THE HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P.Nos. 27468 of 2015 and batch

%31.12.2015

Boggadi Rama Chandra Reddy, s/o. B.Narayana Reddy,
Aged about 37 years, Pullampet Gramapanchayat,
Pullampet Mandal, Kadapa District and others.

…. Petitioners

VERSUS

$ State of Andhra Pradesh, rep.by its Secretary,
Panchayat Raj and Rural Development Department,
Secretariat Buildings, Hyderabad and others.

...Respondents

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> HEAD NOTE:

!**Counsel for Petitioner: Sri C.V. Mohan Reddy, Senior counsel for Sri C.Sumon**

^**Counsel for Respondents: Sri MSR Chandra Murthy, Special Standing Counsel for Panchayat Raj**

? Cases referred

(1974) 2 SCC 831
(1991) 1 SCC 212
(1986) 3 SCC 156
2010 (6) ALD 679
AIR 2000 SC 1080
2014 (4) ALD 695
2003 (2) SCC 107
2011-LAWS (SC) -2-92
2010(2) ALD 174 DB
2009(3)ALD 434
2011 (5) ALD 739
2003(3)ALD 245
AIR 2012 SC 729
(2006) 4 SCC 1
AIR 1953 SC 250
(2013) 3 SCC 607
(2001)10 SCC 83
AIR 1967 SC 1269= (1967) 2 SCR 625
(1992) 4 SCC 118

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

W.P.Nos.27468 of 2015 and batch

W.P.No.27468 of 2015 :

Between :

Boggadi Rama Chandra Reddy, s/o. B.Narayana Reddy,
Aged about 37 years, Pullampet Gramapanchayat,
Pullampet Mandal, Kadapa District and others.

.... Petitioners

And

State of Andhra Pradesh, rep.by its Secretary,
Panchayat Raj and Rural Development Department,
Secretariat Buildings, Hyderabad and others.

JUDGMENT PRONOUNCED ON :31.12.2015

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : YES To Law Reporters/Journals :

3. Whether Their Ladyship/Lordship wish to : See fair Copy of the Judgment ? : YES

THE HON'BLE SRI JUSTICE P NAVEEN RAO

W.P.Nos.27468,27538,35847,26675,26756,26953,27039, 27275, 27277,

27278, 27288, 27291, 27293, 27306, 27321, 27373, 27377, 27397, 27400, 27405, 27410, 27432, 27434, 27435, 27442, 27459, 27463, 27466, 27482, 27584, 27590, 27595, 27616, 27618, 27620, 27626, 27627, 27629,27652, 27653, 27688, 27719, 27766, 27767, 27801, 27825, 27917, 27924, 27929, 27945, 27976, 27984, 27985, 27987, 27997, 28003, 28005, 28018, 28024, 28036, 28040, 28044, 28046, 28059, 28066, 28075, 28083, 28169, 28179, 28193, 28202, 28206, 28211, 28223, 28229, 28240, 28258, 28295, 28300, 28307, 28319, 28320, 28443, 28512, 28514, 28539, 28545, 28559, 28563, 28569, 28572, 28573, 28593, 28608, 28659, 28719, 28735, 28741, 28778, 28781, 28789, 28798, 28808, 28814, 28827, 28831, 28833, 28836, 28838, 28846, 28883, 28886, 28906, 28946, 28949, 28991, 28992, 29010, 29013, 29020, 29026, 29029, 29045, 29047, 29054, 29129,

29130, 29138, 29141, 29160, 29162, 29170, 29189, 29202, 29204, 29211, 29237, 29291, 29301, 29307, 29337, 29350, 29361, 29363, 29364, 29369, 29370, 29371, 29379, 29381, 29391, 29400, 29406, 29423, 29427, 29435, 29439, 29440, 29502, 29538, 29665, 29680, 29735, 29755, 29827, 29862, 29872, 29873, 29895, 29905, 29909, 29915, 29916, 29919, 29921, 29923, 29924, 29925, 29926, 29931, 29934, 29936, 29937, 29940, 29943, 29944, 29947, 29950, 29954, 29956, 29969, 29974, 29975, 29979, 29981, 29986, 29988, 29989, 29992, 29995, 30006, 30023, 30028, 30034, 30042, 30045, 30048, 30050, 30085, 30095, 30099, 30107, 30119, 30130, 30137, 30144, 30145, 30146, 30157, 30158, 30165, 30169, 30183, 30184, 30197, 30201, 30205, 30213, 30243, 30251, 30275, 30278, 30284, 30292,

30301, 30302, 30319, 30325, 30361, 30460, 30476, 30477, 30480, 30495, 30516, 30530, 30560, 30571, 30582, 30589, 30597, 30659, 30662, 30677, 30679,30689, 30694, 30740, 30754, 30774, 30814, 30961, 31056, 31216, 31217, 31251, 31259, 31387, 31425, 31652, 31713, 31867, 31891, 31964, 32009, 32336, 32355, 32655, 32728, 33005, 33093, 33099, 33113, 33152, 33212, 33253, 33257, 33267, 33309, 33455, 33471, 33710, 33810, 33898, 34135, 34607, 34611, 34746, 35531, 35346, 31488, 36382, 37256, 37296, 12650, 37871, 38263, 38637, 38673, 38750, 38793 and 27656 of 2015

W.P.No.27468 of 2015 :

Between :
Boggadi Rama Chandra Reddy, s/o. B.Narayana Reddy,
Aged about 37 years, Pullampet Gramapanchayat,
Pullampet Mandal, Kadapa District and others.

…. Petitioners

And

State of Andhra Pradesh, rep.by its Secretary,
Panchayat Raj and Rural Development Department,
Secretariat Buildings, Hyderabad and others.

…. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P NAVEEN RAO

W.P.Nos.27468,27538,35847,26675,26756,26953,27039, 27275, 27277,

27278, 27288, 27291, 27293, 27306, 27321, 27373, 27377, 27397, 27400, 27405, 27410, 27432, 27434, 27435, 27442, 27459, 27463, 27466, 27482, 27584, 27590, 27595, 27616, 27618, 27620, 27626, 27627, 27629,27652, 27653, 27688, 27719, 27766, 27767, 27801, 27825, 27917, 27924, 27929, 27945, 27976, 27984, 27985, 27987, 27997, 28003, 28005, 28018, 28024, 28036, 28040, 28044, 28046, 28059, 28066, 28075, 28083, 28169, 28179, 28193, 28202, 28206, 28211, 28223, 28229, 28240, 28258, 28295, 28300, 28307, 28319, 28320, 28443, 28512, 28514, 28539, 28545, 28559, 28563, 28569, 28572, 28573, 28593, 28608, 28659, 28719, 28735, 28741, 28778, 28781, 28789, 28798, 28808, 28814, 28827, 28831, 28833, 28836, 28838, 28846, 28883, 28886, 28906, 28946, 28949, 28991, 28992, 29010, 29013, 29020, 29026, 29029, 29045, 29047, 29054, 29129, 29130, 29138, 29141, 29160, 29162, 29170, 29189, 29202, 29204, 29211, 29237, 29291, 29301, 29307, 29337, 29350, 29361, 29363, 29364, 29369, 29370, 29371, 29379, 29381, 29391, 29400, 29406, 29423, 29427, 29435, 29439, 29440, 29502, 29538, 29665, 29680, 29735, 29755, 29827, 29862, 29872, 29873, 29895, 29905, 29909, 29915, 29916, 29919, 29921, 29923, 29924, 29925, 29926, 29931, 29934, 29936, 29937, 29940, 29943, 29944, 29947, 29950, 29954, 29956, 29969, 29974, 29975, 29979, 29981, 29986, 29988, 29989, 29992, 29995, 30006, 30023, 30028, 30034, 30042, 30045, 30048, 30050, 30085, 30095, 30099, 30107, 30119, 30130, 30137, 30144, 30145, 30146, 30157, 30158, 30165, 30169, 30183, 30184, 30197, 30201, 30205, 30213, 30243, 30251, 30275, 30278, 30284, 30292, 30301, 30302, 30319, 30325, 30361, 30460, 30476, 30477, 30480, 30495, 30516, 30530, 30560, 30571, 30582, 30589, 30597, 30659, 30662, 30677, 30679,30689, 30694, 30740, 30754, 30774, 30814,

30961, 31056, 31216, 31217, 31251, 31259, 31387, 31425, 31652, 31713, 31867, 31891, 31964, 32009, 32336, 32355, 32655, 32728, 33005, 33093, 33099, 33113, 33152, 33212, 33253, 33257, 33267, 33309, 33455, 33471, 33710, 33810, 33898, 34135, 34607, 34611, 34746, 35531, 35346, 31488, 36382, 37256, 37296, 12650, 37871, 38263, 38637, 38673, 38750, 38793 and 27656 of 2015

COMMON ORDER:

In this batch of writ petitions, petitioners are challenging the termination /non renewal of their contract for a further period as Field Assistants under the National Rural Employment Generation Scheme on the ground that they have not achieved the performance targets fixed to them. Since the issue for consideration in all these writ petitions being same, all the writ petitions are being disposed of by common order.

2. Heard Sri C.V.Mohan Reddy, learned senior counsel, Sri L.J.Veera Reddy, Sri Vedula Srinivas, Sri V.Maheshwar Reddy, Sri Tadi Nageshwar Rao, Sri Mohana Rami Reddy, Sri Jagdishwar, Sri K.Srinivas, Sri Ch.Srinivas, Sri Gade Venkateswara Rao, Sri N.Ashwatha Narayana, Sri Koti Reddy Idamakanti, Sri P.Nagendra Reddy, Sri P.V.Krishnaiah, Sri V.Surendra Reddy, Sri N Chandrashekar Reddy, Sri V.Surendra Reddy, Sri T.V.S.Prabhakar Rao, Sri P.V.V.Satyanarayana, Sri Syed Azmatullah, Sri Suresh Kumar Reddy Kalava, Sri Rama Rao Mavidi, Sri G.L.Narasimha Rao, appearing for petitioners in respective writ petitions, Sri MSR Chandra Murthy, learned Special counsel representing Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), learned Advocate General and learned Government Pleader respectively and with their consent the writ petitions are disposed of by this common order. For the sake of convenience the documents as filed in W.P.No.27538 of 2015 are reflected in the body of the order.

3. Leading the arguments on behalf of petitioners in the batch of writ petitions, learned senior counsel has taken through various provisions of the 'National Rural Employment Generation Act, 2005' (for short the 'Act, 2005'), A.P. Rural Employment Generation Scheme

(for short, 'the Scheme'), various circulars, model form of contract and Field Assistants Human Resources Policy. Learned senior counsel, contended that right is vested in the able bodied persons to demand work and when such a demand is made, it is mandatory to provide work. The person who is interested to undertake work in the said manner has to enrol himself, obtain wage card and has to submit a demand for provision of work. He therefore contended that it is voluntary on the part of the individual to demand work and no person can force on the person concerned to seek work. The impugned circulars and resultant decision not to renew the contract of employment is based on illegal ground that the petitioners did not ensure enforcement of work from the able bodied persons and did not achieve the targets fixed for them contrary to the object of the Act.

4. By referring to the provisions in Sections 12, 13 and 16 of the Act, 2005, learned senior counsel contended that two different mechanisms are created, one with reference to formulation of policy and second with reference to enforcement. Hierarchy of officers/authorities are created by the Act assigning individual responsibilities at various levels.

5. Learned senior counsel, further contended that as envisaged by Section 32 of the Act, the State of Andhra Pradesh formulated the scheme and for the first time the scheme envisages role to the Field Assistants which was not contemplated by the Act. However, as seen from Clauses 7 (2) and (16) of the scheme limited role is assigned to Field Assistants. They are required to assist the Gram Panchayat in identification of the works and in their implementation.

6. Learned senior counsel further submitted that in terms of Section 12 of the Act, a State Employment Guarantee Council has to be constituted which is the apex body at the State level for implementation and coordination under the Act and admittedly no such council has been constituted by the State Government. Guideline No.6 (10) and (11) which confers power on Commissioner, Panchayat Raj and Rural Development to implement and coordinate the scheme runs counter to Section 12 of the Act. Therefore, Guideline No. 6(10) and (11) are ultra virus the Act. As the Commissioner has issued various circulars fixing targets in exercise of said power, these

guidelines are also illegal.

7. He contended that as implementing and coordinating authority Commissioner can only implement the scheme formulated by the State Government and cannot fix targets in purported exercise of the power conferred on him under Guideline No.6(10) and (11) of the Scheme, in the said capacity.

8. Referring to these clauses and provisions of the Act, 2005, learned senior counsel contended that it is impermissible to terminate the relationship between the petitioners and the respondents on the ground of not achieving the targets, when such targets are not fixed by the Act, 2005 and scheme formulated there under. Alternatively, he contended that as hierarchy of authorities are vested with various responsibilities and ignoring their responsibility, Field Assistants alone cannot be blamed for not achieving the targets, more so, when the gamut of scheme is otherwise. The question of not renewing the contract does not arise as renewal is granted as a matter of course.

9. By referring to Field Assistants Human Resources Policy (for short FAHRP) more particularly para 3 –A (1), learned senior counsel also contended that the Field Assistant is required to provide work only if work is demanded and subject to over all superintendence/control of Gram Panchayat.

10. Learned senior counsel further contended that there is no consistency with reference to the out-put of man-days required and claim of respondents varies from 15000 to 5000 as minimum man-days to be achieved. As a matter of fact the performance of most of the petitioners is far above the minimum required i.e., 5000 man days and 75% of the Labour budget. Thus, it was illegal not to renew contract and this shows clear non application of mind and mechanical exercise of power.

11. Learned senior counsel contended that para 13 (6) of FAHRP prescribes penalties and one of the penalties is termination of service. As per the Human Resources Policy, detailed procedure is envisaged before service can be terminated. Emphasising on the disciplinary provision of the Human

Resources Policy and the terms used as 'Action can be taken on omission and commission' by way of disciplinary control what is alleged against the petitioners does amount to misconduct. He, therefore, submitted that since procedure to terminate from the service is not followed, the impugned order is *ex facie* illegal.

12. He submitted that all along as a matter of course renewal was granted, but for the impugned order, petitioners' contract could have been renewed in ordinary course. There is requirement of work and documents on record would show that the respondent authorities are now taking steps to fill up the slots eitherto occupied by the petitioners. If it is the stand of respondents that tenure of the petitioners is over and renewal is not automatic, there was absolutely no need for passing a formal order for not renewing the contract and assigning reasons for not renewing the contract. Non-renewal of the contract is not a simplicitor decision, but is stigmatic. By placing reliance on the decision of the Supreme Court in **SAMSHER SINGH Vs STATE OF PUNJAB AND ANOTHER**[1], learned senior counsel contended that no order which has an element of stigma being attached can be made without following the due process.

13. Learned senior counsel emphasised that decision to dispense with services of the petitioners is politically motivated. By referring to circular dated 2.7.2015, learned senior counsel contended that the party in power intended to induct their own people and in order to accommodate them, the services of the petitioners are dispensed with. He emphasised that if it is the case of the respondents that petitioners have not achieved the target of 5000 man-days, and / or 75 % of the Labour budget fixed, then the status of the concerned village has to be relegated to the list II category of villages and to enlist the work hitherto undertaken by the Filed Assistants to Senior Mate. Whereas, the circular instructions would show that they continue to show the villages in List-I and decided to provide Field Assistant. This would clearly show the intention of the Government and dispensing with services of the petitioners is not *bona fide.*

14. Learned senior counsel placing reliance on the material available

on website of 'Accountability Initiative', an NGO, contended that there is drastic decree of funds provided by the Central Government and consequently there is drastic decrease of able bodied persons enrolling for provision of employment under the scheme resulting in drastic fall in achieving the targets. The NGO points out several deficiencies in the working of the scheme. On account of the reduction of the funds, there is less demand having direct impact on the performance parameters. He, therefore, contended that there must be a holistic view of the issue and the performance of the individual Field Assistants cannot be put in a straight-jacket formula of fixing targets and not achieving the targets, without examining other possibilities.

15. Learned senior counsel pointed out that rural economy is agricultural based economy. If there are good rains, there will be good demand for agricultural activity and most of the rural youth will be involved in agricultural activity and in such an event, they will not be looking for an alternative employment. If there are drought conditions prevailing in an area, certainly there will be more demand for alternative employment.

16. Prompt payment of wage is a crucial factor for persons claiming employment. When there is unemployment or no source for eking out livelihood, the persons will do whatever work assigned, provided money is paid to them promptly. Unless money is paid to him, it would be difficult for him to attend to the daily requirements of the family. The statistics furnished by the NGO as well as the statistics made part of the records of these cases, would show that there is inordinate delay in making payments, sometimes, the delay has gone up to six months. On account of inordinate delay in making payments coupled with the fact that, as disclosed in the NGO report, there is drastic fall in the financial commitments, certainly, there would be drop in the able bodied men opting to work under the scheme.

17. By extensively analysing the budget released and identified man-days in Kadapa district, he contended that there was clear deficiency of funds to a tune of about Rs.91 crores. Similarly, in Chittoor district, there is clear deficiency of more than 107 crores. He further submitted that while assessing the requirements of the work to be executed, no practical evaluation was

made and Field Assistants were not involved in fixing the targets.

18. He submitted that the Minimum performance parameters cannot be relied since G.O.Ms.No. 316 dated 22.8.2008 is an executive order. It cannot run counter to the statutory scheme. Only Government can issue appropriate notification invoking its powers under Section 4(1) of the Act and no such notification on the fixation of targets is issued.

19. He further submitted that the list that is filed along with the counter affidavits showing the person days and labour budget achieved is prepared on the basis of approximate labour budget in Format-I available on the website of the respondent and not basing on the actual labour budget. The actual labour budget is available in the statement which is uploaded on the respondent website called R.1.4 Abstract Report. If actual labour budget is taken note, there is no deficiency in achieving the targets.

20. Learned senior counsel placed reliance on the decision of the Supreme Court in **KUMARI SHRILEKHA VIDYARTHI AND OTHERS Vs STATE OF U.P. AND OTHERS**[2] to contend that even in contractual matters, Article 14 of the Constitution of India is attracted and State or instrumentalities of the State cannot exercise powers arbitrarily and in violation of the safeguards provided by Article 14 of the Constitution. Whenever there is breach of Article 14, Constitutional Court has jurisdiction to entertain and decide matters, even though, the relationship is one governed by contract.

21. By placing reliance on **CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED AND ANOTHER Vs BROJO NATH GANGULY AND ANOTHER**[3], learned senior counsel contended that the Supreme Court held even termination of contract employment by giving three months notice is illegal and unconstitutional. The Supreme Court held clause incorporated in the service conditions giving such power as illegal. The constitutional Courts have recognised that in matters of this nature, the un-employee being at the receiving end, he has no option but to sign on the dotted lines agreeing to whatever terms fixed in the contract. Thus, pre-determined contractual term

cannot be used against hapless employees and throw them out of service.

22. Learned senior counsel placed great emphasis on the decision of the learned single Judge of this Court in **K.LAXMANNA AND OTHERS Vs. GOVT OF A.P.**[4] to contend that in identical circumstances, this Court held the termination as illegal. Case concerns termination of persons appointed as 'Adarsha Raitu' under the scheme, which is analogous to the present scheme.

23. He contended that as held by the Supreme Court in **V.P.AHUJA VS STATE OF PUNJAB AND OTHERS**[5] termination of probation which attaches stigma is not valid in law and liable to be declared as illegal.

24. Sri L.J.Veera Reddy, learned counsel appearing for some of the petitioners contended that according to Clause 20 of the Scheme, Administrative costs are paid at 6%; those administrative costs are determined based on the evolution of the work requirement and making available required funds. There is no allegation of exceeding the administrative costs in each of the petitioners' centres. This would imply that within the budgetary limits only the allowances are paid to the petitioners and there was no drastic fall in the work allotted and achieved since it depends on the total cost incurred. He, therefore, contended that what is alleged is only imaginary and not based on proper evaluation.

25. By referring to the averments contained in para 4 of the affidavit filed in support of W.P.No.26953 of 2015, learned counsel contended that most of the petitioners in the said writ petition and in other writ petitions are long standing appointees and as a matter of course have been continued year after year and it is illegal not to renew contract now.

26. Though certain exemptions are provided, exemption clause is also arbitrarily extended only to few instances. There are employees who were on leave, for genuine reasons placed under suspension and such suspension was for very long time but the exemption clause is not extended to such persons. When a person is on leave on valid grounds or is placed under suspension, it is not possible for him to achieve the targets as fixed.

These issues ought to have been taken into consideration before evaluation of performance of the individual. He further submitted that period of assessment as per the scheme is financial year whereas they have taken into consideration the period from 1.7.2014 to 30.6.2015 and no justification is shown as to why said period is taken into consideration.

27. Learned counsel further submitted that as seen from the statement on record there was inordinate delay in making payments and such inordinate delay in making payments was main factor in reduction of the execution of works. The petitioners cannot be blamed for delayed payments due and payable to the individuals concerned.

28. He further submitted that initially when petitioners were appointed, the appointment was on temporary basis; unilaterally they have converted said appointments on contract basis; petitioners never signed the said contract and terms of contract cannot be enforced on the petitioners without their consent. No order of such appointment made on contract basis is served on the petitioners. As an example, he referred to one appointment made which is filed in the material papers to show that it was a temporary appointment and not a contractual appointment. By referring to the averments made in Para "F" of the counter affidavit, he submitted that respondents have accepted the condition that initial appointment was on temporary basis.

29. By referring to the tabulated statement in the counter affidavit at page 117, learned counsel contended that even though petitioners have achieved 75% or more of the Labour budget, their contracts are not renewed only on the ground that there was short fall of minimum person days. He pointed out that even when targets are fixed at more than 20,000 also, though there was high performance of achievement of target, but still on the ground that target has not exceeded 75 % Labour budget the contracts are not renewed. All this would show that non renewal of the contract is not on the basis of the performance but weighed by political considerations. The party in power trying to induct their own people by replacing the persons appointed.

30. Learned counsel further contended that no role is envisaged to the Commissioner under the Act and scheme evolved by the State Government. Even according to the notification issued in G O Ms No. 27 {Rule 6 (8)}, Commissioner is only treated as a coordinator. Commissioner is thus not vested with the administrative powers to issue orders, guidelines. Thus, impugned orders are liable to be set aside on this ground alone. He further submitted that no such guidelines are framed in any other State including Telangana State, though originally scheme was formulated when the combined State was in existence.

31. By referring to various instances, learned counsel contended that entire work carried under the supervision of the petitioners was not taken into consideration. This information could not be shared with the authorities concerned as there was no opportunity afforded to them. He has referred to as an example, the data of work out-put given by the third petitioner. If due opportunity was given to the petitioners, the petitioners would have substantiated the amount of work carried out by them. After putting them on notice and giving opportunity, appropriate action ought to have been taken, instead, a perfunctory exercise was undertaken and petitioners are thrown out.

32. By referring extensively to various correspondence, including the letter of the Assistant Project Director dated 27.8.2015, learned counsel contended that this would show that lot of obstacles were created in execution of work, only to see that the performance targets are not achieved by the petitioners and on that excuse to throw them out of employment. Material filed on record further highlights the involvement of local leaders to stop the work until incumbents are removed. The Assistant Project Director was emphatic in stating that he was instructed not to execute works till existing persons are removed. He further emphasised that the work output also depends on the proportionate work to be executed. Most of the works which hitherto could have been executed under the scheme were diverted to 'Janmabhoomi' programme, which is the pet programme of party in power.

33. He further submitted that achieving of targets depends on the performance of the officers also. If the officers do not cooperate or were not

enthusiastic in achieving the targets, it would reflect on the performance of the Field Assistants. He, therefore, emphasised that it is not a simple case of fixing targets and achieving; several factors influence the achievement of the targets fixed and, therefore, blaming the Field Assistants only and throwing them out is not a solution to achieve the objective of the scheme and Field Assistants are made scape goats.

34. He placed reliance on the decisions of this Court in **K.LAXMANNA** (cited supra) and **B.NANDESWAR RAO Vs A.P. TOURISM DEVELOPMENT CORP. LTD, HYDERABAD**[6] and decision of Supreme Court in **HARBANSLAL SAHNIA AND ANOTHER Vs. INDIAN OIL CORPN. LTD. AND OTHERS**[7] to contend that the alternative remedy is not an efficacious and effective remedy and even if there is an alternative remedy, when there is violation of the principles of natural justice or authority taking the decisions lacks competency, writ petition is maintainable. The Supreme Court held that even when there is an Arbitration clause, it does not preclude the writ Court to entertain the writ petition.

35. Sri Vedula Srinivas, learned counsel appearing for petitioner in W.P.No.29010 of 15 contended that though documents on record show that petitioner has achieved the targets fixed, even then her services are dispensed with. The specific allegations made in para 5 of the affidavit filed in support of the writ petition though denied in para 16 of the counter, but no basis is shown.

36. Sri Maheshwar Reddy, learned counsel appearing for petitioners in W.P.No.27442 of 2015 submitted that petitioner was suspended for 10 months and in balance 2 months of service has achieved 70% of the target but by taking the total year as a unit, the services of the petitioner were dispensed with. In W.P.No.27656 of 2015 concerning Kadapa district, learned counsel submitted that though petitioners have achieved the targets, their contracts are not renewed. By referring to clauses 3, 5 and 6 of the scheme, he submitted that the object is to provide livelihood to able bodied persons who volunteer to take the work. Achieving of the targets depends on demand by the able bodied persons to do the work. He, therefore, submitted

that only if the persons come forward to do the work provided to them, the Field Assistants can achieve targets. Thus, motivation is significant aspect. Such motivation depends on the nature of work, the requirement of work by the individuals and time taken for payment of amounts due on the work undertaken by them. Therefore, Field Assistants alone cannot be targeted, but the entire system has to be held responsible, if targets are not achieved.

37. Sri Tadi Nageshwar Rao, learned counsel appearing in W.P.Nos.27459 and 27766 of 2015 pertaining to Vizianagaram district, submitted that during September/October, 2014 entire area was affected by Hud Hud cyclone, due to which entire administration has come to a stand still. People were evacuated and shifted to other places, due to which the scheme was paralysed and could not be implemented for a long time. While taking into consideration the performance appraisal, these issues ought to have been factored but only based on the original targets fixed, the assessment was made. A specific averment is made in para 6 of the affidavit filed in support of the writ petition contending that there is deficiency in performance of the Field Assistants on account of cyclone but same is not denied in counter affidavit except being a general denial in para 17 at page 67 of the counter. He further submitted that appointment of the petitioners was not a contract appointment but was a temporary appointment. He further submitted that no termination order is served on them and by virtue of interim order, they continued to perform their duties and responsibilities but so far no allowances are paid. He further submitted that in spite of the effect of cyclone and other constraints, most of the petitioners have achieved the targets. By referring to the appointment issued in favour of Smt R.Kamalamma at page 32, learned counsel contended that along with appointment order, job chart was enclosed which do not contain conditions now relied upon in not renewing the contract. Such action is *ex facie* illegal.

38. Sri Mohana Rami Reddy learned counsel appearing for petitioners in W.P.No.29337 of 2015 contended that orders under challenge are cyclostyled orders. No individual performance assessment is reflected in the order.

39. Sri Jagdishwar, learned counsel appearing for petitioner in

W.P.No.29350 of 2015 contended that some of the work carried out by the petitioner was not shown in the statement of work. The proceedings of the Mandal Revenue Officer would show that petitioner has undertaken the work mentioned therein but this work is not taken into consideration. If said work is taken into consideration, petitioner is deemed to have achieved the target. With reference to petitioner in W.P.No.29364 of 2015, learned counsel contended that petitioner achieved more than 75% target but some of the estimates proposed were not sanctioned and on account of non sanction of the estimates proposed, the targets achieved are not correctly determined. With reference to the petitioner in W.P.No.29400 of 2015, learned counsel contended that estimates were not sanctioned. There was a proposal for bulk plantation which was sanctioned but subsequently, the same was deleted. These are also important factors to determine the parameters of achievement of the targets but mechanical decisions were taken without looking into the practical aspects of the issues. He submitted that petitioner in W.P.No.29379 of 2015 though achieved the target of 75 % still his contract is not renewed. With reference to petitioner in W.P.No.29427 of 2015, learned counsel contended that on the issue of construction of toilets, there was lot of galata and commotion on the day when social audit was proposed; therefore, petitioner requested to postpone conducting of social audit so that he can explain how work was conducted. Without considering the objections, social audit was conducted. Learned counsel further submitted that the disturbance in the village was also primary cause for not achieving the targets and these aspects should have been considered.

40. Sri Ch. Srinivas, learned counsel appearing for petitioner in W.P.No.27373 of 2015 contended that though Mandal Parishad Development Officer certified that petitioner achieved the target, his contract is not renewed. No reasons are assigned as to why contract is not renewed and specific averment made in support of the affidavit filed along with the writ petition was not denied. He submitted that in some of the villages, works were not sanctioned and Field Assistants were asked to execute the works in other villages. Accordingly work was executed in other villages but while assessing the quantum of the work executed by respective Field Assistants, the work executed under their supervision in other villages is not taken into

consideration, which is also one of the reasons to show poor performance in achieving the targets. Learned counsel further contended that though this Court passed interim order, the same is not complied. Aggrieved thereby, respondent filed W.A.No.916 of 2015 but same was dismissed with a direction to pursue WVMP. Even though writ appeal was dismissed, interim order is not complied and petitioner is not allowed to perform his work. He further submitted that in many instances Field Assistants are deputed to do other works such as bill work, swatch-Bharath etc, but the works executed by them were not accounted for the purpose of achieving the targets. He further submitted that entire data of work executed by Field Assistants is not uploaded. Due to the lapses on the part of concerned persons in not promptly uploading the data, petitioners cannot be penalised.

41. Mr Ch.Srinivas, learned counsel for petitioner further contended that according to Circular No.491 dated 30.11.2012, Field Assistants can work in neighbouring villages. According to said circular, technical Assistants and other employees including Mandal Parishad Development Officers are also made equally responsible. When there is a collective responsibility, the impugned action only against Field Assistant amounts arbitrary exercise of power and is also vindictive.

42. On behalf of respondents, Sri MSR Chandra Murthy, learned Special counsel made submissions on facts and relevant orders on the subject. According to Special counsel the regular Government Officers are assigned specific roles under the scheme. The Commissioner is State Project Co-ordinator; at the District level, District Collector is District Project Coordinator and Project Director and District Panchayat Officer is Additional Project Director; at Mandal level, Mandal Parishad Development officer is Project Officer and at the village level, Panchayat Secretary is responsible for implementation of the scheme. These are all regular government officers/ employees.

43. In order to assist the hierarchy of officers/employees, certain staff is engaged on contract basis, such as Engineering Consultants, Computer Operators, District Vigilance Officer, Ombudsman, Field Assistants

and Senior Mates. Various clauses notified in G.O.Ms.No.27, dated 28.1.2006 and subsequent rules notified in G.O.Ms.No. 550 PR and RD (RD.II) Department dated 6.12.2007 would clearly disclose that the Field Assistant is assigned greater responsibilities. He is involved at every stage in implementation of the scheme starting from registration and issue of job cards. In terms of clause 15.2 higher responsibility is assigned to Field Assistant. Clause 15 deals with detailed procedure for settlement of wages. He states that the job chart of the Field Assistants clearly lays down the work that is required to be undertaken by the Field Assistants. In G.O.Ms.No.316 dated 22.8.2008 performance parameters are prescribed. The Field Assistants are aware of the performance parameters. Field Assistants are entrusted with full responsibility, with reference to preparation of labour budget.

44. Para 6 indicates the role of Field Assistants in planning. In the deliberations during Grama Sabha, Field Assistants are required to play an important role. Para 10 prescribes time schedule within which the entire gamut of the scheme should be adhered to. He further submitted that in every village 'Shrama Shakti Sangams' are formed and each Sangam is assigned distinct number. The data of their details and work done by them is compiled and made available to Filed Assistant. It is the responsibility of the Field Assistant to consistently talk to Sharama Shakti Sangams, obtain from them the details of work days they are willing to undertake the work and furnish the willingness to the higher authorities. As seen from Circular No.1090 dated 7.3.2014, targets are fixed. The circular also warns of taking action, if targets are not achieved. These targets are fixed only after deliberating with the Field Assistants. The Field Assistants Association, represented to the Government for enhancement of the remuneration. As seen from the memo No. 5540 dated 3.4.2014, notification of the package was a result of the consultations. While agreeing to enhance the remuneration as sought for by the Field Assistants, the targets were fixed and the association of the Field Assistants agreed to adhere to the targets. Several circulars and orders were issued by the previous government and in continuation other circulars are issued. He therefore submits that the allegation of political motivation, is baseless and unfounded. Such allegation is made only to divert the issued.

45. With reference to payment of wages, learned special counsel submitted that in order to ensure transparency and funds are not misused, elaborate procedure is envisages for payment of wages. G.O.Ms.No.153, dated 6.7.2011 prescribes the time schedule for settlement of amounts and failure to settle the amount within time fixed interest is payable. He further submitted that there is neither a fund crunch nor delayed payment, once works are property processed. Centralised fund management system is in place and after processing, money is directly gets credited to the account of wage earner. He therefore submitted that there is no truth in the allegation that there is inordinate delay in making payments. Even if there was delay, it must be for the reasons of not conducting proper verification and not because of fund crunch.

46. Learned special counsel further submitted that circular No.241 dated 21.4.2011 envisages detailed procedure for renewal. Thus, renewal is linked to performance and Field Assistants are very much aware of the requirement to achieve the targets to seek for renewal and that renewal is not automatic. The performance criteria is determined based on the labour budget. By referring to the statistics of Kadapa district for the year 2014-15, learned special counsel submitted that there are 895 Gram Panchayats and contract of all the Field Assistants is reviewed and renewal is granted except where performance is poor and targets are not achieved. Non renewal of the contract is marginal as compared to the number of Field Assistants working.

47. Learned special counsel submitted that immediately after the notification of scheme and prior to 2008 appointments were treated as temporary. Later those appointments were converted into contractual appointments and renewed from time to time on assessment of the performance. G.O.Ms.No.316, dated 22.8.2008 incorporates the model contract and it contains the terms and conditions of the contract such as fixed tenure, fixation of targets and scope of renewal. The contracts are entered into strictly in accordance with the model contract form. Clause-3 fixed the tenure and clause 4 provides for renewal. The contract appointment terms are further reviewed in the year 2012. An additional clause was introduced i.e.,

Clause-13. This clause also fixes the targets and requires the Field Assistants to achieve the targets. Petitioners have signed the contract which prescribes the tenure of contract. Having agreed for appointment on contract basis and having knowledge of the fixation of the tenure, it is not open to the petitioners to contend that initially some of the petitioners were appointed on temporary basis and therefore conversion is illegal. Based on record, learned special counsel submitted that there is no truth in the contention that petitioners were not aware of the conversion of their appointments as contractual appointment.

48. By referring to Government Memo No.15963/RD.II/A1/2009 dated 28.8.2010, learned special counsel submitted that power to take disciplinary action is vested in the Project Director. Earlier to said memo, power was vested in Mandal Parishad Development Officer. Separate circular was issued regarding disciplinary action. He referred to the documents of renewal of contracts for the year 2013-14 and contended that Project Director assigned the targets and that he is competent authority. By referring to letter No.1090 dated 11.07.2014 and statistics, learned special counsel submitted that the Director, Employment Guarantee Scheme, emphasised on achievement of target of 75% of Labour budget as mandatory. Following the guidelines of various authorities and parameters already set out, the Project Directors of respective districts reviewed the performance of each of the Field Assistants and only after assessing the performance, contract was not renewed to such of those Field Assistants who have not crossed 75 % of the labour budget and minimum of 5000 person days.

49. Learned special counsel further contended that the Field Assistants were aware of the requirement to achieve the targets and their entitlement for renewal of contract depended on the performance turned out by them for the relevant year, in this case 2014-15. The non renewal of contract for the year 2015-16 is in terms of the contract of appointment and various circular instructions and the decision does not amount to casting stigma. The entire data has been compiled. Initial estimates, person days, labour budgets were all determined with the full knowledge of Field Assistants and their performance out-put is assessed based on those

parameters only. There is no requirement of issuing a notice to a person whose tenure is already over and when the employer takes a conscious decision not to renew on set parameters.

50. Refuting the allegations of the learned senior counsel that State Council is not constituted and Act and the Scheme do not envisage any role to the Commissioner of Rural Development and circulars issued by Commissioner which are challenged in the writ petition are not valid in law, learned special counsel contended that such allegation is baseless. Orders in G.O.Ms.No. 550 dated 6.12.2007 (notified in gazette on 15.12.2007) would disclose implementation of the assignments. According to para 6.1.0 of the government order, Commissioner is State Project Coordinator. In terms of para 6.1.1, State Project Coordinator is required to coordinate implementation of the scheme. The circulars impugned in the batch of writ petitions are issued in exercise of said power. Learned special counsel submitted that as a State Project Coordinator, the Commissioner, Rural Development has notified several other circulars including Human Resources policy. He further submitted that those circular instructions are only to guide the Project Directors in undertaking the review of performance before granting renewal of the contracts. The terms of contract, Human Resource policy and other orders envisaged fixation of targets and achievement of those targets as a pre requirement of granting renewal. It is further submitted that merely because State Employment Guarantee Council (SEGC) is not established, does not vitiate various notifications issued by the officers of the State.

51. Learned special counsel further contended that the orders impugned do not amount to termination and therefore provisions of Human Resources policy are not attracted. Taking disciplinary action as envisaged in para 13 (6) of FAHRP would apply, if termination is resorted to by way of penal action on account of misconduct. The decision impugned in the writ petitions are with reference to non renewal of the contract for a further period. Therefore it is not a penal action. The decision not to renew the contract based on the performance appraisal does not amount to stigma.

52. In continuation to submissions made by the learned special counsel, learned Advocate General (AP) appearing for respondents made

elaborate submissions on the legal aspects and on the scope of judicial review against decision not to renew the contracts of appointment by referring to several precedents of this Court and Supreme Court. Learned Advocate General contended that the relationship of the petitioners with the respondent State/ its instrumentality is governed by contract of appointment. The contract of appointment clearly stipulates the tenure. Once tenure is completed they have no right to insist that the tenure should be renewed. It is always permissible for the employer to assess the performance of the employee before granting renewal. Each renewal is a new contract. Relationship is regulated by the terms of contract. Petitioners are aware of the parameters of their performance and they are also aware of the bench mark which they are required to achieve to seek renewal. Contracts of only those Field Assistants were not renewed if they have not achieved the targets fixed to them. Once tenure is over, relationship does not subsist. Therefore continuation of such contract cannot be insisted upon. No mandamus can be issued directing the respondent authorities to renew the contract. At the most, if the termination is held to be illegal, an individual may claim damages but direction to renew / continue contract, contrary to the terms of the contract cannot be granted.

53. By referring to provisions of the Act and the scheme learned Advocate General submitted that objective of the scheme is to ensure provision of employment to rural youth at least for 100 days in a year, so that they can meet two square meal per day. In the process of providing such employment assurance, it is also intended to build infrastructure facilities in the rural areas such as sanitation, provision of hygienic conditions, laying of roads, drainage system, drinking water facility etc which all would help in over all development of infrastructure of the village. To achieve these objectives of the scheme, the Field Assistants have to play leading role and this fact is known to Field Assistants. Therefore performance of the Field Assistants is crucial and has direct proportion to the achievement of objectives of the scheme. The Field Assistants were informed of their roles and responsibilities and targets fixed to them. All parameters of the targets were taken care of, the data was compiled carefully, scheme deficiencies wherever necessary were taken note and only after detailed assessment, wherever it is found that the performance is not up to the mark, the contract

was not renewed. Thus, it cannot be alleged that there was arbitrary exercise of power by the competent authority.

54. The assessment of performance was made based on the labour budget and the person days. Field Assistants are involved in identifying the able bodied persons willing to undertake the work; the person days are arrived by compiling the enrolment in the form of job charts and requisition made by the persons for undertaking the work. Based on the requisition received for undertaking the work, works to be executed and identified, the budget estimation is made and budget is determined. It is further submitted that Field Assistants are also involved in certifying the work executed. After they certify execution of the work, relevant documents go to Technical Assistant, who assesses the work executed and there on proposals are moved for sanction of the wages. Thus, Field Assistants are aware of the progress of the work made as per the targets. It is their responsibility to motivate able bodied persons to undertake the work, to encourage them to come out with better performance. Thus, achievement of targets is integral part of the responsibility assigned to Field Assistants and if such persons do not achieve the targets, it would be detrimental to the very object of the scheme and will stultify the implementation process of the scheme. Thus, before granting renewal of the contracts, the performance of each Field Assistant was assed based on the records.

55. Learned Advocate General placed reliance on following decisions:

U.P. STATE TEXTILE COMPANY LTD Vs. SURESH KUMAR[8], W.A.No. 780 OF 2011 & BATCH, GOVERNMENT OF ANDHRA PRADESH Vs. P.SULOCHANAMMA AND OTHERS[9], K.KANKARAJ Vs. INSTITUTE OF CHARTERED FINANCIAL ANALYSTS OF INDIA (ICFAI), HYDERABAD[10], V.S.N MURTHY Vs SAMATHA MAHILA COOPERATIVE URBAN BANK LTD, HYDERABAD AND ANOTHER[11], P.DOKI Vs GOVERNMENT OF INDIA AND OTHERS[12], GRIDCO LTD Vs. SADANANDA DOLOI AND OTHERS[13] and **STATE OF KARNATAKA Vs. UMA DEVI(3)[14]**.

56. The Act is made with principal objective to ensure that rural

population get at-least assured employment in a given year and are remunerated properly. The Act vests right in able bodied persons to insist for provision of work and it shall be the endeavour of the State Governments to formulate scheme for provision of work and to provide work accordingly. The scheme is funded to the extent of 90% by the Government of India and 10 % by the respective State Governments. As seen from the scheme of the Act, hierarchy of authorities are entrusted with the responsibility of formulating the scheme and policies to ensure the generation of work as mandated by the Act and its implementation mechanism. At the State level, policy guidelines have to be laid down by the State Government and at the District level, the policy guidelines are to be formulated by respective district collectors. The scheme of Sections 14 to 16 would show that implementation mechanism is vested in the District administration and down-below. The District Collector is the District Programme Coordinator and the entire programme in the respective districts functions under his control and supervision. The Project Director, District Water Management Agency, assists the District Programme Coordinator. At the mandal level, the Mandal Development Officer is the Project Officer and it is his responsibility for enforcement of the objects of the Act. Sub Section 7 of Section 16 of the Act, 2005 emphasises the role of the Gram Panchayats. At the gross-root level, the role is assigned to the Gram Panchayats for the enrolment of the able bodied persons for work and for provision of work. Gram Panchayat has to identify the projects which can be executed, ensure their execution and supervise the proper execution of works. Section 26 vests a residuary power in the form of delegation.

57. Act and the scheme create hierarchical structure down to the Gram Panchayat at the grass root level for implementation of the objectives of the Act. Each of the authorities in the pyramid are assigned specific roles and responsibilities. The scheme envisages elaborate exercise to identify demand for work, identification of work, budget estimation and so on.

58. Though Act does not envisage post of Field Assistant, the post and several other posts are imported in to the structure, at the grass-root level in the scheme formulated by the State Government. This additional framework turns out to be the backbone of the scheme.

59. Scheme envisages pivotal role to the Field Assistants. He is involved from the stage of issuance of job cards, entitlement of demand for work, identification of works that can be executed, preparation of labour budget, motivation of groups formed to undertake the job, preparation of bills for payment of wages and so on.

60. The object of the Act and the scheme is to ensure guarantee of employment to youths living in rural areas; to ensure infrastructural development in the villages and to channlise the talent of youth in villages. Field Assistant has to act as a catalyst in achieving these objectives. For effective implementation of the objectives of the Act and scheme made there under, proper functioning of Field Assistants is very crucial. To effectively implement the scheme performance parameters are fixed and Field Assistants are put on notice of achieving the targets. They are involved at every stage of planning and implementation and are aware of their targets.

61. Points that arise for consideration in the batch of writ petitions are:

(1). Whether the decision not to renew contract is stigmatic and therefore is vitiated ?

(2). Whether even if decision impugned in the writ petitions is held to be stigmatic, can a mandamus be issued to renew the contracts?

(3). Whether not affording opportunity to petitioners before holding them as not meeting the targets is arbitrary?

62. Before answering the points in issue, a brief survey of precedents is necessary on the scope of right of a contract employee and the scope of judicial review in such matters.

63. In W.A.Nos.780 of 2011 and batch, the issue was non renewal of contract of Ombudsman after initial period. The said appointments were under same scheme as in these cases. Section 27 of the National Rural Employment Guarantee Act (for short, 'the NREGA'), envisages office of Ombudsman. As per the scheme of appointment of Ombudsman, the grant of

extension was subject performance appraisal. The selection committee having appraised and assessed the performance found the candidates as not fit for extension of appointment for another year. This Court held:

> "8. The nature of appointment of the party-respondents is contractual in nature for a fixed period reserving liberty to the selection committee to extend the period subject to appraisal of performance of the candidates. When once the nature of appointment is contractual in nature, the respondents cannot seek for enforcement of contractual obligations to continue them in services as Ombudsmen beyond one year. Principles of natural justice cannot be read into in matters of contractual obligations. Further, the party-respondents cannot approbate and reprobate as they did not raise any objection at the time of appointment fixing the period of tenure to one year, though the term of office as stated in GO Ms.No.291, dated 10-8-2010 is at variance with what is stated in the instructions on Ombudsman in Clause 2.2.5 issued by the Joint Secretary (NREGA), vide order dated 7-9-2009. The party respondents could not demonstrate any violation of any indefeasible right, except pleading equity. Extension of period of appointment by the selection committee depends upon various aspects and it is within their realm and it is not for this Court to decide the suitability and continuity of the candidates in the office for another year when the selection committee after appraisal choose not to extend the period. We are of the considered view that the party-respondents are not entitled for the relief sought by them. If so advised the party-respondents can seek for damages under common law remedy and not extension by one more year as a matter of right. In the circumstances, the impugned orders passed by the learned single judge in the above noted WPs are set aside and the writ appeals are accordingly allowed. No order as to costs."

64. In **P.SULOCHANAMMA AND OTHERS** (cited supra), respondents were appointed on contract basis for one year, in the vacancies earmarked for reserved categories, due to non availability of reserved category candidates. Their services were terminated after completion of one year tenure. In batch of Original Applications challenging termination the Andhra Pradesh Administrative Tribunal directed continuation of applicants. On a challenge by State Government, said orders of the A.P. Administrative Tribunal, this Court held:

> "The said contract, admittedly, was for one year and by efflux of time, automatically, the appointment comes to an end on expiry of one year period and as such even without the order of termination, which is impugned herein also, when the contract is not renewed for further period, no legitimate right can be claimed by the applicant to continue in service. The order of termination of the applicant, merely amounts to putting an end to the said contract in terms of the contract."

65. **K.KANKARAJ** (cited supra) is also a case on the point. Petitioners

were appointed by Alpha Foundations, a department of ICFAI, to various positions initially for a period of one year. On assessment of their performance, by proceedings dated 30.10.2007, contract period was extended till 31.12.2012. Vide proceedings dated 30.9.2008, petitioners were transferred. Petitioners requested for retention. While so, vide proceedings dated 25.10.2008, their services were terminated w.e.f. 30.9.2008. The orders of termination are assailed in this Court. This Court held;

> "17. Be that as it is, the nature of language used in the appointment orders, issued by respondent No. 2 to the petitioners, would disclose that the appointment of the petitioners is not even temporary, but purely on contract basis, and that too for a limited period, which was mutually renewable. The law is well settled that in matters relating to and arising out of contractual obligations, writ petition is not a remedy, and the party seeking to enforce contractual obligations has to approach the competent civil Court having jurisdiction"

66. In **V.S.N MURTHY** (cited supra) petitioner was appointed on contract basis in March, 1998. In December, 2000, employer noticed misuse of official position and misappropriation. Initially he was placed under suspension and disciplinary enquiry was initiated. However, on 18.12.2001 his services were terminated. Said termination was challenged as one of stigmatic and therefore illegal as no enquiry was conducted. This Court held:

> "9. More importantly, it should be noted here that the petitioner was appointed as a Manager in the 1st respondent bank admittedly on a contractual basis and in such a situation, the termination of his services would amount to only breach of a contract which may give rise to a civil remedy for damages as no contract of service can be specifically enforced. Thus apart from the above controversy relating to the applicability or non-applicability of Article 12 to the case, the nature of the petitioner's appointment being a contractual one, it follows that the present writ petition is not maintainable as several disputed questions of fact would arise.
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> ……
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> …….
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> 11. …… Thus it was terminable by the 1st respondent bank and it should also be noted that a contract of service can be terminated even for loss of confidence and no reasons need be assigned. It is true that the bank has earlier placed the petitioner under suspension contemplating an enquiry and may even have commenced it. As the appointment of the petitioner is a contractual one, suspension pending enquiry was not necessary as rules were not applicable to him and the contract could be terminated for loss of confidence also. If the bank was not right in terminating the contract, that would at best give to the petitioner a right to sue for damages for breach of contract and he could

not have claimed for its specific performance and he could not have been reinstated for violation of any rules. Thus the mere fact that the 1st respondent bank earlier initiated some enquiry after placing the petitioner under suspension cannot estop it from terminating the contract as it is terminable under law……"

67. In **GRIDCO** (cited supra) Supreme Court was considering the scope of judicial review of termination of contract appointment made for a fixed tenure and also scope of renewal/extension of contract. On review of law on the subject, Supreme Court held;

"26. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge."

68. In **UMA DEVI (3)** (cited supra) five Judge Bench of Supreme Court held;

"47**.** When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual

or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

69. In **P.DOKI** (cited supra), the scope of tenure appointment has fallen for consideration. This_Court reviewed the entire law on the subject and held:

"22. The empirical principles governing a tenure appointment and the precedents analysed supra applied to the facts of the case on hand, clearly ordain the conclusion that with the expiry of petitioner's tenure of appointment by 16.10.2001 he had no right to continue thereafter absent an expressed order extending his tenure or appointing him afresh on a fresh tenure of office"

70. The principles deducible from the precedents are summarized as under:

1. Once nature of appointment is contractual, there is no legitimate right to seek to continue in service beyond period of contract.
2. Principles of natural justice cannot be read into matters of contractual obligations
3. It is permissible to assess suitability before granting renewal of contract appointment.
4. Ordinarily matters arising out of contractual obligations including termination of contract having stigma, writ petition is not the remedy and may give rise to civil remedy.
5. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action.
6. Power of judicial review cannot be extended to sit in the arm chair of the administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances.
7. If it is claimed that termination of contract appointment is

illegal, it may give rise to a right to sue for damages.

8. It is permissible for employer to impose special terms and employee is bound by those terms.

POINT No.1:

71. To appreciate the point, it is necessary to note the language employed in the impugned decision. Proc.R.O.C.No.D2/H.R./3210/ FA13/2015, dated 14.08.2015 issued to Smt k.Nagendra Mani (petitioner in W.P.No.26756 of 2015) is taken as example. The relevant portion reads as under:

> "1. మహాత్మా గాంధీ జాతీయ గ్రామీణ ఉపాధిహామి పథకము క్రింద సంవత్సర కాంట్రాక్టు ప్రాతిపదికపై 2014 - 15 ఆర్థిక సంవత్సరములో ఒక సంవత్సర కాలమునకు 01.07.2014 నుండి 30.06.2015 వరకు చిత్తూరు జిల్లా, Chandragiri మండలము, Are Palle Rangampet గ్రామ పంచాయతీ నందు శ్రీ /శ్రీమతి K.Nagendra Mani వారి సేవలను కాంట్రాక్టుకు క్షేత్ర సహాయకులుగా కుదుర్చుకొనడమైనది□ శ్రీ / శ్రీమతి K.Nagendra Mani వారి కాంట్రాక్టు తేది□ 30.06.2015 తో ముగిసినది□
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> 2. పై సూచికల ప్రకారం Are Palle Rangampet గ్రామ పంచాయతీ నందు 2014 – 15 ఆర్థిక సంవత్సరము తేది 01.07.2014 నుండి 30.06.2015 వరకు శ్రీ / శ్రీమతి K.Nagendra Mani వారు కనీసం 7500 పనిదినాలు మరియు ఆమోదించబడిన లేబర్ బడ్జెట్ పనిదినాల కల్పన యందు 75 శాతముపైగా లక్ష్యము సాధించవలసి ఉండగా, ఆమోదించబడిన లేబర్ బడ్జెట్ పనిదినాల కల్పన యందు 52 శాతాము మాత్రమే సాధించియున్నారు□ దీనిని బట్టి ఉపాధిహామి కూలీలకు పనులు కల్పించుటలో విఫలమైనట్లు తెలియచున్నది□
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> 3□ కావున శ్రీ /శ్రీమతి K.Nagendra Mani క్షేత్ర సహాయకులు Are Palle Rangampet గ్రామ పంచాయతీ, Chandragiri మండలము వారి కాంట్రాక్టు తేది 30.06.2015 తదుపరి నవీకరణ (Renewal) చేయరాదని నిర్ణయించడమైనది□ లక్ష్య సాధనలో విఫలమైన శ్రీ /శ్రీమతి K.Nagendra Mani క్షేత్ర సహాయకులు Are Palle Rangampet గ్రామ పంచాయతీ వారి కాంట్రాక్టు సేవలు అవసరం లేనందున వారి కాంట్రాక్టు నవీకరణ రద్దుపరచడమైనది□
>
> 4. శ్రీ / శ్రీమతి K.Nagendra Mani క్షేత్ర సహాయకులు Are Palle Rangampet గ్రామ పంచాయతీ, Chandragiri మండలము వారు ఆధీనములో ఉన్న మహాత్మా గాంధీ జాతీయ గ్రామీణ ఉపాధిహామి పథకము యొక్క సంబంధిత రికార్డులు, సెల్ ఫోన్, సిమ్ కార్డు మరియు కార్యక్రమ అధికారివారినుండి గ్రహించబడిన ఇతర ఆస్తులు అదనపు కార్యక్రమ అధికారి (ఇ□జి□యస్□) Chandragiri మండలము వారికి సమర్పించి రసీదు పొందవలెను□
>
> 5. మండల పరిషత్ అభివృద్ధి అధికారి / కార్యక్రమ అధికారి (ఇ□జి□యస్□) Chandragiri మండలము వారు ఉతర్వులు సంభందిత క్షేత్ర సహాయకులకు అందజేసి తిరుగు రశీదు అదనపు కార్యక్రమ అధికారి (ఇ□జి□యస్□) వారినుండి తీసుకొన్న రికార్డులు మరియు సెల్ ఫోన్, సిమ్ కార్డు తదితరముల చార్జిలిస్టు ఈ కార్యాలయమునకు నకలు పంపవలసినదిగా ఆదేశించడమైనది□ "

72. The correspondence refers to completion of term of contract and decision not to renew further. Serious objection is raised on the words 'failure to provide work' and 'failure in achieving targets' used in the communication given to the petitioners as amounting to stigma. It is further contended that the words used amounts to misconduct and therefore procedure as required by Clauses 12 and 13 of FAHRP is required to be followed before dispensing with the services of the serving Field Assistants.

73. Strong reliance is placed on Clauses 12 A(1), 12 (5), 12 P(1), 12 (P) (2) and 13 (B) (6) (b) (c) of FAHRP to contend that the reason assigned in the impugned proceedings is covered by above clauses and procedure as mandated therein ought to have been followed before deciding not to renew the contract.

74. The relevant clauses read as under :

"Clause 12

A(1). Every FA shall be devoted to his/her duty and shall maintain absolute integrity, discipline, impartiality and sense of ownership/belongingness.

…..

A(5). he shall obey the orders of superiors given in writing. Where it is not practicable to obtain direction in writing, shall obtain written confirmation of the direction as soon as possible. It shall be incumbent on such official superior to confirm in writing the oral directions given by her/him, and in any event, she/he shall not refuse such written confirmation where a request is made by the FA to whom such direction was given. However, this shall not empower the FA to evade her/his responsibility by seeking instructions from, or approval of, an official superior where such instructions are not necessary under the scheme of distribution of powers and responsibilities.

P(1). Non collection of demand as laid down in unemployment rules or to non allocation of work as per demand

P(2). Willful insubordination or disobedience of instructions whether alone or in combination with others or any lawful and reasonable order of a superior;

……

Clause 13 (B) DISCIPLINARY AUTHORITY:

(1). The Addl. DPC/PD DWMA concerned is the disciplinary authority. Action against the Field Assistant can be initiated based on.

(a). Report of social audit
(b). Report of programme officer regarding any omission or commission.

(c). Inspection by any other higher officials
(d). Inspection by any special team by DPC or CRD office
(e). Violation of code of conduct and maintenance of discipline.

(2). Once an act of omission/commission is noticed/reported, the Addl. DPC/ PD DWMA concerned shall keep the Field Assistant under "Temporary out of contract employment". The orders of "Temporary out of employment" to Field Assistant shall be followed by issuance of a Show Cause Notice containing the charges based on which action is proposed along with sufficient evidence.

…...
……
……

(6). The following penalties may be imposed on Field Assistant.
(a). Written warning
(b). Recovery from pay of the whole or part of any pecuniary loss caused by him to the Government or scheme, by negligence or breach of orders.
(c). Termination of the contract agreement from the service thereon. Once terminated, the same shall ordinarily be a disqualification for further employment.

….
….

75. On a careful reading of these clauses, it is evident that these clauses are attracted when employer intend to take disciplinary action which may result in premature termination of the employment during the subsistence of contract of employment. In the instant cases the clauses of contract show that term of contract is one year and ends on 30/6 of the year. The contract was not subsisting after 30-06-2015. Thus, the above clauses of FAHRP are not applicable to the cases on hand.

76. After the notification of Employment Guarantee scheme, initially Field Assistants were appointed on temporary basis. On evaluation of the functioning of the scheme and role of Field Assistants, on consideration of representations of Field Assistants vide G.O.Ms.No.316 dated 22.8.2008, modified conditions of service are notified. Additional benefits are extended. Monthly remuneration is enhanced. Nature of appointment of Field Assistants is converted to one of contract.

77. In the process of conversion into contract for employment the

administration has also evolved job chart, which lay down the role assigned to Field Assistant. The performance yardsticks are built into the contracts. Field Assistants are told in clear terms the roles assigned and the necessity to achieve the targets determined for them. The message was perform or perish. The performance parameters are based on total demand for work-called as person days, labour budget, cost estimation for the works to be executed for the year determined on the basis of the person days of demand. Field Assistant should ensure completion of person days and should utilise 75 % of labour budget. On both parameters the targets have to be achieved. It is perceived that the effective compliance of the mandate of the scheme is to achieve at-least these targets.

78. The villages are put into three groups, List-I, List-II and List-III. Villages shown in List-I are estimated to have higher demand for work. List-I villages shall have at-least one Field Assistant. In List-II villages, the similar nature of work is entrusted to Senior Mate, a post envisaged as a step below Field Assistant. A village to continue in List-I and Field Assistant to hold his assignment, Field Assistant has to achieve the targets fixed. Otherwise, Field Assistant loses his job and the village gets relegated to List-II.

79. It appears earlier, renewal was granted without strict evaluation of performance. Probably, having noticed that the objective of the Act and scheme is not achieved even though huge public funds are spent and lack of commitment to motivate rural youth to participate in taking up the employment under the scheme, Government desired to make assessment of performance as a pre-condition before granting renewal of contract for the year 2015-16. This decision is followed by two circulars dated 29.7.2015 and 11.8.2015, which are assailed in these writ petitions. A serious effort to assess the performance of Field Assistants was undertaken and axe has fallen on petitioners as a consequence to review of assessment.

80. Reading of the scheme, various circular instructions, job chart, and determination of performance charts would show that Field Assistant is the lubricant to the engine of the scheme and shall ensure achieving of the objectives of the scheme. He must be a person who should motivate rural youth sitting idle, to enrol in the scheme, to encourage to form Sangams, to

demand work and to undertake the work assigned competently, and to assess the amount payable. He must have determination to ensure that the targets are achieved. His continuation in the job depends on his performance in reaching the targets.

81. Appointment of petitioners as Field Assistant is for a fixed tenure and such appointment is governed by contract. When appointment is for fixed tenure, continuation in employment is by way of new contract. Thus, a renewal means, a fresh appointment. A tenure appointment *per se* signifies that it is not permanent but is for a fixed term. In tenure appointments, renewal clause assumes significance. The renewal clause, a fortiori vests in the employer to assess the performance of the employee before granting extension/renewal and necessity to grant such renewal/extension in the larger interests of the organisation. Even if performance of individual is upto the mark still position held by such employee may not be needed on account of change of priorities of the organisation and revised employment strategy or for any other reason in the best interests of the organisation and employer may refuse to renew the contract.

82. Several circulars are issued from time to time alerting the Field Assistant that renewal of contract is only based on performance. Vide Circular No.491/PA(PI)/2011 dated 30.11.2011 Field Assistants are asked to increase the performance output. In Government Memo No.5540/RD.II/A1/12 dated 3.4.2012 further instructions are issued. Subsequent to this Government order, several circulars are issued. In circular No.241/SRDS/HR/Extension of contract/2010 dated 3.12.2013 the Commissioner noted that targets are not achieved and Field Assistants are not putting enough effort to achieve the targets even though better remuneration is granted to them and in spite of repeated instructions. Unit officers were called upon to exercise proper assessment before granting renewal of contracts. The two circulars issued in the year 2015, impugned in these writ petitions only emphasise what is already required.

83. What is informed to petitioners individually is since employer is not satisfied with the performance out-put of the persons during the contract period, he is not renewing the contract. The continuation of contract of

employment is contingent upon confidence and satisfaction of the employer. It is for the employer to fix parameters of performance and assess the continuous usefulness of a person as employee having regard to the nature of job and priorities of the employer. In the instant cases, the scheme is evolved to give effect to the objectives of the Act. Effective implementation of the scheme depends on the output given by the employee. Huge public money is spent to provide guaranteed work to rural work force. It is thus permissible for employer to fix targets and to impose conditions for renewal of contract to ensure that the objectives of the Act are achieved. Thus, non-renewal of contracts on the basis of performance during the previous contract period cannot be faulted. Even without the express terms of contract it is permissible for the employer not to renew the contract/ not to continue the person.

84. On analysis of various orders/circulars and terms of contract, it is evident that employer has expressed in clear terms that if Field Assistant does not achieve the targets fixed, his contract would not be renewed. In the communication to the petitioners, they are informed that they have not achieved the targets and therefore their performance is not satisfactory. Satisfaction of the employer for renewal of contract, in the context of the cases on hand, is based on assessment of fitness of person based on performance in achieving the targets in the previous year. Contract terms and various orders/circular instructions fixed tasks to be achieved and renewal is conditioned upon achieving the targets. In the impugned communication, employer informed the petitioners that they have not achieved the targets and therefore employer decided against renewal of contract. It is also to be noted that the term of contract is over and there was no subsisting relationship of employer-employee by the time impugned communication was given to petitioners. Since contract has come to an end, employee can weigh the performance of person worked as Field Assistant to continue him or look out for someone available in open market.

85. It is not the case of petitioners that all Field Assistants are thrown out. The statistics placed before the Court would show that the review of performance resulted in displacement of few Field Assistants only.

86. Though extensive submissions are made on the scope of the Act, the scheme, the powers of Commissioner and contended that orders of Commissioner are unsustainable as Commissioner is not vested with power to deal with such conditions and fixation of parameters to Field Assistants and under the Act the State Employment Guarantee Council alone is competent to issue orders fixing targets, what is relevant for consideration in these cases is, whether there is any breach of contractual terms by employer and whether petitioners are entitled to seek reinstatement/continuation of their employment. Thus, non-constitution of State Employment Guarantee Council is not relevant for the adjudication of the issue in these cases. In these cases the issue for consideration is whether the respondents erred in not renewing the contract of Field Assistants. It is necessary to note that Field Assistant is not a post created by the Act. It is a post created in the process of implementation of the scheme formulated under the Act. The relationship between Field Assistant and respondents is contractual. Such relationship depends on the terms of contract. The job chart and terms of appointment delineate the duties and responsibilities of Field Assistants. The circulars issued by the Commissioner seek to enforce terms of contract, which are binding on the petitioners. Furthermore, contract prescribes particular targets to be achieved to get eligibility for renewal. The circulars under challenge only reiterate government stand and terms of contract already determined. No new conditions are stipulated.

87. In **SATISH CHANDRA ANAND Vs UNION OF INDIA**[15], five judge bench of the Supreme Court held; "State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound" (para 13)

88. In **SBI Vs PALAK MODI**[16] on review of law on the subject Supreme Court held :

> "25. The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time

during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

89. Thus, in the peculiar facts of these cases the words used in the communication cannot be viewed as stigmatic and non-renewal of contract of employment cannot be held as illegal on that ground. What is informed to petitioners is in compliance of terms of employment and no exception can be made to such decision.

POINT NO.2:

90. Assuming that the terms used in the correspondence whereby petitioners were informed that their contract of employment is not renewed amounts to casting stigma, the question for consideration is, in exercise of power of judicial review under Article 226 of the Constitution of India can a direction be issued to employer to renew contract of appointment?

91. Learned senior counsel placed reliance on two decisions to emphasis that no order having stigma be made without following due process (1) **SAMSHER SINGH** and (2) **V.P. AHUJA** (cited supra).

92. In **SAMSHER SINGH**, Supreme Court held the termination of service of Samsher Singh and Ishwar Chand are by way of punishment and therefore illegal as due process is not followed. Supreme Court held:

"67**.** An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct (see *State of Bihar* v. *Shiva Bhikshuk Mishra*[20]).

……

.....

80……The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order

terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. ……"

93. In **V.P.AHUJA**, Supreme Court held

"7**.** A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the appellant."

94. In both the decisions, Supreme Court was dealing with persons who were appointed substantively and while on probation their services were terminated on the ground of misconduct. In the case on hand, petitioners are not on probation. They have not attained status. They do not have the protection of Article 311 of the Constitution of India. Their appointment is governed by contract and for fixed tenure. On completion of tenure, further continuation is an independent contract and a fresh tenure appointment. The performance in previous tenure was assessed to ascertain the desirability to continue the relationship. It is not a case of termination.

95. In **B.NANDESWARA RAO** (cited supra), though petitioner was a contract employee, his termination was demonstrably on grounds of misconduct and therefore the Court struck down such termination. The same is upheld by the Division Bench in the case reported in **B.NANDESWAR RAO**.

96. In **A.P. STATE FEDERATION OF COOP SPINNING MILLS LTD Vs P.V.SWAMINATHAN**[17], Supreme Court held that termination was not simplicitor but one of penalty.

97. In **STATE OF ORISSA Vs. DR (MISS) BINAPANI DEI AND OTHERS**[18], Supreme Court held unilateral determination of age and retirement of permanent servant on the ground of altering the age of superannuation based

on such determination is against concept of justice. It is held “An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play” (para 9).

98. **STATE OF HARYANA Vs PIARA SINGH**[19] deals with claim for regularization. The said decision is considered in **UMADEVI** (cited supra) and held that **PIARA SINGH** cannot be said as laying down the law that all ad-hoc temporary and casual employees engaged without following the regular recruitment procedure should be made permanent.

99. In **CENTRAL INLAND WATER** (cited supra), Supreme Court held terms of service enabling employer to terminate the services of permanent employee by giving three months notice as unconstitutional.

100. On a careful consideration of precedent decisions cited at the bar and the facts of the cases on hand I am of the considered opinion that the above decisions do not come to the rescue of petitioners.

101. The decision of learned single Judge in **K.LAXMANNA** (cited supra) turns on its facts. Be that as it may, I am bound by two decision of Division Benches of this Court on the same subject. Thus, the decision in **K.LAXMANNA** do not come to the rescue of petitioners.

102. In **GRIDCO LTD** (cited supra), Supreme Court created small window of opportunity to seek judicial review on the parameters set out above. However, those parameters may attract in case of premature termination of contract of appointment. In the cases on hand, petitioners are not terminated. Their contract is not renewed further on assessment of past performance. It is the right of an employer to choose right person to do right job. If the employer found that employee has not reached to its expectations, he can dispense with his services. In the instant writ petitions, petitioners’ appointment is one of contract, even if the stand of petitioners that their appointment is one of temporary but not contractual is accepted, they are not holding permanent employment and have not acquired status to a public post. They are appointed in a scheme post. It is permissible to employer to assess past performance to continue the relationship further. According to

employer, on assessment of performance of all Field Assistants, appointment is not renewed to only such of the employees who did not achieve the set targets.

103. Renewal is not automatic but termination of relationship on completion of tenure is automatic and unless renewal is granted the relationship of master and servant comes to an end after the period of contract. Renewal is at the sole discretion of the employer.

104. Furthermore, tenure of appointment is over and there is no manner of right vested in petitioners to continue in employment after 30.6.2015. Thus, petitioners cannot seek a mandamus in exercise of power of judicial review to ask for renewal of contract, irrespective of fulfilment of targets fixed. When relationship is determined by contract, no mandamus can be issued to compel party to a contract to renew the contract. Therefore, even if it is assumed that words employed in the communication impugned in these writ petitions informing the decision not to renew the employment is stigmatic at the most it may give rise to right to sue for damages but no direction to renew the contract and to employ the petitioners be granted on that ground.

POINT NO.3

105. With reference to short fall in achieving of targets, several grievances are projected. That certain works executed in other villages, as authorised, are not accounted; certain works executed in the same village are not updated; that there were certain physical/practical constraints which ought to have been noted before assessing the performance; that certain works proposed were not approved or diverted to Janmabhoomi scheme; local leaders deliberately created obstacles for political and personal reasons. It was further contended that during the year 2014-15 Postal Biometric System was introduced, whereby payment is linked to Aadhar card but due to lack of internet connectivity at the Mandal Computer Centres, resulted in delay in generating payments; funds were not released on time during several months, by State as well as Central Government; in some villages hud hud cyclone was also a cause for not achieving the targets; in some cases though execution of work was certified by Mandal Parishad

Development Officer, the same is not accounted; putting off duty for long time pending disciplinary action though H R policy fixed 30 days to complete the disciplinary action; availing leave on genuine grounds, hindered achieving the targets. It is therefore contended that if an opportunity was offered to them, they could have explained the genuine causes in their defence and placed material to substantiate that target is achieved.

106. In support of said contention, reliance is placed on Clause 15 of the contract appointment order. Clause 15 reads as under:

> "(15) That the performance appraisal of the Field Assistant will be taken up on quarterly basis/ periodically and if found that his/her performance is not upto satisfactory level, one week notice will be given to improve his/her performance. On his/her failure to improve performance, his/her services will be terminated."

107. It appears no such performance appraisal was made in the presence of petitioners. Admittedly, no prior opportunity was given to petitioners. There may be some truth in the contentions urged by petitioners on individual grievances briefly referred to above. If only petitioners were put on notice they could have endeavoured to satisfy the competent authority that the targets set are achieved or for valid reasons targets could not be achieved, or certain material facts ought to have been taken note of before assessing the performance. Though it is for the employer to accept the defence or reject, fairness required, more so in view of Clause 15 extracted above to afford some kind of opportunity before deciding not to renew contract. More particularly, having regard to Clause 15 of the contract, such opportunity ought to have been given.

108. In **SHRILEKHA VIDHYARTHI** (cited supra), Supreme Court was considering mass termination of law officers in all the Districts of State of UP by one stroke, even though they did not complete the term of office, Supreme Court held :

> "22**.** There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient

to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

…….

48**.** In our view, bringing the State activity in contractual matters also within the purview of judicial review is inevitable and is a logical corollary to the stage already reached in the decisions of this Court so far. Having fortunately reached this point, we should not now turn back or take a turn in a different direction or merely stop there. In our opinion, two recent decisions in *Dwarkadas Marfatia and Sons*[13] and *Mahabir Auto Stores*[14] also lead in the same direction without saying so in clear terms. This appears to be also the trend of the recent English decisions. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power."

109. Guided by the principle of law in **SHRILEKHA VIDHYARTHI**, not granting opportunity to petitioners prior to taking decision not to renew contracts has to be held as failure to comply with the basic requirements of Article 14, arbitrary, unfair and unreasonable. Orders impugned are also stereotyped orders.

110. Points 1 and 2 are answered against petitioners and point 3 is answered in favour of petitioners. While holding that communication impugned in the writ petitions does not amount to stigma and that since tenure of appointment having come to end on 30.6.2015 no positive direction to reinstate/ to renew contract can be granted, the writ petitions are disposed

of with the following directions:

111. The respondent District Collectors shall form a committee of three officers consisting of Revenue Divisional Officer, any District level Officer, other than the District Panchayat Officer and Mandal Parishad Development Officer of respective mandals. The Committee shall hold its sittings in respective Mandal Parishad Development offices with advance intimation of date of holding of sitting to Field Assistants hitherto_working within the territorial jurisdiction of concerned mandal, whose contract is not renewed, give them opportunity to explain the targets achieved by them which are not accounted/reasons for not achieving the targets, other constraints. The Committee shall also make available the assessment record of respective Field Assistants for perusal of concerned Field Assistants. The Committee shall consider said explanations objectively and make appropriate recommendations to the competent authority.

112. The competent authority shall consider the recommendations of the committee objectively and shall take decision for renewal of the contracts of petitioners having due regard to parameters set out while granting such renewal to others. Until the entire exercise is completed no fresh recruitment shall be made.

113. It is to be noted that if the contract of any of the petitioners is not renewed, they are entitled for consideration for fresh enlistment along with other candidates from open market, more so when the respondents also contend that the decision not to renew the contract of employment is not as a measure of penalty nor intending to attach stigma. Thus, respondents shall permit such of those petitioners whose contract is not renewed also to compete along with open market candidates and consider their suitability for appointment as Field Assistants if they are otherwise eligible and without regard to previous assessment undertaken at the time of renewal of contract.

114. The Writ Petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 31.12.2015

Note: L R Copy to be marked--YES

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THE HON'BLE SRI JUSTICE P NAVEEN RAO

W.P.Nos.27468,27538,35847,26675,26756,26953,27039, 27275, 27277,
27278, 27288, 27291, 27293, 27306, 27321, 27373, 27377, 27397, 27400, 27405, 27410, 27432, 27434, 27435, 27442, 27459, 27463,

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Date: 31.12.2015

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[1] (1974) 2 SCC 831

[2] (1991) 1 SCC 212

[3] (1986) 3 SCC 156

[4] 2010 (6) ALD 679

[5] AIR 2000 SC 1080

[6] 2014 (4) ALD 695

[7] 2003 (2) SCC 107

[8] 2011-LAWS (SC) -2-92

[9] 2010(2) ALD 174 DB

[10] 2009(3)ALD 434

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[18] AIR 1967 SC 1269= (1967) 2 SCR 625

[19] (1992) 4 SCC 118