially, the appointments were made by the Zilla Parishad, as at the relevant time, the implementing machinery was the Zilla Parishad. Though now a society has been established, it is clearly seen that the scheme is funded by the Union of India. The society is established, funded and controlled by the State. The only purpose for which the society is established is to implement the scheme, which is extended till 2047. This Court has already held that the work is of perennial nature. The Government Resolution dated 31/07/2018 also clearly shows that the technical breaks are given only with the view to see that no right of permanency is created. Government Resolution itself shows that the work is of perennial nature and the Government has every apprehension that if no technical breaks are given benefits of permanency will have to be given as the work is of perennial nature. The welfare Government is not expected to adopt such tactics and deny the benefits of permanency to the employees. Though the petitions are to be allowed, this Court finds the submissions of learned

AGP to be correct so far as the payment of the arrears is concerned. The petitioners are entitled to get the arrears of salary for the period of three years preceding date of filing of the petition with bank interest.”

17. In view thereof, we are also inclined to issue the similar order in the present petitions as petitioners are similarly situated employees. Accordingly, we proceed to pass the following order :

(i) The Writ Petitions are allowed.

(ii) The respondent-Authorities are directed to regularize the services of all the petitioners on their respective posts with effect from their respective initial dates of joining in service, with consequential benefits. Arrears of pay to be paid to the petitioners within a period of six months from today as per Rule.

(iii) The respondent-Authorities to create the posts to absorb the petitioners either in Zilla Parishad or in the State Government or in the Society.

(iv) Petitioners shall be entitled to receive the arrears of salary for a period of three years preceding date of filing of the petitions with bank interest.

(v) Rule made absolute in above terms.

(vi) In view of disposal of these writ petitions, pending civil applications, if any, do not survive and the same are also disposed of accordingly.

[VAISHALI PATIL – JADHAV, J.]

[ARUN R. PEDNEKAR, J.]

sga/