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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 9th OF NOVEMBER, 2022

WRIT PETITION No. 17280 of 2022

BETWEEN:-

1. PRADEEP MISHRA S/O SHRI
JANARDAN MISHRA, AGED ABOUT 34
YEARS, OCCUPATION: RADIOGRAPHER
F-178, BIRLA GRAM NAGDA, DISTRICT
UJJAIN (MADHYA PRADESH)

2. ASHRAF ALI SHAIKH S/O SHRI KADIR
ALI SHAIKH, AGED ABOUT 37 YEARS,
OCCUPATION: LAB ASSISTANT 151,
HAHAVEER NAGAR, RATLAM (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI G.K. PATIDAR, ADVOCATE)

AND

1. UNION OF INDIA THROUGH MINISTRY
OF RAILWAYS (RAIL MANTRALAYA)
THROUGH ITS COMPETENT AUTHORITY
DEPUTY DIRECTOR ESTT. (NG) II
RAILWAY BOARD, NEW DELHI (DELHI)

2. DIVISIONAL RAILWAY MANAGER,
WESTERN RAILWAY, RATLAM
THROUGH ITS COMPETENT
AUTHORITY, SENIOR DIVISIONAL
PERSONAL OFFICER WESTERN
RAILWAY DRM OFFICE, DO BATTI,
RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI HIMANSHU JOSHI, ADVOCATE)

.....

This petition coming on for order this day, the court passed the following:

ORDER

This petition has been filed by the petitioners under Article 226 of the Constitution of India, against the order dated 28.03.2022, passed by the respondent No.2/Divisional Railway Manager, Western Railway, Ratlam whereby, the contractual appointment of the petitioners, who were posted as Radiographer and Lab Assistant in the Railway Hospital, Ratlam respectively, have been terminated, holding that the petitioner's contract was up to 31.03.2022 only.

According to the petitioners, they were initially appointed on 26.07.2011, on contractual basis on the said posts in the employment of the Railway Department, at Ratlam and thereafter their period of contract was extended from time to time. Lastly, it was extended on 23.09.2021 up to 31.03.2022. The case of the petitioners is that, subsequently, the Railway Ministry has also issued a Circular on 19.01.2022 to extend the services of such persons up to 30.06.2022 and thereafter, vide another Circular dated 30.06.2022; the contract was directed to be extended up to 30.06.2023 subject to clear availability of funds.

Counsel for the petitioners has submitted that although the employment of the petitioners was contractual in nature, however, as per the Railway Ministry's Circular, their contract period has been extended up to 30.06.2023. Under such circumstances, to curtail their services vide impugned order dated 28.03.2022 holding that their services are being terminated as their contract has come to an end on 31.03.2022 is arbitrary and unjust. Thus, it is submitted that the impugned has been passed in violation of the circular issued by the Railway Ministry and hence, the same is liable to be quashed.

Counsel for the respondents, on the other hand, has opposed the prayer and has submitted that no case for interference is made out as the circular issued by the Railway Ministry is unambiguous and in fact, a condition has also been imposed in the aforesaid circular that services may be extended up to 30.06.2023 subject to clear availability of funds and hence, due to paucity of funds the petitioners services were done away with. It is also submitted that, as soon as the funds were made available to the respondents, they again issued an advertisement dated 15.07.2022, to fill the vacancies but, instead of participating in the aforesaid recruitment process, the petitioners have preferred this petition. It is also submitted that pursuant to the aforesaid advertisement, two persons namely; Chetan Singh, S/o Jawahar Singh and Lalit

Sharma, S/o Harilal have also been appointed on the petitioners' post. Thus, it is submitted that no case for interference is made out.

In support of his contention, counsel for the respondents has also relied upon the decision rendered in the case of **Dr. Bhupendra Singh Yadav Vs. Union of India and others** reported as **2022 (3) MPLJ 594**.

In rebuttal, counsel for the petitioner has submitted that the respondents have not placed on record any documents to demonstrate that they ran out of funds and even otherwise it is inconceivable that the respondents/Railway Department has any positive of funds and thus, petition be allowed.

Heard the learned counsel for the parties and also perused the record.

On due consideration of the rival submissions and on perusal of the record, this Court does not find force with the contention raised by the counsel for the petitioners. It is found that the petitioners' services were purely temporary in nature and they were initially appointed in the year 2011 and 2015 respectively and thereafter, it was extended from time to time up to 31.3.2022 on detail vide impugned order dated 28.2.2022 their services were terminated. It is true that on earlier occasion the Railway Ministry had directed the General Managers of all Zonal Railway/Production Units and RDSO to extend the services of the Paramedical Staff

on contract basis up to 31.3. 2022 and thereafter it was also directed to be extended up to 30.6.2023 subject to clear availability of funds.

The respondents in their reply have come out to with a case that only due to paucity of funds, the services of the petitioners were not extended, and thereafter, the department issued the advertisement dated 15.7.2022 to fill up the vacancies, as the petitioners' services were already done away with. In the considered opinion of this Court, the termination of the contract of the petitioners on account of paucity of funds on the particular date cannot be said to be unreasonable or inconceivable, as the concerned department of the Railway at Ratlam had shortage of funds to meet their obligations. The funds have already sanctioned by the higher authorities. Thus, the petitioners cannot claim their right on the post held by them on contractual basis, and as the petitioners have also not participated in the subsequent recruitment drive, other two persons have already been appointed by the respondents/Department in place of the petitioner, hence, in such circumstances the petitioners' claim that their services ought not to have been terminated does not stand in the eyes of law.

Learned counsel for the respondents has rightly placed the decision rendered by the co-ordinate Bench of this Court in the case of **Dr. Bhupendra Singh Yadav** (supra) and in that case also

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the temporary employment on contract basis of the petitioner was discontinued on the ground of non-availability of budget and this Court while relying upon another decision rendered by the co-ordinate Bench of this Court in the case of *Ashita Dubey vs. State of M.P. and others* reported as *2021 (4) MPLJ 155* has rejected the claim of the petitioner.

In view of the same, the petition being devoid of merit, is hereby **dismissed**.

The interim order passed earlier shall stand vacated and since the petitioners have already worked on the basis of the interim order, it is directed that no recovery shall be made from them for the work performed.

Certified copy, as per rules.

(Subodh Abhyankar)
Judge

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MONI RAJU

Digitally signed by MONI RAJU
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