

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.11823 of 2016

ORDER:

Heard the learned counsel for petitioner and the learned Government Pleader for Panchayat Raj (AP) for respondents.

2. The petitioner was appointed as Field Assistant in the year 2007 on contract basis under the Mahatma Gandhi National Rural Employment Generation Scheme and his appointment was 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 petitioner's appointment came up for consideration, his contract was not renewed basing on the performance report generated. Challenging non-renewal of contract, the writ petitioner 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 petitioner giving him an opportunity to submit explanation before the Committee. The petitioner submitted his explanation on 12.02.2016. After considering the report of the Committee, the third respondent – District Collector passed an order on 03.05.2016 not renewing the contract of the petitioner. Challenging the non-renewal of the contract of the petitioner, 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 petitioner to prove his case with regard to the meeting of target, and for the said purpose, a Committee was constituted. Before the Committee, the petitioner submitted his explanation on 12.02.2016 stating that for the year 2014-2015, he generated 8839 working days as against the budget days of 5923, thus achieving 149.23% as could be seen from the letter of MPDO. The Committee has not considered this aspect of the matter, but based on the web based APD report, it came to the conclusion that the petitioner achieved only 66.94%. After considering the report of the Committee, the third respondent – District Collector passed an order on 03.05.2016 not renewing the contract of the petitioner without applying his mind to the above facts. There is difference between the report submitted by the MPDO and the conclusion arrived at by the Committee.

7. In the circumstances, non-renewal of the contract of the petitioner is bad and hence the impugned order of the third respondent dated 03.05.2016 is set aside and the matter is remanded to the third respondent for consideration of the case of the petitioner afresh in the light of the letter dated 20.08.2015 of the MPDO – fifth respondent and

pass appropriate orders thereon within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 25.07.2016

TJMR