

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6994 OF 2020
WITH CA/8475/2020 IN WP/6994/2020

ASHOK RAMBHAU ZINE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.Joslyn Menezes, Advocate for the petitioners.
Mr.S.B.Pulkundwar, AGP for respondent No.1.
Mr.P.P.Mandlik, Advocate for respondent No.2.
Ms.Anjali Bajpai-Dube, Advocate for respondent No.3.
Mr.R.S.Deshmukh, Sr.Counsel a/w Mr.Shriram V. Deshmukh,
Mr.D.R.Deshmukh, Advocate for respondent No.4.
Mr.A.S.Savale, Advocate for respondent No.5.
Mr.A.N.Patale, Standing Counsel for respondent No.6.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : SEPTEMBER 30, 2021

PER COURT :

1. We have extensively heard the learned Advocate for the petitioners, the learned AGP on behalf of respondent No.1, the learned Advocate for respondent No.2 and 3, the learned Senior Counsel for respondent No.4, the learned Advocate for respondent No.5 / Union and the learned Standing Counsel for Union of India on behalf of respondent No.6.

2. The petitioners have put forth prayer causes B, C and D as under :-

"B. That by Writ of Mandamus or any other appropriate writ, order or direction direct Respondent No.2 Board to register the petitioners as per the Government Resolution dated 10.10.2018 and so also in term of Maharashtra Private Security Guards (Regulation of Employment and Welfare), Act, 1981 and Scheme framed there under;

C. That the Notice of termination dated 01/09/2020 issued by Respondent No.4 against Petitioner No.1, 2, 3 and 5 may kindly be quashed and set aside and the services of petitioners may kindly be protected till the registration of petitioners and respondent Nos. 3 and 4 with the Respondent Board in terms of the Maharashtra Private Security Guards (Regulation of Employment and Welfare), Act, 1981 and scheme framed there under;

D. That during the pendency of the present writ petition by way of an interim relief, respondent Nos. 3 and 4 may be restrained from taking any coercive action with respect to the services of the petitioners till the disposal of this writ petition;"

3. It is conceded by the petitioners that petitioner No.5 is a member of the Marathwada Labour Union/ respondent No.5 herein who is already party to WP No.6125/2005 in which the Union has prayed for directions to register its' members with the Security Guard Board. It

was further prayed that the security guards at Sr.Nos. 1 to 19 of annexure A be allotted work by the HPCL (Petroleum Company) and the Security guards at Sr.Nos. 20 to 22, to be reinstated in service by HPCL. Petitioner No.5 Tejrao Madhavrao Gayasaminder is party to the said petition and being amongst 1 to 19 covered by prayer clause "C", he was not in employment then and was praying for allotment of work as on 01/08/2005.

4. As such, we are directing that petitioner No.5 shall stand deleted from the present petition before us. We could have initiated appropriate action against him for having suppressed material information by not disclosing that he is a party to that petition and he was without work from 01/08/2005. In paragraph No.6 before us, all the petitioners have stated that they have not filed any other writ petition touching the subject matter in this petition when we find that prayer clause "B" in this petition is identical to prayer clause "D" in WP No.6125/2005. We are pardoning him since he is without employment and, therefore, we would not impose costs on him or initiate any action against him.

5. The learned Advocate for petitioner Nos. 1 to 4 submits on instructions that petitioner Nos.1 and 3 namely Ashok Rambhau Zine and Ashok Maroti Chouthmal have been disengaged and have not been deployed on any job assignment by respondent No.4 contractor/employer either with respondent No.3/company or any other place, from 01/10/2020. Had this been disclosed to this Court when the order was passed on 16/10/2020 or when ad-interim relief of “not to terminate” was granted on 27/11/2020, we would have noted this aspect and would have passed a different order, keeping in view that reinstatement in service cannot be granted at an interim stage as it amounts to granting final relief. We, therefore, hold that our earlier orders would not protect petitioner Nos. 1 and 3.

5. When we passed the order on 27/11/2020, the petitioner No.2 Dnyaneshwar Wamanrao More and petitioner No.4 Pritam Govindrao Waghmare were deployed by respondent No.4 with respondent No.3. Even when we passed an order on 28/07/2021, the learned Sr.Advocate was instructed to say that respondent No.4 has not terminated their service. Nevertheless, as on 01/07/2021, when Dnyaneshwar and Pritam were disengaged by respondent No.4, our protective order dated

27/11/2020 was in force.

6. There is no dispute that these 5 petitioners have already undergone the process of registration in 2014 in accordance with the procedure in vogue. By communication dated 14/06/2016, in accordance with the provisions of the The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and The Private Security Agencies (Regulation) Act, 2005, the proposals of these petitioners for enrollment with the Security Guards Board have been forwarded. The same are still pending with the Assistant Commissioner of Labour (Mathadi), Office of the Commissioner of Labour, Kamgar Bhavan, BKC, Bandra East, Mumbai – 51.

7. The learned Advocate for the Board points out a Government Resolution dated 25/08/2010 issued by the Industries, Energy and Labour Department Mantralaya, which clarifies that proposals for sanctioning enrollment under the Mathadi Board, is within the jurisdiction of the Commissioner of Labour, Maharashtra.

8. In view of the above, the proposal sent by the Board from Aurangabad dated 14/06/2016, concerning these 5 petitioners and all

those mentioned in the annexure A-1 and A-2 annexed thereto, shall be considered by the Commissioner (Labour) Maharashtra or such authority functioning under respondent No.1, on or before 30/10/2021 and a decision on such enrollment, shall be arrived at within the parameters of the 1981 Act. A reasoned order shall be passed on or before 30/10/2021. The petitioners pray that their services be protected till further orders being passed on their applications for registration as Security Guards.

9. It is beyond debate and the petitioners also agree in the light of the Law that the security guards, either before registration, while being in the employment of the private security agency or even after registration and upon having entered the pool of registered guards of the Board, do not have a right to select an establishment for deployment. Prior to registration, it is the prerogative of the labour contractor – employer to deploy them at any place where he has a contact for such deployment with an industrial establishment. Post registration as a security guard under the board, the board can deploy them wherever work is available by following the register in which their seniority of registration in the pool is maintained.

10. As such, petitioner Nos. 2 and 4 cannot claim as a matter of right to be insulated against all forms of termination, in as much as, they can not seek a specific deployment or a deployment with a specific establishment. Nevertheless, since we have protected petitioner Nos. 2 and 4 in the light of it being revealed to us that petitioner Nos. 1 and 3 were already out of employment on 01/10/2020 whom we have excluded from the ambit of our protective order, that we direct respondent No.4 contractor – employer to pay the salaries of petitioner Nos. 2 and 4 for the period 01/07/2021 upto 30/10/2021. Since the decision on their registration as security guards would be delivered on or before 30/10/2021. We direct respondent No.4 to make such payment for the said period on or before 21/10/2021. With such payment, it would amount to compliance of our protective order passed earlier with the clarification that we have recorded in the foregoing paragraphs of this order to the extent of petitioner Nos.1 and 3.

10. This petition, with the above directions, is disposed off.

11. Pending civil applications are disposed off. In the event respondent No.4 has already paid amounts to petitioner Nos. 1 and 3

after disengaging them on 01/10/2020 for any further period, respondent No.4 would refrain from seeking recovery of those amounts.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)