

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5920 OF 2015
WITH
CIVIL APPLICATION NO. 8009 OF 2015

SACHIN CHAINSUUKHLAL GANDHI AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for petitioners : Mr. P. R. Katneshwarkar h/f Mr. A. G. Ambedkar
Advocate for respondent No. 1 : Mr. A. G. Talhar
A. G. P. for respondent Nos. 2 and 3 : Mr. K. M. Suryawanshi
Advocate for respondent No. 4 : Mr. S. T. Shelke
Advocate for respondent No. 5 : Mr. P. R. Tandale
Advocate for respondent No. 6 : Mr. S. B. Ghute
Advocate for respondent No. 7 : Mr. S. S. Munde
Advocate for respondent No. 8 : Mr. P. P. Dama
Advocate for respondent No. 9 : Mr. S. S. Tope
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 4th AUGUST, 2015

P.C. :-

1. The petitioners have filed the writ petition claiming multiple reliefs. However, on 20.07.2015, the learned counsel for petitioners made a statement that prayer clause "C" i.e. regularization of service would not be pressed and the writ petition is withdrawn with regard to the prayer clause "C" with liberty to file fresh petition as and when cause of action arises. The present petition is restricted to the extent of prayer clause "B" i.e. the services be continued till the contractual period is over.

2. All these petitioners were appointed vide appointment orders on contract basis for a period of 11 months. Mr. Katneshwarkar, the learned counsel for the petitioners submits that the State of Maharashtra accepted the scheme of “Rajiv Gandhi Panchayat Sashaktikaran Abhiyan” for the year 2013-14 in accordance with the Central Government Scheme. The State of Maharashtra issued a Government Resolution to make appointments of Block Engineer and Panchayat Engineer for development and empowerment of Village Panchayat under the said scheme. The Government Resolution is issued on 06.08.2014 by the Rural Development Department of the Maharashtra State for appointment to various posts under the said scheme. As per the advertisement, the petitioners applied for the post of Block Engineer/Panchayat Engineer. The petitioners were thereafter selected and appointed. The learned counsel submits that abruptly, their appointments are cancelled. Vide Civil Application, the said termination orders are brought on record. The learned counsel submits that the petitioners are entitled to be continued till the end of the contractual period. The respondents are bound to continue the petitioners till the end of the contractual period. The respondents cannot terminate the services of the petitioners before the end of the contractual period. A right is created in favour of the petitioners. It is not that the scheme has come to an end. Even the Government of

India, Ministry of Panchayat Raj has taken a decision to follow the “Rajiv Gandhi Panchayat Sashaktikaran Abhiyan” scheme for the year 2015-16.

3. The respective learned counsel for the Zill Parishads submit that the Government Resolution, pursuant to which the appointments were made, itself clearly stated that even if the appointments are on contractual period, the same would come to an end even before the said period. The appointment orders also specifically lay down the said term that their appointments would be cancelled even before the end of the contractual period. The learned counsel submits that as the scheme itself has been closed down and the same was funded by the Central Government, in absence of the funds, the appointments of the petitioners cannot be continued.

4. The learned counsel relied on the judgment of the Apex Court in a case of ***Rajendra and others vs. State of Rajasthan and others reported in AIR 1999 SC 923.***

5. As the prayer for regularization is withdrawn with liberty to take up any appropriate proceedings, we are not required to consider the said prayer. The prayer is now only limited to the extent of continuation in the contractual period.

6. We have considered the appointment orders and the Government Resolution pursuant to which the process for appointment has been undertaken. The Government Resolution dated 01.08.2014 is relevant for the said purpose. It states that the persons can be appointed for 11 months by giving technical break, however, the same would be as per the availability of the work and inspite of the contractual period the appointment can come to an end at any time. Even majority of the appointment orders had the said condition incorporated in it.

7. The Apex Court, in the case of **Rajendra and others** (spura) in paragraph No. 13, has observed as under :

“13 In our opinion, when the posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. The decision taken by the respondent-State to abolish the posts was a bonafide decision taken after due application of mind by appointing an Expert Committee which went deep into all relevant considerations and

made recommendations in the interest of rationalisation. The decision is based on administrative and financial considerations. There is nothing wrong in the societies having acted on the policy decision of the State Government. Really speaking there was hardly anything left to be done by the DRDA societies at their own end. Inasmuch as the societies did not have any funds of their own independent of those made available by the State Government how could the societies have continued with the posts and the incumbents thereon though they were left with no merits to pay salaries attaching with the posts."

8. It is stated that today, the scheme itself is not in force and not under implementation. The funds are provided by the Central Government which has been stopped. The petitioners cannot be said to have been taken by surprise as they were made aware of the same in the appointment order itself.

9. As the work itself is not available and the work under the said scheme itself has been closed down, the prayer of the petitioners cannot be considered.

10. In case the petitioners, are aggrieved by the work not being given for the remainder period of their contract, the petitioners are at liberty to claim damages or any other relief as may be admissible in law.

11. The writ petition is accordingly disposed of. No costs. In view of disposal of writ petition, Civil Application No. 8009 of 2015 does not survive and the same is also disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

aaa/