

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.5734 of 2015

ORDER:

Heard Sri V.Hariharan learned counsel for Sri Sudarshan Reddy Duddugunta, learned counsel for petitioner, learned Government Pleader for Panchayat Raj appearing for 1st respondent and Sri M.S.R. Chandra Murthy, learned Standing Counsel appearing for respondent Nos.2 to 4.

2. Petitioner has filed this Writ Petition assailing the order dt.09-02-2015 passed by 2nd respondent terminating the contract of petitioner to work as Field Assistant in Beechiganipalli Gram Panchayat, Parigi Mandal, Anantapur District.

3. Petitioner was appointed as Field Assistant under the Mahatma Gandhi National Rural Employment Guarantee Scheme in the above village in 2010 on contract basis. On 07-09-2014, he was temporarily kept as out of contract (suspended) by 2nd respondent alleging that for the period between 04-08-2014 to 24-08-2014 he could not capture 100% of the demand and that he did not complete Adhaar seeding.

4. Petitioner submitted explanation (Ex.P-3) thereto and requesting that the proceedings dt.07-09-2014 issued by 2nd respondent be withdrawn.

5. Without adverting to this explanation at all, the impugned order has been passed on 09-02-2015 by 2nd respondent terminating his contract agreement.

6. Assailing the same, this Writ Petition is filed.

7. Learned counsel for petitioner contended that the impugned order has been passed without considering the petitioner's explanation to the notice dt.07-09-2014 and that though petitioner had done the work, the same was not updated because of a faulty mobile phone, that it was updated subsequently manually and without taking this into consideration, the impugned order has been passed.

8. Counter-affidavit has been filed by 2nd respondent justifying the order passed by him and contending that the contract agreement of petitioner though commenced in 2010, is extendable from year to year; that it comes to an end by 30-06-2015 and since relationship is purely contractual, the petitioner cannot invoke Article 226 of the Constitution of India. He also stated that there is an appeal provided to the Commissioner of Panchayat Raj, which was not availed of and that the Writ Petition therefore ought not to be entertained. It is stated that there was an enquiry report submitted, which showed that the petitioner failed to provide work to the labour from April, 2014 to September, 2014.

9. The allegation that the petitioner has not provided work to labour from April, 2014 to September, 2014 is admittedly not

mentioned in the show cause notice dt.07-09-2014 issued by the 2nd respondent to the petitioner. Having issued notice that the petitioner did not do 100% demand capture for the period from 04-08-2014 to 24-08-2014, it is not open to 2nd respondent to justify the impugned order saying that the petitioner did not turn out the requisite work for the period from April, 2014 to August, 2014 without mentioning the same in the notice dt.07-09-2014.

10. Having issued a show cause notice alleging that the petitioner has not done 100% demand capture for the period from 04-08-2014 to 24-08-2014, the 2nd respondent could not have ignored the explanation submitted by petitioner and passed the impugned order. It is thus clear that there is clear violation of principles of natural justice. Once this is so, failure of the petitioner to avail the remedy of appeal is no bar to file the present Writ Petition. Therefore, non-engagement of the petitioner by 2nd respondent or termination of his appointment as a Field Assistant by 2nd respondent appears to be not only arbitrary but also not *bona fide*.

11. Therefore, the Writ Petition is allowed and the impugned order dt.09-02-2015 passed by 2nd respondent is set aside and the 2nd respondent is directed to reinstate the petitioner into service. However, it shall be open to 2nd respondent to consider the explanation of petitioner, give an opportunity to petitioner to defend

himself by producing evidence in support of his claim and then pass a reasoned order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-01-2017

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