

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONEMPT PETITION NO. 59 OF 2019
WITH
WRIT PETITION NO. 1413 OF 2019

Pravin N. Mahale and others. ... Petitioners.

V/s.

Shri Pravin Shrivastav, The Secretary,
Department of Statistics and others. ... Respondents.

Mr.M.M.Vashi, Senior Advocate with Mr.Rahul Walia and
Mr.Brijesh Nittekar for the Petitioners.
Shri Anil Singh, Addl.Solicitor General with Mr.R.R.Shetty and
Ms.Anamika Malhotra for the Respondents.

CORAM : **NITIN JAMDAR AND
M.S. KARNIK, JJ.**

DATE : **4 March 2020.**

P.C. :

By this contempt petition, contempt of the ad-interim order dated 31 January 2019 passed in Writ Petition No.1413/2019 is alleged. The order dated 31 January 2019 reads as under:

- 1] Issue notice to Respondents, returnable on 21/2/2019.
- 2] Mr. Shetty, learned Counsel, waives service of notice on behalf of Respondents.
- 3] Respondents are directed not to replace the services of the Petitioners by another ad-hoc persons.

An emphasis has been placed by the learned Senior Advocate for the Petitioners on paragraph-3 of the order stating that it placed an embargo on the Respondents not to replace the services of the Petitioners by another ad hoc persons. The contention of the Petitioners is that the Respondents have done exactly that by employing certain persons through agency. This fact was disputed by the learned Additional Solicitor General appearing for the Respondents and, thus, we passed the order dated 3 February 2020 directing the parties to place the details on record. Both the Petitioners and the Respondents have filed their affidavits. The Respondents assert that the persons employed after the ad-interim order are doing some other work and they are not meant to replace the Petitioners.

2. What is invoked before us is a contempt jurisdiction. The order of which contempt is alleged is an ad-interim order passed while issuing notice. At that time no reply was filed. The purport of the ad-interim order was not to stall the functioning of the Respondent- Authorities but to protect the interest of the Petitioners in case they succeed in their challenge. There is dispute as to whether the Petitioners were actually working as on 31 January 2019. According to the Respondents, their contract had come to an end in the year 2017 and it was only by virtue of the order passed by the Tribunal that they had continued and when the Tribunal evicted the interim order on 22 January 2019, the Petitioners automatically

ceased from service. The Petitioners have asserted that the Petitioners have actually worked as on that date.

3. We do not find a categorical mandate in the order dated 31 January 2019 that to continue or give work to the Petitioners so as to exercise contempt jurisdiction. It is trite that if the order is open to possible interpretations contempt jurisdiction should not be exercised.

4. The learned Additional Solicitor General makes a statement, as an extension of the stand of the Respondents taken in the affidavit that the persons now employed are not replacing the services of the Petitioners, that in case the Petitioners succeed then the Respondents will not put forth the ground of lack of posts or that have been filled in. He states that for 43 Petitioners, 43 posts will be earmarked, in case the Petitioners succeed, We accept the statement.

5. In view of this position, according to us, the purpose of the ad-interim order is served. The other controversies raised in this petition will have to be heard in the writ petition when it will be taken up for hearing. Accordingly, contempt petition is disposed of.

6. Writ Petition No.1413/2019 to come on board on 17 March 2020.

(M.S. KARNIK, J.)

(NITIN JAMDAR, J.)