

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.30446 of 2016

ORDER:

1. Heard the learned Counsel for the petitioner, learned Government Pleader for Panchayat Raj and Rural Development appearing for respondents 1 to 3 and learned Government Pleader for Revenue appearing for respondent No.4.
2. The petitioner was appointed as Field Assistant in the year 2006 on contract basis under the Mahatma Gandhi National Rural Employment Guarantee 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 2015 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 03.02.2016. When no orders were passed renewing 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, the learned single Judge 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 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?”

The learned single Judge 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 03.02.2016 stating that he completed 88.56% labour budget during the year 2015-16. He further stated that he was kept in charge of Veerapuram Gram Panchayat also as there is no Field Assistant there. The Committee, without taking into consideration of the above fact,

simply said that the explanation is not convincing. Thereafter, an order was passed on behalf of the 4th respondent on 20.05.2016 not renewing the contract on the ground that the petitioner failed to prove that he fulfilled 75% contract of labour budget. The 4th respondent should have applied his mind to the facts of the case before passing the order. After going through the record, this Court noticed a recommendation of the Mandal Parishad Development Officer, Chilamathur Mandal, Anantapur District, dated 28.04.2016, recommending the case of the petitioner for renewal on the ground that he achieved 96.82% labour budget.

7. In the circumstances, non-renewal of the contract of the petitioner is bad and hence the 4th respondent is directed to consider the case of the petitioner 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 shall stand closed.

A.RAMALINGESWARA RAO, J

13-10-2016
Gsn