

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 WRIT PETITION NO.2221 OF 2018

AMOL AJAY AGRAWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. B. R. Kedar h/f Mr. V. M. Jaware.

AGP for Respondent Nos.1 & 2-State : Mr. S. G. Sangle.

Advocate for Respondent No.3 : Mr. M. M. Patil (Beedkar).

Advocate for Respondent No.4 : Mr. M. S. Sonawane.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.07.2021

PER COURT :-

1. The petitioners have put forth prayer clauses 'C' and 'D' as under :

"(C) By issuing Writ of mandamus or any other appropriate writ the respondents may kindly be directed to accomodate the petitioners in service and permit them to work in the office of respondent No.3 on their respective posts with benefits of continuity of service and arrears of back wages."

"(D) Till final hearing and disposal of this writ petition respondents may kindly be directed not to fill up any respective posts of the petitioners and they may be permitted to work on their respective posts."

2. In the last more than three years of the pendency of this

petition, this Court has not granted any interim protection to the petitioners.

3. We have considered the submissions of the learned advocates, for the petitioners, respondent Nos.3 and 4 and the learned AGP on behalf of respondent Nos.1 and 2.

4. Considering the limited issue raised before us and the order that we intend to pass, we are not adverting to the entire contentious issues raised by the petitioners before us. Suffice it to say that on 13.07.2017, these petitioners, along with 20 others, were restrained from entering into the office of the Nagar Panchayat, Bodwad on the ground that their appointments are illegal and they have been appointed after the issuance of the first notification of the Bodwad Nagar Panchayat. The District Collector, Jalgaon, allegedly, without hearing the petitioners, sent a letter to the Superintendent of Police, Jalgaon to initiate preventive action against the petitioners for restraining them from handling office work and entering office premises. On 15.07.2017, the Police Station Bodwad issued a notice to the petitioners under Section 149 of the Cr.P.C. and prevented them from reporting for duties till

28.07.2017.

5. We find that the issue raised by the petitioners before us is two fold. Firstly, that the petitioners are the legally appointed employees of Village Panchayat, Bodwad, which has now been converted into Nagar Panchayat, Bodwad by notification dated 06.05.2016. It is their contention that the erstwhile Bodwad Gram Panchayat passed a resolution of granting permanency to petitioner Nos.1 to 3, on 27.01.2015 and petitioner Nos.4 to 6, on 31.08.2015.

6. The learned AGP is right in submitting that disputed questions cannot be gone into by this Court under its extraordinary jurisdiction. The learned advocate representing respondent Nos.3 and 4 submits that it would be within the domain of the employer to assess whether these petitioners were legally appointed in employment with the Bodwad Gram Panchayat and whether such employment could be continued after its conversion to Nagar Panchayat, Bodwad.

7. From the record, it is undisputed that the restraining order issued against these petitioners and 20 others was only upto 28.07.2017, as per the communication made by the Police

Inspector, Bodwad Police Station, dated 15.07.2017 to these petitioners individually. Mr. Patil, the learned advocate representing respondent No.3 - Nagar Panchayat, Bodwad submits, on the basis of a communication dated 25.10.2017 addressed by the District Collector to some of the petitioners, that he cannot comment about the duration for which these petitioners were restrained from entering the premises.

8. In Service Jurisprudence, it is a well settled law that an employee cannot be barred from entering the work place without following the due process of law. In the case of a private employment in the industrial sector to which the Industrial Employment (Standing Orders) Act, 1946 would be applicable, an employee can be suspended pending disciplinary proceedings or can be awarded the punishment of suspension from service without wages for a maximum period of four (4) days, for which a departmental inquiry is not necessary.

9. The disputed issue before us is that the petitioners' claim to be in the employment of Bodwad Gram Panchayat prior to its conversion into Nagar Panchayat, Bodwad and that their services have been, therefore, continued by creation of law

with the newly established Nagar Panchayat, Bodwad. The learned advocates representing respondent Nos.2, 3 and 4 contend that the legality and validity of the appointment orders of the petitioners will have to be considered in the light of the law settled in the matter of ***Secretary, State of Karnataka and others Vs. Umadevi and others, 2006 (4) SCC 1***, as back door entries in public employment is prohibited.

10. In our extraordinary writ jurisdiction, we are not required to go into these disputed issues. The Police Inspector, Bodwad Police Station had issued orders under Section 149 of the Cr.P.C. and in his order, based on the directions of the District Collector, Jalgaon, the period of restraintment was from 13.07.2017 till 24.00 hours of 28.07.2017 taking into account Section 37(1)(3) of the Bombay Police Act.

11. In the light of the above, it is apparent that, as on date, there is no restraining order against the petitioners, inasmuch as, restraining orders cannot be continued in perpetuity. This petition is, therefore, partly allowed by holding that the restraining orders have ceased to operate beyond 28.07.2017. We, however, make it clear that since there appears a service

dispute between the petitioners and respondent No.3 as regards the legality of their employments, we express no opinion on the same and the petitioners are at liberty to avail of a remedy as may be permissible in law.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-