

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 11011 of 2015 and 17110 of 2018

Date :13 .6.2018

Between:

Munta Venkataiah Yadav S/o Sankaraiah
40 yrs Field Assistant,
NREGS, Thellarallapalle Gram Panchayat, Pangal mandal
Mahboobnagar district

Petitioner

And

The State of Telangana
Rep by its Principal Secretary
Panchayat Raj & Rural Devp Dept
Secretariat, Hyderabad and others

Respondents

The Court made the following:



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COMMON ORDER:

Heard learned counsel for petitioner and learned Special Standing Counsel for respondents. Since the petitioner and issue in both writ petitions is same they are disposed by this common order.

2. Petitioner was appointed as Field Assistant at Thellarallapalle Gram Panchayat, Pangal mandal, Mahaboobnagar district (presently Wanaparthi district) in the year 2006 on contract basis under Mahatma Gandhi National Rural Employment Guarantee Scheme(MGNREGS). The contract of the petitioner was extended from time to time and last extension was granted in the year 2013 valid till 30.06.2014. In August 2014, petitioner applied for renewal of his contract. Upon review of performance of the petitioner, the request for renewal was not granted and vide memo No.D5/22/2013 dated 10.10.2014 he was accordingly informed. Challenging the same petitioner filed W P No. 11011 of 2015. W P No. 17110 of 2018 is filed to renew the contract for the post of Field Assistant.

3. According to learned counsel for petitioner, petitioner discharged his duties and responsibilities without any remark. There were no allegations of fraud or misappropriation; for the financial year 2014-15 he has generated 16621 person days, which would show that he was discharging his duties and responsibilities properly. According to learned counsel, if the services of contract Field Assistant were to be terminated, as per the Human Resources Policy, procedure is required to be followed before such termination, whereas, in the case on hand, no such procedure was followed. He would further submit that his contract was not renewed though he made repeated requests and post is kept vacant. There is no justification in not renewing the contract having

utilized his services for 8 years and keeping the post unfilled. Learned counsel alternatively submits that direction may be issued to respondents to consider his request for renewal of contract at-least prospectively.

4. According to learned Special Standing Counsel, petitioner was appointed on contract basis for a period of one year. As per the circular instructions dated 21.4.2011 issued by the Commissioner, Rural Development, certain parameters are laid down for renewal of the contract. As per further instructions of the Commissioner, only after assessment of actual performance, fresh contract can be renewed. On assessment of the performance of the petitioner, decision was taken not to renew the contract after expiry of earlier term. Thus, the relationship of master and servant ceased to operate after expiry of the earlier contract period in June 2014. Petitioner has no manner of right to seek renewal of contract as a matter of course. According to learned counsel, as per the report of the Social Audit Team dated 25.5.2011 pointing out certain irregularities, show cause notice was issued on 30th August, 2011. Petitioner submitted explanation only on 4.7.2015. He would further submit that his applications for renewal were considered and as there were adverse remarks made by Social Audit Team, petitioner was found as not eligible for renewal, therefore renewal was not granted. By placing reliance on decision of this Court in WP 27468 of 2015 and batch dated 31.12.2015, he would submit that as relationship is one of contractual, no mandamus can be issued seeking direction to renew the contract.

5. The issue of non-renewal of contract of Field Assistants was considered by this Court in W P No. 27468 of 2015 and batch dated

31.12.2015. This Court decided the following points in the said batch of writ petitions:

“61. Points that arise for consideration in the batch of writ petitions are:

- (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?”

5.1 On elaborate consideration, this Court held as under:

“70. The principles deducible from the precedents are summarized as under:

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.

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75. On a careful reading of these clauses, it is evident that these clauses are attracted when employer intend to take disciplinary action which may result in premature termination of the employment during the subsistence of contract of employment. In the instant cases the clauses of contract show that term of contract is one year and ends on 30/6 of the year. The contract was not subsisting after 30-06-2015. Thus, the

above clauses of FAHRP are not applicable to the cases on hand.

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83. What is informed to petitioners individually is since employer is not satisfied with the performance out-put of the persons during the contract period, he is not renewing the contract. The continuation 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.

84. 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.

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103. Renewal is not automatic but termination of relationship on completion of tenure is automatic and unless renewal is granted the relationship of master and servant comes to an end after the period of contract. Renewal is at the sole discretion of the employer.

104. Furthermore, tenure of appointment is over and there is no manner of right vested in petitioners to continue in employment after 30.6.2015. Thus, petitioners cannot seek a mandamus in exercise of power of judicial review to ask for renewal of contract, irrespective of fulfilment of targets fixed. When relationship is determined by contract, no mandamus

can be issued to compel party to a contract to renew the contract. Therefore, even if it is assumed that words employed in the communication impugned in these writ petitions informing the decision not to renew the employment is stigmatic at the most it may give rise to right to sue for damages but no direction to renew the contract and to employ the petitioners be granted on that ground.”

6. The Court rejected the contention of the petitioners that decision not to renew the contract was stigmatic and therefore vitiated. The Court further held that no mandamus can be issued to renew the contract.

7. In the case on hand, the contract came to an end on 30.6.2014. The Competent Authority did not renew the contract. On the application submitted by the petitioner his request to renew was rejected holding that the Competent Authority was not satisfied with the performance, therefore contract cannot be renewed. In view of the judgment rendered by this Court on the same issue in the above batch of writ petitions, decision of the respondents refusing to renew the contract cannot be faulted.

8. Since the contract is not renewed in the year 2014 when it was due and when the Competent Authority refused to renew, petitioner cannot insist that contract should be renewed at-least now. As held by this Court in the above judgment, petitioner cannot seek a mandamus from this Court to renew contract. He cannot even ask for exclusive consideration of his claim for appointment as Field Assistant afresh. It is for the employer whether to grant fresh appointment to the petitioner or go for fresh recruitment process from the open market. Merely because the vacancy is not filled up so long, cannot be a ground for the petitioner to seek renewal. As held by this Court in the above batch of writ petitions, as there is no manner of right vested in the petitioner to hold the post of Field Assistant and his tenure ended on 30.6.2014, petitioner cannot ask mandamus to consider for renewal or fresh appointment as

Field Assistant. However, it is open for the competent authority to consider his candidature as and when recruitment is taken up and if petitioner applies.

9. For the foregoing reasons, writ petitions merit no consideration. They are accordingly dismissed. Pending Miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:13-06-2018
TVK



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