

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WA.No.719 of 2016

Date:16.8.2016

Between:

Naripogula Anandaiah
S/o Jojappa and 11 others.

..... Appellants

And:

The State of A.P., repled by its
Secretary, Panchayat Raj & Rural
Development Department,
Hyderabad and eight others.

....Respondents

Counsel for the appellant: Mr. L.J.Veera Reddy

Counsel for respondent Nos.1 to 4: Mr. M.S.R.Chandra
Murthy

Standing Counsel for

MGNREGS

Counsel for respondent No.4: GP for Transport (TS)

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The appellants were appointed as Field Assistants under the schemes framed under the National Rural Employment Generation Act, 2005. Initially, they were appointed on temporary basis and later, their appointments were converted into contract appointments for specified periods. It appears that the contract periods

of the appellants expired by 30.6.2015. While considering renewal of the appellants' appointments, their performance was assessed and as the same was found unsatisfactory on the aspect of providing work to the prescribed number of labour during the year 2014-15. By separate, but identical orders passed by the competent authority, their contracts were not renewed.

These orders were questioned in a batch of Writ Petitions by the appellants and other similarly situated persons. Extensive arguments were advanced and the same were considered by the learned single Judge after framing the following 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?”

Under point No.1, the learned single Judge held that the ground of unsatisfactory performance, on which the respondents have declined to renew the contracts of the appellants, does not amount casting a stigma.

Under point No.2, the learned single Judge held that even if the orders were stigmatic, no *Mandamus* could be issued for renewal of contracts as, the appellants were not protected by the provisions of Article-311 of the Constitution of India.

Under point No.3, the learned single Judge has directed constitution of a Committee for considering the case of each Field Assistant, by affording an opportunity of submitting their explanations, and to take a decision whether to renew the contracts or not by the competent authority.

Mr. L.J.Veera Reddy, learned counsel for the appellants, submitted that the learned single Judge has not considered one of the main aspects raised before

him, viz., the fixation of targets itself is not within the purview of the Commissioner of the Rural Development, State of Andhra Pradesh.

A perusal of the judgment of the learned single Judge would clearly show that he has undertaken elaborate discussion on the nature of the scheme and the rights of the appellants under the contracts. While dealing with this aspect, the learned single Judge held as under:

“The continuance 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.

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 prescribe 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.”

We are entirely in agreement with this finding of the learned single Judge. Though the scheme has been evolved under a Central enactment and the majority funds are being provided by the Central Government, the responsibility lies on the appropriate State Governments to fix proper guidelines for due implementation of the scheme. Therefore, it lies ill in the mouth of the Field Assistants to contend that the State Government or its functionaries are denuded of jurisdiction to frame guidelines.

Mr. M.S.R.Chandra Murthy, learned Standing Counsel for the MGNREGS, submitted that in pursuance of the judgment of the learned single Judge, the District Collector, Kurnool, has constituted a Committee on 19.02.2016; that all the appellants who received notices from the Committee have submitted their explanations; that after holding a detailed enquiry, the Committee submitted its report to the District Collector, who, on 10.6.2016, has passed orders rejecting the explanation offered by the appellants; and that, this Writ Appeal was filed on 08.7.2016.

These facts would reveal that the order of the learned single Judge worked itself out to the extent of the directions issued under point No.3.

If the appellants feel aggrieved by the aforementioned order, dated 10.6.2016, passed by the District Collector, Kurnool, they shall be free to avail a fresh legal remedy in order to question the same.

Subject to the liberty given to the appellants as

above, the Writ Appeal is dismissed.

As a sequel to dismissal of the Writ Appeal, WAMP.No.1814 of 2016 filed by the appellants for interim relief is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

*16th August 2016
DR*