

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**WRIT PETITION NO.1291 of 2020**

Naresh Mahadeo Borkar

vs.

The State of Maharashtra through its Secretary, Department of Urban  
Development and Town Planning, Mumbai and others.

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order  
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Court's or Judge's Order

Shri G.L.Agrawal, Advocate for petitioner.

Mrs S. S. Jachak, Assistant Government Pleader for respondent nos. 1 and 3.

Shri Anjan De, Advocate for respondent no. 2.

**CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.**

**DATE :- AUGUST 26, 2022**

Heard.

2. The Akola Municipal Corporation on 17.12.2006 passed a Resolution thereby resolving to appoint Encroachment Removal Officers on contractual basis. Pursuant to the said Resolution an advertisement was issued by the Municipal Corporation calling upon persons interested to apply for appointment as Encroachment Removal Officer on contractual basis. Thereafter, a Committee was constituted to interview the candidates to facilitate such appointment. On 29.04.2006 five persons including the petitioner were appointed as Encroachment Removal Officer on honourarium of Rs.6,000/- per month. As per the order of appointment, it was stated that the same was on temporary basis for a period of five months. It was also stated that the services would come to an end on the expiry of contractual period. If it was found that the work was not satisfactory, the services could be dispensed with without any notice. According to the petitioner, after expiry of the said period of five months, fresh appointment orders were issued on contractual basis from time to time. The last order issued was on

28.05.2019 which was to operate till 14.10.2019. The petitioner sought regularisation of his appointment by making an application to the Municipal Corporation. It appears that on 27.06.2019 the contractual engagement of the petitioner was terminated by issuing him a notice. Being aggrieved the petitioner approached the Labour Court for challenging the notice of termination. In those proceedings the petitioner filed an application for interim relief seeking reinstatement pending the complaint. The Labour Court on 11.09.2019 recorded a finding that the petitioner was not a workman in view of Section 2(s) of the Industrial Disputes Act, 1947. By the said order his application came to be rejected. The petitioner then approached the Industrial Court by filing a revision application for challenging the said order. The Industrial Court on 03.01.2020 dismissed the revision application.

In the aforesaid backdrop the petitioner has approached this Court raising a challenge to the order dated 27.06.2019 by which his contractual appointment was terminated prior to 14.10.2019. He has sought declaration that he is entitled to be reinstated and continued in service.

3. Shri G. L. Agrawal, learned counsel for the petitioner submitted that since the year 2006 the petitioner was appointed on contractual basis, each engagement being for a period of five months. Various orders in that regard were issued to the petitioner from time to time and the last order issued was on 28.05.2019. As per the said order the petitioner was entitled to continue in employment till 14.10.2019. However, without any justifiable reason his engagement was terminated on 27.06.2019. In that order it was stated that the petitioner was not discharging his duties diligently and hence his services were no longer required. It was not permissible for the Municipal Corporation to have terminated the petitioner's services in such a manner. Only because the petitioner sought regularisation of his services, he was being

victimised by removing him from service. Though the petitioner had approached the Labour Court and thereafter the Industrial Court, it was held that the petitioner was not a workman and hence jurisdiction was not exercised. In these facts, the only remedy available to the petitioner was to approach this Court in writ jurisdiction. It was also submitted that one Shri Vijay Badone who was similarly situated was also removed from contractual engagement but he had been subsequently taken back in service. The petitioner ought to be granted similar treatment. In support of the prayers made in the writ petition, the learned counsel placed reliance on the decisions in *Satwati Deswal vs. State of Haryana and others [(2010) 1 SCC 126]*, *Union of India and others vs. Jayakumar Parida [(1996) 1 SCC 441]*, *State of Maharashtra and another vs. Kishor Shivdas Chaudhari [2009 SCC Online Bom 1110]*, *Jitendra Kumar and others vs. Union of India and others [2019 SCC Online Del 6412]* and *State of Maharashtra and others vs. Rambhau Bansi Bagul [2010 (1) BCR 443]*. It was thus submitted that the petitioner was entitled for the reliefs as prayed for.

4. Shri Anjan De, learned counsel for the respondent no.2-Municipal Corporation opposed the aforesaid submissions. According to him, the appointment of the petitioner was purely contractual in nature. There was no right created in favour of the petitioner to seek reinstatement. His appointment had been put to an end in accordance with the terms of the contract. Having approached the Labour Court and thereafter the Industrial Court, the petitioner gave up those proceedings without challenging the orders passed therein. It was open for the petitioner to get his rights adjudicated through the appropriate forum and not by invoking writ jurisdiction under Article 226 of the Constitution of India. Inviting attention to the documents filed alongwith the reply,

it was denied that the petitioner had been victimised by putting an end to his services. He referred to various terms and conditions in last the order of appointment which indicated that the services had been put to an end as per those terms and conditions. The allegation made by the petitioner with regard to Shri Vijay Badone being taken back in employment was denied. It was submitted that since his services were required in the Property Tax Department of the Akola Municipal Corporation, he was re-engaged on contractual basis. It was thus submitted that there was no legal basis for the petitioner to seek the aforesaid reliefs.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is found that from 29.04.2006 the petitioner was issued various orders of appointment which were contractual and temporary in nature. These orders were for fixed period of five months each as per the terms and conditions thereunder. It was permissible to dispense with the services of such appointee by complying with those terms and conditions. The last order of appointment on contractual basis is dated 28.05.2019 by which the engagement was come to an end on 14.10.2019. Prior thereto the Municipal Corporation by stating that the Administration was not satisfied with the discharge of duties by the petitioner proceeded to put an end to his engagement. As per Clause 16 of the terms and conditions of the contract, in case of any dispute in the matter of appointment the decision of the Commissioner was to be treated as final. Breach of any terms and conditions was also to render the temporary appointment being terminated.

It can be seen from the order dated 27.06.2019 that the Administration was not satisfied with the discharge of duties by the petitioner. On that count it was stated that his services were no longer required and hence the contract was terminated.

6. The aspect whether the petitioner was victimised and whether the Municipal Corporation was justified in terminating the contract of appointment prior to the period for which the contract was to operate are questions that cannot be satisfactorily considered and answered in exercise of writ jurisdiction under Article 226 of the Constitution of India. Adjudication of these aspects would require resolution of disputed questions and the same cannot be decided in a summary manner. While the petitioner contends that he was discharging his duties diligently and that his services had been dispensed with for extraneous reasons, according to the Municipal Corporation its Administration was not satisfied with the manner in which the work being done by the petitioner. It would not be possible to resolve these aspects in exercise of writ jurisdiction.

7. It is to be noted that the petitioner had invoked the jurisdiction of the Labour Court for challenging the order dated 27.06.2019 putting an end to his contractual engagement. The Labour Court held that the petitioner was not a workman and hence it had no jurisdiction to decide the proceedings. That order was unsuccessfully challenged before the Industrial Court. Thereafter the petitioner has not pursued the complaint and has instead filed this writ petition. We find that in terms of the last order of appointment the petitioner was entitled to continue on such engagement till 14.10.2019. The period of the contractual appointment has now come to an end. It would therefore not be possible for this Court to issue a direction to reinstate the petitioner for the remainder period of the contract. If the petitioner is aggrieved by the order dated 27.06.2019 terminating his contractual engagement his remedy for seeking appropriate relief would lie elsewhere and not under Article 226 of the Constitution

of India. There cannot be any dispute with regard to the ratio of the decisions relied upon by the learned counsel for the petitioner. However, in the facts of the present case when it is clear that the petitioner had a right to continue on his contractual appointment only till 14.10.2019, we do not find any case made out to grant him relief of restoration in service.

8. With liberty to the petitioner to avail such other remedies that are available in law for challenging the order dated 27.06.2019, the writ petition is not entertained. Keeping the points as raised open, the writ petition is dismissed with no order as to costs.

( URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

*Andurkar.*