



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2484 OF 2024

1. Shri. Kalpesh S. Mandlik,
Age 37 yrs, Occ. Service,
R/o.2, Aradhana Nagar,
House No. 2698/2, Mayur Peth,
Kharbi Road, Nagpur 440 034
Tahsil and District Nagpur Maharashtra.

2. Shri Yogesh Funde,
Age 35 yrs, Occ. Service,
R/o. Bazar Chowk, Salekasa,
District Gondia, Maharashtra.

.....**PETITIONERS**

...V E R S U S...

1. State of Maharashtra,
through Maharashtra Rail Infrastructure
Development Corporation Ltd.
A Joint Venture of the Government of
Maharashtra and Ministry of Railways,
Through its Assistant Manager,
HR Department, Office at 2nd Floor,
Hoechst House, Nariman Point,
Mumbai 400 021 (Maharashtra State)
E-mail : info@maharail.com

2. Maharashtra Rail Infrastructure
Development Corporation Ltd.,
through its Group General Manager,
Office at 3rd Floor, Girish Heights,
Opposite VIMS Hospital, Sadar,
Nagpur 440 001 (Maharashtra State).

3. Human Resources (HR) Department,
Through its Assistant Manager,
Maharashtra Rail Infrastructure
Development Corporation Ltd.,
2nd Floor, Hoechst House,

Nariman Point, Mumbai. 400 021
(Maharashtra State)
E-mail : hr@maharail.com

.....**RESPONDENTS**

Mr. Y.R. Kinkhede, Advocate for the petitioners.
Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. U.P. Dable, Advocate for
Respondent No.1.

**CORAM:- NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

CLOSED FOR JUDGMENT ON : 18.07.2024
JUDGMENT PRONOUNCED ON : 28.08.2024.

JUDGMENT (Per: Abhay J. Mantri, J.)

Rule. Heard finally with the consent of learned counsel
for the parties.

2. The petitioners have invoked the writ jurisdiction to
challenge the notices dated 20.03.2024 issued by respondent No. 3,
thereby rescinding the petitioners' contract prior to the completion
of the contractual period of their services.

3. The brief facts of the case are that the petitioners were in
employment with respondent Nos. 1 and 2. Respondent No. 1
appointed petitioner No. 1 on 14.01.2019 on the post of Senior
Executive (Civil) on a contract basis for a period of three years w.e.f.
14.01.2019, extendable up to 5 years. The contract period was to

expire on 13.01.2022. Likewise, petitioner No. 2 was appointed on 01.08.2019 on the post of Executive (Civil) on a contract basis for a period of three years, and the contract period was to expire on 30.07.2022, which was extendable up to 5 years. Clause 10 of the said appointment letters deals with the termination of services. Thereafter, respondent No.1 issued a promotion/extension letter in favour of the petitioners on 09.01.2024 and 20.04.2021. According to the letters, petitioner No. 1 was promoted to Assistant Manager (Civil), and his contract was extended till 12.07.2024. Likewise, petitioner No. 2 was promoted from E.O. to E-1 Grade, and his contract period was extended up to 31.07.2024.

4. However, vide email/communications dated 20.03.2024, respondent No.1 surprisingly terminated the petitioners' services in view of clause 10 of the appointment letters prior to the completion of the contractual period. Hence, the petitioners are before this Court by way of this petition.

5. Respondent No.1 filed a reply and contended that the petitioners were appointed on a contract basis for a specific role. After completing their role, the contract has been rescinded by

giving a month's notice in terms of clause 10 of the appointment letters. Therefore, the petitioners are not entitled to claim the relief as claimed. It is further averred that the said project is to be completed by the end of 2024. Therefore, rescinding the petitioners' contract was taken in the organisation's interest; thus, no illegality was committed by issuing the impugned notices. Further, without admitting any of the contentions raised by the petitioners and with a view to end the litigation, respondent No. 1 was inclined to complete their contractual period but not for any further period after that. The petitioners have no right to claim continuity till the appointment of a regular employee in view of their contractual appointment. Therefore, the said contention in that regard is devoid of merit and categorically opposed by the respondents. Lastly, it is averred that the Executive (Civil) and Senior Executive (Civil) are not of regular sanctioned posts, so a question of regularisation of their services does not arise. Hence, the respondent prayed for the dismissal of the petition.

6. Mr. Kinkhede, the learned counsel for the petitioners, has drawn our attention to clause No.10 of the appointment letters and argued that respondent No.1 could terminate the services of the

petitioners on the ground of *'indiscipline, insubordination, misconduct, unsatisfactory performance or breach of any terms and conditions of the appointment letter'*, else they were not empowered to terminate the services before completion of the contractual period. He has also taken us through the termination order and canvased that no reason has been assigned to the termination order; therefore, issuance of an impugned termination order is illegal and bad in law. Consequently, he urged to quash and set aside the impugned notices.

7. To buttress the contentions, he has relied upon the law laid down in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (2) and Others*, [(2006)4 SCC 44]; *Gridco Limited and Another Vs. Sadananda Doloi and Others*, [(2011)15 SCC 16; *K. Ragupathi Vs. State of Uttar Pradesh and Others*, [(2022)6 SCC 346; *State of Haryana and Others Vs. Piara Singh and Others*, [(1992)4 SCC 118]. He pointed out paragraph Nos. 45 to 47 in the case of *Secretary, State of Karnataka and Others (supra)* and argued that in view of the law laid down in the aforesaid case, termination of the services of the petitioners by respondent No.1 is bad in law and liable to be set aside. He also submitted that the petitioner be permitted to continue as long as the scheme continues or until the respondents

complete the regular recruitment process.

8. *Per contra*, Mr. S.P. Dharmadhikari, the learned Senior Counsel for respondent No. 1, strenuously argued that the petitioners were appointed on a contractual basis and, therefore, after the expiry of the contractual period, they are not entitled to claim continuity in service. The learned Sr. Counsel further submits that respondent No.1 has terminated their contract. Therefore, the petitioners are not entitled to claim for further extension beyond the contractual period or till the regular appointment is made. Hence, he urged for the dismissal of the petition.

9. We have appreciated the rival contentions of the parties, gone through the record and the citations relied upon by the learned counsel for the petitioners.

10. It is pertinent to note that vide impugned Email/Communication dated 20.03.2024, respondent No. 1 rescinded the services of the petitioners from 19.04.2023, i.e. prior to the completion of their contract period.

11. That being so, the petitioners approached this Court and, vide order dated 12.04.2024, obtained the interim protection as per clause 4 of the order, which reads thus:

“4. In view of the fact that the term of the petitioners is yet to expire, there shall be a status quo as on today”.

12. It is to be noted that as per the order of extension of contractual services, the services of petitioner No. 1 were extended up to 12.07.2024 and of petitioner No. 2 up to 31.07.2024 and both the period expired during subsistence of interim order dated 12.04.2024. Moreover, respondent No. 1, in paragraph No. 6 of the reply, categorically averred that the respondent is inclined to permit the petitioners to complete their contract period. We would like to reproduce paragraph No. 6, which reads thus:

“6. However, without admitting to any of the contentions raised by the petitioners, and with a view to end the present litigation, the answering respondent is inclined to let the petitioners complete their contract period with the Corporation, but not any further. It is submitted that the petitioners do not possess any right to continue with the answering respondents beyond their contract period; they are purely contractual employees. Their appointment order also makes the said position very clear.”

13. Considering the extension letters /order and paragraph No. 6 of the reply and facts of the case, it is evident that the

petitioners have completed their extended period of services during the pendency of the petition. The only question remains “*whether the impugned notices issued by respondent No.1 to the petitioners are legal or not.*” In this regard, we would like to reproduce the contentions in the legal notices as under:

“In terms of clause No. 10 of your Appointment Letter No. MRIDC/HR/Posting dated 14.01.2019. You are being given one month's notice for rescinding your contract employment with MRIDC.

You are requested to kindly hand over the SIM and other company assets, if any, provided by the MRIDC during your services before or on the last working day. i.e. 19.04.2024 (AN).”

Likewise, we reproduce **clause 10** of the appointment letters dated 14.01.2019 and 01.08.2019 of the petitioners as under:

“10. MRIDC reserves the right to terminate your services at any time on the grounds of indiscipline, insubordination, misconduct, unsatisfactory performance or breach of the terms and conditions of this letter by giving one month's notice or without any notice on payment of one month's salary in lieu of notice”.

14. A perusal of clause 10 reveals that respondent No.1 has the right to terminate the petitioners' services at any time on the grounds of *indiscipline, subordination, misconduct, unsatisfactory performance or breach of any of the terms and conditions of the*

appointment letter only. However, in the impugned termination notices/orders, respondent No.1 has not assigned any reason for the termination of services of the petitioners but only mentioned that in terms of clause 10 of the letter, their services have been terminated. In fact, as per clause No. 10, the right to terminate the petitioners' services by respondent No.1 has accrued only after violation of the conditions/terms mentioned therein. However, without assigning any grounds/reasons or giving an opportunity for a hearing, the petitioners' services have been terminated before the completion of the contractual period. Hence, in our opinion, the issuance of the said notices is illegal and bad in law and is liable to be quashed and set aside.

15. *Furthermore,* the petitioners also claim that after the contractual period is completed, they may be permitted to continue to work on their respective posts until the respondents carry out the regular selection process. It is pertinent to note that the petitioners' services were on a contractual basis and were not on a regular basis to claim continuity beyond the contractual period. It is to be noted that the petitioners have accepted the employment on a temporary basis. Therefore, permitting them to claim continuity in services

would not be proper. If the petitioners are permitted to continue in service, then it would create another mode of public employment, which is not permissible. In such circumstances, the petitioners cannot invoke the theory of legitimate expectations for being continued in the services without following due process of law. Respondent No.1 categorically stated that both posts were not sanctioned, so the question of regularisation did not arise. Moreover, respondent No.1 averred that the project will be completed by the end of 2024. In such an eventuality, the petitioners are not entitled to claim continuity in service.

16. At the same time, we cannot lose sight of the fact that if the project/scheme continues and if the respondent intends to replace the petitioners by appointing new candidates on an ad hoc basis, in these circumstances, in our opinion, the petitioners have a preferential right to claim continuity in service until the appointment of a regular employee is carried out by following due process of law.

17. In the aforesaid background, we deem it appropriate to pass the following order:

i) The petition is partly allowed.

ii) The impugned termination orders/notices dated 20.03.2024 at Annexure No. 6 are hereby quashed and set aside.

iii) Needless to clarify, if the project/scheme continues and respondents intend to replace the petitioners by appointing a new ad-hoc employee, in that eventuality, the petitioners are entitled to claim continuity in the services until the respondents initiate a regular appointment process, in accordance with the law.

18. The petition stands partly allowed in the afore-stated terms. No order as to cost.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)