

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.13128 of 2016

ORDER:

Heard the learned counsel for petitioners and the learned Government Pleader for Panchayat Raj (AP) for respondents 1 to 4.

2. The petitioners were appointed as Field Assistants on contract basis under the Mahatma Gandhi National Rural Employment Guarantee Scheme and their appointments were renewed from time to time. As per the said scheme, the Government will provide minimum 100 days work to the workers per year and the Field Assistants have to mobilize the work as per the job card and supervise the works. When the renewal of petitioners' appointments came up for consideration, their contracts were not renewed basing on the performance reports generated. Challenging non-renewal of contracts, the writ petitioners and similarly situated other Field Assistants filed several writ petitions and this Court, by a common order dated 31.12.2015 in W.P.No.27468 of 2010 and batch, held that by non-renewal of the contract, no stigma is attached, as the tenure of their contracts came to an end by 30.06.2015. However, this Court issued 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.”

3. Pursuant thereto, a notice was issued to the petitioners giving them an opportunity to submit explanation before the Committee. The petitioners submitted their explanations. After considering the report of the Committee, the fifth respondent passed an order on 11.03.2016 not renewing the contracts of the petitioners. Challenging the non-renewal of the contracts of the petitioners, the present writ petition is filed.

4. The learned single Judge of this Court in the above batch of writ petitions came to the following conclusion on the basis of the principles decided in the precedents.

“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.”

5. However, he framed the following three points for consideration.

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

(2) Whether even if decision impugned in the writ petition 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?”

He held points 1 and 2 against the petitioners and point No.3 in favour of the petitioners.

6. Thus it is clear that what this Court gave is an opportunity to the petitioners to prove their case with regard to the meeting of targets, and for the said purpose, a Committee was constituted. Before the Committee, though petitioners 18, 38, 39, 50, 52, & 54 submitted their explanations stating that they have achieved the targets, the Committee without considering the same, passed orders not recommending their cases for renewal. In respect of other petitioners, they admitted in their explanation that they have not reached the targets. After considering the report of the Committee, the fifth respondent passed an order on 11.03.2016 not renewing the contracts of the petitioners without applying his mind to the above facts.

7. In the circumstances, since this Court is *prima facie* satisfied with regard to the explanations submitted by petitioners 18, 38, 39, 50, 52, & 54, non-renewal of their contracts is bad and hence the impugned order of the fifth respondent dated 11.03.2016 is set aside insofar as petitioners 18, 38, 39, 50, 52, & 54 and the matter is remanded to the fifth respondent for consideration of the case of petitioners 18, 38, 39, 50, 52, & 54 afresh after going through the record and pass appropriate orders

thereon within a period of four weeks from the date of receipt of a copy of this order. In respect of petitioners 1 to 17, 19 to 37, 40 to 49, 51, 53 and 55 to 68, the impugned order does not warrant interference.

8. The writ petition, in respect of petitioners 18, 38, 39, 50, 52, & 54, is allowed and in respect of petitioners 1 to 17, 19 to 37, 40 to 49, 51, 53 and 55 to 68, it is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 23.08.2016

TJMR