

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 11th OF JANUARY, 2024

WRIT PETITION No. 11632 of 2020

BETWEEN:-

1. DARVARI SINGH SAREYAM S/O LATE SHRI LAKHAN SINGH SAREYAM, AGED ABOUT 42 YEARS, OCCUPATION: SNCU SUPPORT STAFF DISTRICT HOSPITAL, SEONI (MADHYA PRADESH)
2. AADHAR SINGH MARSEKOLE S/O MEHTAR SINGH MARSEKOLE, AGED ABOUT 46 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
3. DEVENDRA SHRIVAS S/O SHRI GENDLAL SHRIVAS, AGED ABOUT 41 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
4. SMT MANJU RAJAK W/O RAMDIN RAJAK, AGED ABOUT 27 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
5. DINESH PARDHI S/O CHATURBHUI PARDHI, AGED ABOUT 35 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
6. RANI SARATHE D/O SHRI RAJKUMAR SARATHE, AGED ABOUT 30 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
7. SMT LATA BHARDWAJ W/O RAKESH BHARDWAJ, AGED ABOUT 42 YEARS, OCCUPATION: NRC SUPPORT STAFF NRC SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)
8. KUMARI RAJNI YADAV D/O RAJU YADAV, AGED ABOUT 34 YEARS, OCCUPATION: NRC SUPPORT STAFF NRC SUPPORT STAFF DISTRICT HOSPITAL

SEONI (MADHYA PRADESH)

9. **KUMARI UPASANA BARVE D/O PRAHALAD SINGH BARVE, AGED ABOUT 26 YEARS, OCCUPATION: NRC SUPPORT STAFF NRC SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)**
10. **DILIP DAYARAMANI S/O LATE SHRI CHIMMAN DAS, AGED ABOUT 32 YEARS, OCCUPATION: UPHC SUPPORT STAFF UPHC SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)**
11. **SMT MEHANTI MARSEKOLE W/O LATE SHRI MANU PRASAD MARSEKOLE, AGED ABOUT 40 YEARS, OCCUPATION: SUPPORT STAFF CARETAKER SUPPORT STAFF CARETAKER NUTRITION REHABILITATION CENTER GHANSORE DISTRICT SEONI (MADHYA PRADESH)**
12. **KUMARI ALIN PARTE D/O SHRI NAHAR SINGH PARTE, AGED ABOUT 27 YEARS, OCCUPATION: SUPPORT STAFF COOK SUPPORT STAFF COOK NUTRITION REHABILITATION CENTER KEOLARI DIST SEONI (MADHYA PRADESH)**
13. **SMT SADHNA PANDRE W/O AJAY KUMAR, AGED ABOUT 39 YEARS, OCCUPATION: SUPPORT STAFF CARETAKER SUPPORT STAFF CARETAKER NUTRITION REHABILITATION CENTER KEOLARI DISTRICT SEONI (MADHYA PRADESH)**
14. **KUMARI SAROJ UIKE D/O SHRI RAM SHARAN UIKE, AGED ABOUT 28 YEARS, OCCUPATION: SUPPORT STAFF CARETAKER SUPPORT STAFF CARETAKER NUTRITION REHABILITATION CENTER KEOLARI DISTRICT SEONI (MADHYA PRADESH)**
15. **KUMARI KAUSHALYA D/O LATE SHRI VAINI SINGH THAKUR, AGED ABOUT 39 YEARS, OCCUPATION: SUPPORT STAFF CARETAKER SUPPORT STAFF CARETAKER NUTRITION REHABILITATION CENTER LAKHNADAUN DISTRICT SEONI (MADHYA PRADESH)**
16. **KUMARI MANISHA SHRIVASTAVA D/O DAYA KUMAR SHRIVASTAVA, AGED ABOUT 28 YEARS, OCCUPATION: SUPPORT STAFF COOK SUPPORT STAFF COOK NUTRITION REHABILITATION CENTER LAKHNADAUN DIST SEONI (MADHYA PRADESH)**

17. RAMSHANKAR PADWAR S/O IMRAT LAL PADWAR, AGED ABOUT 43 YEARS, OCCUPATION: SNCU SUPPORT STAFF SNCU SUPPORT STAFF DIST HOSPITAL SEONI (MADHYA PRADESH)
18. DEEPMALA KAROSIYA W/O VISHAL KAROSIYA, AGED ABOUT 36 YEARS, OCCUPATION: SUPPORT STAFF CARETAKER SUPPORT STAFF CARETAKER NUTRITION REHABILITATION CENTER LAKHNADAUN DISTRICT SEONI (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY SHRI HARISH CHANDRA SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE COMMISSIONER HEALTH SERVICE MADHYA PRADESH HEALTH SERVICE MADHYA PRADESH BHOPAL (MADHYA PRADESH)
3. NATIONAL HEALTH MISSION MADHYA PRADESH THR ITS DIRECTOR 8 ARERA HILLS OLD JAIL ROAD BHOPAL (MADHYA PRADESH)
4. THE DIRECTOR NATIONAL HEALTH MISSION MADHYA PRADESH 8 ARERA HILLS OLD JAIL ROAD BHOPAL (MADHYA PRADESH)
5. THE CHIEF MEDICAL AND HEALTH OFFICER SEONI THE CHIEF MEDICAL AND HEALTH OFFICER SEONI CHIEF MEDICAL AND HEALTH OFFICER DISTRICT SEONI (MADHYA PRADESH)
6. ROGI KALYAN SAMITI SEONI THR ITS SECRETARY ROGI KALYAN SAMITI DISTRICT SEONI (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER FOR THE RESPONDENTS-STATE AND SHRI SATYAM AGRAWAL - ADVOCATE FOR THE RESPONDENT NO.3)

WRIT PETITION No. 24232 of 2019

BETWEEN:-

1. GANPAT LAL AHIRWAR S/O SHRI BHAIYALAL, AGED ABOUT 42 YEARS, OCCUPATION: COOK BADAPURA BEHIND DHARMASHALA BAJARIA, DISTRICT DAMOH (MADHYA PRADESH)
2. SMT.VAISHALI SEN D/O DEEPNARAYAN SEN, AGED ABOUT 42 YEARS, OCCUPATION: CARETAKER 280 MANGAJ WARD NO.3 MALAIYA MILL ROAD TEEN GALI DAMOH KHAS, DISTRICT DAMOH (MADHYA PRADESH)
3. HARVENDRA LADIYA S/O RAMSHANKAR LADIYA, AGED ABOUT 38 YEARS, OCCUPATION: COOK 412 BAJARIYA WARD NO. 4 BADAPURA NEAR ASHARAM DUKANDAR, DISTRICT DAMOH (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SHREYAS PANDIT - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THR. SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. MISSION DIRECTOR NATIONAL HEALTH MISSION ARERA HILS, DISTRICT BHOPAL (MADHYA PRADESH)
3. CHIEF MEDICAL AND HEALTH OFFICER DAMOH DISTRICT DAMOH (MADHYA PRADESH)
4. CIVIL SURGEON CUM CHIEF HOSPITAL SUPERINTENDENT DAMOH DISTRICT DAMOH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER FOR THE RESPONDENTS-STATE AND SHRI SATYAM AGRAWAL - ADVOCATE FOR THE RESPONDENT NO.2-NATIONAL HEALTH MISSION)

WRIT PETITION No. 17794 of 2020

BETWEEN:-

DASHRATH SHRIVASTAVA S/O LATE SHRI LAKHAN SINGH SAREYAM, AGED ABOUT 42 YEARS, OCCUPATION: SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI SNCU SUPPORT STAFF DISTRICT HOSPITAL SEONI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY SHRI HARISH CHANDRA SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THR. THE PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE GOVT.OF MP VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE COMMISSIONER HEALTH SERVICES DISTRICT BHOPAL (MADHYA PRADESH)
3. NATIONAL HEALTH MISSION THROUGH DIRECTOR 8 ARERA HILLS OLD JAIL ROAD BHOPAL (MADHYA PRADESH)
4. THE DIRECTOR NATIONAL HEALTH MISSION MP 8 ARERA HILLS OLD JAIL ROAD BHOPAL (MADHYA PRADESH)
5. CHIEF MEDICAL AND HEALTH OFFICER SEONI DISTT.SEONI (MADHYA PRADESH)
6. ROGI KALYAN SAMITI THROUGH SECRETARY DISTT.SEONI (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER FOR THE RESPONDENTS-STATE AND SHRI SATYAM AGRAWAL - ADVOCATE FOR THE RESPONDENT NO.3-NATIONAL HEALTH MISSION)

WRIT PETITION No. 1295 of 2021

BETWEEN:-

1. MUKESH AHIRWAR S/O SHRI MAGAN LAL AHIRWAR, AGED ABOUT 41 YEARS, OCCUPATION: CARETAKER R/O INDIRA GANDHI WARD NO. 14,

PATHARIYA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)

2. CHANDRAKUMAR AHIRWAR S/O PANCHAMLAL AHIRWAR, AGED ABOUT 38 YEARS, OCCUPATION: CARETAKER R/O BADAPURA, BAJARIYA, NO. 14, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)
3. MUKESH AHIRWAR S/O GAJJU PRASAD AHIRWAR, AGED ABOUT 38 YEARS, OCCUPATION: COOK R/O BAJARIYA NO. 5, CHAINPURA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)
4. ASHOK RANI BANSAL S/O SHRI RAJKUMAR BANSAL, AGED ABOUT 38 YEARS, OCCUPATION: AYYA R/O MELVARAR, VILLAGE PATHARIYA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SHREYAS PANDIT - ADVOCATE)

AND

1. THE STATE OF M.P. THR. SECRETARY BHOPAL (MADHYA PRADESH)
2. MISSION DIRECTOR NATIONAL HEALTH MISSION BHOPAL (MADHYA PRADESH)
3. CHIEF ADMINISTRATIVE OFFICER NATIONAL HEALTH MISSION BHOPAL (MADHYA PRADESH)
4. CHIEF MEDICAL AND HEALTH OFFICER DAMOH DAMOH (MADHYA PRADESH)
5. CHIEF BLOCK MEDICAL OFFICER COMMUNITY HEALTH CENTRE TENDUKHEDA, DISTRICT DAMOH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER FOR THE RESPONDENTS-STATE AND SHRI SATYAM AGRAWAL - ADVOCATE FOR THE RESPONDENT NO.2-NATIONAL HEALTH MISSION)

WRIT PETITION No. 1377 of 2021

BETWEEN:-

1. SANGEETA PATERIYA W/O MUNNALAL

PATERIYA, AGED ABOUT 40 YEARS, OCCUPATION: CARETAKER R/O HAZARI WARD, HATA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)

2. CHANDRANARAYAN LADIYA S/O SHRI LATORILAL LADIYA, AGED ABOUT 43 YEARS, OCCUPATION: COOK R/O SAGAR NAKA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)
3. JEEVANLAL AHIRWAR S/O O SHRI BHADDILAL AHIRWAR, AGED ABOUT 45 YEARS, OCCUPATION: CARETAKER R/O VILLAGE GHANGAURKALA, TEHSIL TENDUKHEDA, DISTRICT DAMOH (M.P.) (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SHREYAS PANDIT - ADVOCATE)

AND

1. THE STATE OF M.P THR SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE, BHOPAL DISTT. (MADHYA PRADESH)
2. MISSION DIRECTOR NATIONAL HEALTH MISSION BHOPAL (MADHYA PRADESH)
3. CHIEF ADMINISTRATIVE OFFICER NATIONAL HEALTH MISSION BHOPAL (MADHYA PRADESH)
4. CHIEF MEDICAL AND HEALTH OFFICER DAMOH DAMOH (MADHYA PRADESH)
5. CHIEF BLOCK MEDICAL OFFICER COMMUNITY HEALTH CENTRE TENDUKHEDA, DISTRICT DAMOH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER FOR THE RESPONDENTS-STATE AND SHRI SATYAM AGRAWAL - ADVOCATE FOR THE RESPONDENT NO.2-NATIONAL HEALTH MISSION)

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These petitions coming on for admission this day, the court passed the following:

ORDER

This bunch of petitions is filed by various persons who were initially engaged by the respondent-National Health Mission as part of their scheme on

various subsidiary jobs. Subsequently, respondents vide order dated 13.08.2019 and subsequent order dated 01.07.2020, decided to delegate the services of the petitioners to Rogi Kalyan Samiti and, in turn, Rogi Kalyan Samiti has decided to outsource the services through a contractor.

2. Petitioners' grievance is two fold. One is in regard to change of the employer and another is in regard to reduction of wages which were contracted when petitioners were engaged by National Health Mission.

3. Shri K.C. Ghildiyal, learned senior counsel submits that respondent - Chief Medical and Health Officer has not complied with the earlier order of the High Court dated 28.09.2020 passed by a coordinate Bench of this Court for which another opportunity was granted on 12.09.2022.

4. No reply is filed by the respondents-State to point out that why compliance is not being made. Therefore, that issue will be dealt separately.

5. Shri Satyam Agrawal, learned counsel for the respondent-National Health Mission, in his turn, submits that there are two different issues. One is a policy decision taken by the National Health Mission to delegate subsidiary services which do not form the backbone of grant of health services *per se* in the rural areas to Rogi Kalyan Samiti. Another issue is that once the services have been delegated to Rogi Kalyan Samiti, then it is Rogi Kalyan Samiti which is free to take a call and decide the terms and conditions of such contractual employees.

6. It is submitted that services of none of the contractual employees are being dispensed with and, therefore, in the light of the decision of a coordinate Bench of this High Court at Gwalior in case of **Hariom and others Vs. State of Madhya Pradesh (W.P. No.11482/2020 (S) decided on 20.08.2020)**,

petitioners are not entitled to any relief.

7. After hearing learned counsel for the parties and going through the record and also taking into consideration the judgment of Hon'ble Division Bench of this High Court in case of **The State of Madhya Pradesh Vs. Puneet Mohan Khare (W.A. No.418/2017, decided on 05.02.2018)**, matter is taken up for hearing.

8. Two issues emerge for determination. Whether National Health Mission is entitled to delegate its work to Rogi Kalyan Samiti and, in turn, Rogi Kalyan Samiti is entitled to sub delegate it to a contractor to provide these ancillary services. Another issue which emerges is whether petitioners are entitled to protection of wages which were contracted with National Health Mission, inasmuch as, they will still be doing the same work as was contracted with the National Health Mission, despite change of principal employer to Rogi Kalyan Samiti or upon further delegation of work to a labour contractor which may be engaged by the Rogi Kalyan Samiti.

9. As far as first issue is concerned, there is substance in the arguments put forth by Shri Satyam Agrawal that with a view to concentrate on the core health services, it has been decided to hive off the work of ancillary nature in favour of Rogi Kalyan Samiti. That being discretion of National Health Mission, and a policy decision taken by the National Health Mission, does not call for interference in the hands of this Court.

10. Coming to the next question which is the bone of contention of this case. There is no iota of doubt that once for the same work, contract was entered into between National Health Mission and a particular set of employees either in individual or in a collective capacity and certain wages were decided for doing the said work then during the currency of continuance of the said

work, wages cannot be adversely affected.

11. A perusal of Annexure P-8 which is a communication dated 27.07.2017 made by the National Health Mission to the Director, AIIMS, Dean, Medical Colleges, Chief Medical and Health Officers and Civil Surgeons-cum-Chief Hospital Superintendent, Madhya Pradesh, it is evident that it is clearly mentioned that Rogi Kalyan Samiti shall engage subsidiary services on full time or part time basis as per the directions of the mission. The qualifications and eligibility for such appointment shall be same as were prescribed earlier.

12. Thus, it is evident that overall control of the National Health Mission has not been delegated in favour of Rogi Kalyan Samiti or the contractor. It is only an administrative arrangement whereby Rogi Kalyan Samiti has been given task of managing subsidiary services so that National Health Mission may concentrate on their core function of providing health services.

13. Thus, in view of the said facts, which could not be disputed by Shri Satyam Agrawal, there cannot be any reduction of wages on delegation of work to Rogi Kalyan Samiti or sub delegation of work to a contractor and, therefore, respondents have failed to make out a case for reduction of wages for doing the same nature of work for the same duration in the hands of a delegatee or a sub delegatee and, thus, the submission put forth by the respondents that they are entitled to negotiate the wages again, is not made out. They may be in a position to negotiate the wages through Rogi Kalyan Samiti or the contractor only for those who were not engaged earlier by the National Health Mission i.e. a new set of employees who may be engaged by Rogi Kalyan Samiti or the contractor. But as far as those set of employees who were already engaged by the National Health Mission is concerned, there cannot be any reduction of wages.

Therefore, second issue needs to be answered in favour of the petitioners and accordingly, this bunch of petitions is disposed of with the following directions:-

1. Petitioners who were engaged by National Health Mission on a certain set of wages for doing a particular set of work, during the continuance of that set of work will be entitled to the same payment of wages or the revised wages, as may be revised by the Collector from time to time for such contractual employees, as was fixed by the National Health Mission.
2. As far as change of the employer is concerned, petitioners will not raise any objection as long as their conditions of service for contract, except for change of the employer, is not altered any further.
3. As far as reduction in wages is concerned, that has since been held to be illegal, petitioners who are engaged through National Health Mission, will be entitled to get the same wages as were contracted by them with National Health Mission and, if any deduction was made, then the residual amount of deduction be paid to the petitioners within a period of 30 days of receipt of certified copy of the order being passed today.
4. Petitioners shall not raise any objection to the change of the employer that being Rogi Kalyan Samiti or a contractor in terms of the aforesaid discussion.
5. As far as decision of a coordinate Bench of this High Court at Gwalior in case of **Hariom** (supra) is concerned, issue therein was different. There petitioners were claiming regularization and, therefore, discussion was made having regard to the law laid down by Hon'ble Supreme Court in case of **State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1**. In the present case, petitioners are aware of the fact that they being contractual employees are not entitled to any regularization and that being not a prayer, which is specified by the learned counsels for the petitioners who are appearing herein, facts of that case are different.

14. Thus, in case of delegation of work in favour of a delegatee, the contract wages cannot be reduced in an arbitrary and illegal manner. Accordingly, in above terms, these writ petitions are allowed and disposed of.

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