

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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