THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.41245, 41249, 41283, 41591, 41706, 41594, 41621, 41712, 42642, 42656, 42817, 42906, 43035, 44505, 45358, 45386, 45460, 45471, 45779, 45812, 45842, 45922, 46129, 46152, 46221, 46158, 46231 of 2016, 146, 184, 213, 225, 252, 255, 687, 559, 608, 909, 940, 1051, 1109, 1118, 1204, 1225, 1245, 1328, 1338, 1339, 1347, 1350, 1355, 1391, 1403, 1405, 1423, 1434, 1440, 1461, 1463, 1467, 1526, 1556, 1559, 1690, 1692, 1703, 2190 of 2017 and 39376 of 2016.

DATED : 02.02.2017

W.P.No.41245 of 2016

Between :

P. Sudarsan Reddy S/o.P.Narayanaswamy,
Aged about 33 yrs, Occu : Field Assistant (NREGS),
Mallapalle Gram Panchayat, Gorantla Mandal,
Ananthapuramu District.

.. Petitioner

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Panchayat Raj and Rural Development Department,
Andhra Pradesh Secretariat Buildings,
Velagapudi, Guntur District & others.

.. Respondents

This court made the following :

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COMMON ORDER :

In all these batch of writ petitions, petitioners challenge the order of the District Collector rejecting the request of the petitioners for renewal of the contract appointment as Field Assistants.

2. Petitioners and several others were working as Field Assistants, for a long time. Earlier W.P.No.27468 of 2015 and batch were filed in this Court challenging non-renewal of their contract appointment as Field Assistants/termination of their services as Field Assistants. Several contentions were urged against the said non-renewal/termination, on the ground of not achieving the targets fixed for the Field Assistants and not performing as was required by them.

3. This Court posed three points for consideration. They read as under :

(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?

4. Points 1 and 2 were answered against the petitioners. The issue raised in these writ petitions arise out of the direction issued by this Court with reference to point No.3.

5. In W.P.No.27468 of 2015 & batch, extensive submissions are made on behalf of the petitioners that if only an opportunity was afforded to them before not renewing their contract/terminating their services, they would have explained the reasons for not achieving the targets, where ever an allegation of not achieving the targets are made and or that records were not properly updated and therefore, the targets achieved by them are not reflected and therefore, termination order/not renewing the contract, order is liable to set aside on this ground.

6. Having regard to these submissions, this Court held as under :

> *107. It appears no such performance appraisal was made in the presence of petitioners. Admittedly, no prior opportunity was given to petitioners. There may be some truth in the contentions urged by petitioners on individual grievances briefly referred to above. If only petitioners were put on notice they could have endeavoured to satisfy the competent authority that the targets set are achieved or for valid reasons targets could not be achieved, or certain material facts ought to have been taken note of before assessing the performance. Though it is for the employer to accept the defence or reject, fairness required, more so in view of Clause 15 extracted above to afford some kind of opportunity before deciding not to renew contract. More particularly, having regard to Clause 15 of the contract, such opportunity ought to have been given.*

109. Guided by the principle of law in ***SHRILEKHA VIDHYARTHI,*** *not granting opportunity to petitioners prior to taking decision not to renew contracts has to be held as failure to comply with the basic requirements of Article 14, arbitrary, unfair and unreasonable. Orders impugned are also stereotyped orders.*

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.

7. As directed by this Court, a three member committee was constituted. The three member Committee issued notices to the petitioners and also gave a personal hearing to them. Petitioners have expressed their defence individually in each of the cases. On consideration of the explanations, the committee submitted its report individually in each of the cases. Based on the reports

submitted by the committee, respective District Collectors, passed orders refusing to renew their contract, assailed in these writ petitions.

8. Apart from making submissions on merits, learned counsel also contended that the order of the District Collector is liable to be set aside on the sole ground that though a detailed explanation was submitted by the petitioners individually, the committee simply submitted its report as "Not recommended". The decision of the committee not recommending renewal is not supported by reasons. There is no discussion by the committee as to why the explanation submitted by the individual petitioners is not acceptable. Learned counsel therefore submits that there is clear violation of directions of this Court and there is non-compliance of the directions in true letter and spirit. Thus, on this ground the orders should be set aside and the matters may be remitted to the Committee for consideration afresh.

9. One other contention urged is that the competent authority to deal with service conditions of Field Assistants is the Project Director, District Water Management Corporation, whereas the orders are passed by the District Collector.

10. The second contention is dealt with first. It is seen from the direction issued by this Court that the District Collector was only directed to constitute a Committee to go into the claims of persons who earlier worked as field assistants. This direction was issued since he being the District head of the Government, and the officers who were to be part of the Committee belong to different departments, he alone can constitute the Committee and Project

Director cannot constitute such a Committee. Thus, the directions to District Collector is only to this limited extent. To the post of Field Assistant and other staff the competent authority is the Project Director. Thus, District Collector could not have passed the orders when he is not the competent authority. Thus, the order of the District Collector is liable to be set aside on this ground.

11. Learned standing counsel submits that the direction issued by this Court was only to constitute a three-man committee and that three-man committee should make available the relevant assessment records and give a personal hearing and. The assessment records were given to the individual field assistants, they were given personal hearing and after furnishing the records and affording personal hearing, the Committee considered their objections and recommended to the District Collector. He would submit that the review exercise resulted in granting renewals of contracts to several petitioners in the earlier litigation and only in cases where the Committee was not satisfied with the explanations, has not recommended for renewal and the District Collector accordingly passed orders. He would therefore submit that there is no error in the procedure followed and it was in due compliance of the directions issued by this Court and therefore, the orders are validly made. He also placed reliance on the decision of the learned Single Judge in W.P.Nos.11800 and 23177 of 2016. These two writ petitions were filed challenging similar orders passed by the District Collector and this Court having regard to the earlier directions held the procedure followed as valid.

12. However, learned Special Standing Counsel is fair in submitting that another learned Single Judge in W.P.Nos.23143 and 18797 of 2016 allowed the writ petitions and remanded the matter to three-man committee for consideration of the issue, holding that there is no compliance of the directions issued by this Court in the batch of writ petitions.

13. The issue for consideration in these writ petitions is whether the procedure followed by the respondents is in true compliance of the directions issued by this Court and whether the matters require remittance to the stage of consideration by the Committee.

14. As seen from Para 111 extracted above, this Court directed to make available the assessment records in respect of Field Assistants for perusal of concerned Field Assistants. This Court directed consideration of explanations **"objectively and make appropriate recommendations"**. This direction clearly takes care of the required procedure to be followed by the Committee. The objective consideration would necessarily mean that the Committee has to look into explanation vis-à-vis, the official records, record its finding as to why explanations are not valid and make appropriate recommendations.

15. On a reading of the reports of the three-man committee it is apparent that there was no discussion on the explanations submitted by the petitioners' vis-à-vis the relevant records. For example, in W.P.No.31683 of 2016, petitioner contended that there was delay in transfer of amount to post office; therefore, it resulted in decrease of labour turn out. It was also contended that non priority works like jungle clearance, boulder removal was stopped from December, 2014 through out the district which also resulted

in reduction of labour turn out. In W.P.No.39376 of 2016, the explanation offered by the petitioner was "delay in payments; that the Field Assistant was incharge of another gram panchayat which is 25 kms away and therefore delay in payments for boulder removal and trenching". The findings of the Committee read as under :

> ***"The parameters of the field assistant in achieving the relevant target is 26% which is much less than the prescribed 75% performance. Hence, the performance is not satisfactory".***

16. In many other cases what is recorded is 'not recommended'. It is not in dispute, as fairly submitted by learned Special Standing Counsel, in all cases the Committee has not assigned reasons as to why the explanations submitted by the individuals is not valid. Even where, in some cases, there is some discussion, the merits of contentions urged were not answered by the Committee. The District Collector passed orders rejecting the request for renewal only going by the recommendations of the Committee. When a Committee is appointed to look into the grievance, it pre-supposes that the Committee has to consider the objections objectively and record its reasons in support of the recommendations, wherever, the individual performance and the explanation given by the individual for not reaching the targets, is not satisfactory, as per the record available and furnished to the individuals.

17. In W.P.No.18797 of 2016 the learned Single Judge, having regard to the similar contentions held as under :

> ***"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'."

18. As seen from the orders passed by this Court in W.P.Nos.11800 and 23177 of 2016, it appears that considering the individual cases, the Court rejected the prayer of the petitioners for reconsideration of the issue. It appears both have admitted with regard to not reaching the targets and the Committee did not find the reasons assigned as valid. Having regard to this specific issue considered by the Court, the writ petitions were dismissed.

19. As noted above, in all these writ petitions learned Special Standing counsel, representing the respondents fairly submits that reasons are not recorded by the three-man committee or the Committee has not answered the specific objection of the individuals and the final recommendation of the Committee is only "as not recommended".

20. Having regard to the above findings, I am of the considered opinion that the exercise undertaken by the respondents in pursuant to the direction issued by this Court in W.P.No.27468 of 2015 and batch dated 31.12.2015 is not in accordance with the said directions and is in clear violation of the basic principles as to how a decision has to be taken by the competent authority, i.e., decision must be supported by reasons, more so, when it affects a person's right to public employment. In the instant case, the decision of the Committee is affecting petitioners' right to claim public employment or continuation of their service on contract basis with the 2nd respondent as Field Assistants and when such claim is affected, the decision must be supported by reasons. As

noted above, the Collector has simply accepted the recommendations of the Committee and passed orders and the District Collector is not the competent authority.

21. Thus, the writ petitions are allowed. The matters are remitted to the stage of consideration by the three-man Committee. The Committee shall assign due reasons in support of its recommendation on each of the petitioners after consideration of the explanations already submitted and on due verification of the relevant records. It shall forward its recommendations to the Project Directors concerned. On consideration of such recommendations, the respective Project Directors shall pass orders as required in each of the cases. The entire exercise shall be completed within a period of 30 days from the date of receipt of copy of this order.

22. Since the matters are remitted to the stage of consideration of three-man committee constituted as directed by this Court in Para No.111 in W.P.No.27468 of 2015 and batch dated 31.12.2015, as directed in Para 112, till the decision is made in accordance with the directions issued in these batch of writ petitions, no further appointments shall be made at the places earlier occupied by petitioners. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

P.NAVEEN RAO,J

2nd February, 2017
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