

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.18797 of 2016

ORDER :

Heard the counsel for petitioners, and Sri M.S.R. Chandra Murthy, learned Standing Counsel for respondent nos.3 to 5.

2. Individual orders have been passed in respect of the petitioners by the 4th respondent cancelling the contracts awarded to petitioners to work as Field Assistants under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 on the ground that petitioners could not provide man-days of 75 per cent as per the sanctioned labour budget.

3. The petitioners had approached this Court earlier by filing W.P.No.27468 of 2015 and batch alleging that the non-renewal of their contracts by respondents was arbitrary, and no reasons were assigned for not renewing their contract. After considering the contentions of petitioners as well as respondents and after referring to various reasons given for short-fall in achieving targets by petitioners therein and also Clause 15 of the Contract Appointment Order issued to petitioners, appointing them as Field Assistants, which mandated issuance of a weeks' notice in the event of performance of petitioners as Field Assistants was not up to a satisfactory level, this Court held as under :

“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.”

4. Thus, this Court evolved a mechanism wherein the claims of petitioners for renewal of their contracts as Field Assistants within the territorial jurisdiction of the concerned Mandal are redressed by constituting a Committee consisting of the Revenue Divisional Officer, any District Level Officer, other than the District Panchayat

Officer and the Mandal Parishad Development Officer of the respective Mandals. This Court directed the said Committee to give advance intimation of the date of holding of the sitting to petitioners and directed the Committee to give opportunity to explain the targets achieved by them and the reasons for not achieving such targets or other constraints. It directed the Committee to make available assessment record of petitioners / Field Assistants for their perusal and the Committee was directed to consider the said explanations ‘objectively’, and make appropriate recommendations to the competent authority. The competent authority was then directed to consider the recommendations of the Committee objectively, and take a decision for renewal of contracts of petitioners having due regard to parameters set out while granting renewal to others. It further directed that until this exercise is completed, no fresh recruitment would be made.

5. The counsel for petitioners contends that in spite of the specific directions of this Court as mentioned above, the Committee did not give due consideration to the explanations offered by each of the petitioners, and simply made recommendations without applying its mind.

6. In para nos.7 & 8 of the affidavit filed in respect of the Writ Petition, the petitioners contend as under :

“07. I submit that bare perusal of the impugned order clearly discloses that the none of the respondents followed the said mandate issued by this

Hon'ble Court. The RDO issued notice and thereby directed us to appear before them. That accordingly all of us personally attended and submitted detailed explanation. That we specifically explained the things with clear data and further stated that I fulfilled the targets in the labour budget in all years i.e., 143.11% for the year 2012-2013, 68.12% for the year 2013-2014, 46.34% for the year 2014-2015 and 83% for the year 2015-2016. That for not reached the target for the year 2014-2015 is no major works viz. tank repairs, canal works, minor irrigation works were not undertaken by the gram Panchayat, due to rains there, the job card holders not attended to the MGNREGS works due to attend for regular agricultural works etc. But the same was not considered by the Committee in proper perspective. The other Field Assistants who are similar and identical grievance also submitted their explanations to the RDO and the Committee considered number of persons for renew their contract basing on the oral recommendations of the local politicians and the members of the Janmabhoomi Committee and the person likely situated. That the entire exercise of terminating the contracts based on the oral recommendations of the village level, politically formed Janmabhoomi Committee, which has no sanctity or power to recommendations. That in the entire district the official respondents yielded to the political pressures from the ruling party and silently implemented their instructions. That the alleged Janmanbhoomi Committee, or the official respondents even not considered my explanation. It is pertinent to submit here that the 4th respondent mechanically accepted the recommendations of the Janmabhoomi Committee, without application of his mind and without following the directions issued by this Hon'ble Court. But simply issues the impugned order without considering the explanation, with a sole object to satisfy their political bosses who are keenly instructed that all the persons appointed during the earlier government shall be replaced by their people.

08. That there are several factors and practical reasons for not fulfilling the target of providing 75% work days to the job card holders for the allocated labour budget. First there must be preparation of estimates for the works by the Engineering Consultant / Junior Engineer identification of new works by the Technical Assistant and also preparation of all works and the Panchayat Secretary is the main person who shall co-ordinate at all levels for preparation, implementation and monitoring of works in co-ordination with the Sarpanch and Ward

Member. That the Government also issued G.O.Ms.No.15 dt.31.10.2014 and thereby fixed the important roles and responsibilities of various functionaries including the Field Assistants. There is no specific allegation of misfeasance and malfeasance in discharging duties and responsibilities are not pointed out. That the allegation is beyond the role and responsibility of Field Assistant. That all the official respondents know that there was no targets were fixed to the Field Assistants, as the fulfillment of the targets is depending on all the machinery, viz., Panchayat Secretary, Sarpanch and the Program Officer and Technical Assistants. That, on the strength of the recommendations of Janmabhoomi Committee (In my village three members from ruling party, Sarpanch and MPTC are the members), the 4th respondent issued the impugned order directly, even without issuing any show-cause notice which is utter violation of the principles of natural justice and now insisting orally that not to attend for duties from 30.04.2016. That the whole purport of the imputations is made behind the back of the petitioners are with a sole object to replace the petitioners with persons of their choice. That there is no specific allegation of misfeasance and malfeasance in discharging duties as Field Assistant. The allegations are absolutely generic in nature without reference to any particular instance. It is respectfully submitted that we reserved our right to raise other or further grounds at the time of hearing of the case. It is out of place to mention that the respondents are acting for extraneous reasons. In fact, respondents more particularly the 4th respondent retained the candidates of his choice though they did not complete 75% labour budget. Hence, it is clear that the said condition used a weapon against the petitioners.”

7. In the counter-affidavit filed by respondents, the respondents have given certain statistics with regard to each of the petitioners, and in the material papers filed along with the counter-affidavit the recommendations of the Committee to the competent authority were mentioned without referring to the explanations individually offered by petitioners, and why such explanations of petitioners were not acceptable to the Committee.

8. This clearly defeats the very purpose of the mechanism evolved by this Court in para no.111 of the order dt.31.12.2015 in WP.No.27468 of 2015 and batch, wherein this Court had directed consideration of the explanations 'objectively'. This requires, in my considered opinion, reference to the explanation of each individual petitioner and stating why such explanation is not acceptable, at least.

9. It is not in dispute that the order passed in WP.No.27468 of 2015 has been confirmed by a Division Bench judgment of this Court in W.A.No.719 of 2016 and batch dt.16.08.2016.

10. Though the learned Standing Counsel for respondent nos.3 to 5 deny that there is no need to individually consider the explanations of petitioners or to give any reasons for not accepting them, and that the Committee is deemed to have followed the parameters set out while considering the case of petitioners and making recommendations to the competent authority, I am afraid that the said contention cannot be accepted having regard to the specific directions of this Court in W.P.No.27468 of 2015 and batch, which directed consideration of the explanations 'objectively'.

11. In my considered opinion, the respondents have not acted in accordance with the above order of this Court and considered the case of petitioners objectively as mandated by it.

12. Therefore, the Writ Petition is allowed and the orders dt.04.04.2016 passed by 4th respondent on the basis of

recommendations of the Three-Member Committee constituted by this Court in the above Writ Petition are set aside; the Members of the Three-Member Committee are therefore directed to apply their mind to the explanations offered by each of the petitioners and consider why the explanations offered cannot be accepted; and the Three-Member Committee is directed to strictly follow the directions of this Court mentioned above and consider objectively the explanations given by each of the petitioners and record reasons briefly as to why the explanations given are not acceptable. No order as to costs.

13. Till this exercise is completed, the respondents shall not commence any fresh recruitment of Field Assistants.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-10-2016

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