

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.20651 of 2015

ORDER:

The petitioner was initially appointed as Data Entry Operator on contract basis in the Mandal Resource Center, Rajupalem, vide proceedings dt 03.11.2005 of the Mandal Educational Officer, Narsaraopet Mandal, Guntur District. She possessed B.Com qualification and was qualified to hold the said post. In that manner, on a remuneration of Rs.8,400/- per month, she has been continuing till 2015. On 27.4.2015, respondent No.3 issued a certificate showing that her work performance for the period from 28.4.2014 to 23.4.2015 was satisfactory.

However, on 30.4.2015, respondent No.3, without assigning any reason, termed her work performance as not satisfactory.

Taking a cue from the latter certificate, the petitioner's services were disengaged by the respondents even though respondent No.2 had issued instructions on 30.4.2015 to re-engage the services of the Data Entry Operators on the basis of the work done by them from 01.5.2015 till the end of the academic year 2015-16.

The petitioner contends that having certified that her services were satisfactory for the academic year 2014-15 on 27.4.2015, respondent No.3 acted arbitrarily, illegally and unreasonably in changing his mind without assigning any reason and terming her work as unsatisfactory. She, therefore, seeks a direction to the respondents to permit her to join duty as Data Entry Operator in the Mandal

Resource Center, Narsaraopet and to allow her to continue with the employment therein.

On 05.7.2015, while admitting the Writ Petition, in WPMP.No.26599 of 2015, this Court passed the following order:

“If there is any vacancy of Clerk-cum-Data Entry Operation, by taking into account and on consideration the quality of the services rendered by the petitioner in the past, her case may be considered by re-engagement.”

I.A.No.1 of 2015 (WVMP.No.4609 of 2015) has been filed by respondent Nos.1 to 3 to vacate the said interim order.

In the counter-affidavit, the respondents reiterated that though on 27.4.2015 respondent No.3 issued certificate stating the petitioner's services as Data Entry Operator were satisfactory, three days later, *i.e.*, on 30.4.2015, he issued a revised certificate and on that basis, her services were disengaged. It is also stated that the petitioner has no right to contend that her services are to be engaged and that the respondents have every right to engage the services of persons of their choice as long as they do not discriminate or act in a *mala fide* manner.

I have noted the contentions of the both sides.

The fact that the petitioner worked as Data Entry Operator on contract basis ever since she was appointed to the said post initially on 03.11.2005 by respondent No.3 is not in dispute. The further fact that she was continued up to 27.4.2015 and a performance certificate was issued by respondent No.3 on that day certifying that her services were satisfactory is also not in dispute. How respondent No.3, within three days thereafter *i.e.*, on 30.4.2015, came to a different conclusion

that her services were not satisfactory, is not explained in the counter-affidavit.

In my considered view, this action of respondent No.3 is not *bona fide* and is arbitrary, unreasonable and violates Article-14 of the Constitution of India.

The contention of the respondents that the petitioner's appointment every year was only for 11 months 23 days and is of a contractual nature needs to be understood in the context of continuance to such employment for about 10 years. Obviously, artificial breaks in services are being given for seven days every year. Such a course has been criticized in strong terms by the Hon'ble Supreme Court in *Rattan Lal & Ors Vs. State of Haryana & Ors*¹ in the following terms:

“In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad-hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation or earlier to appoint them again on an ad-hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad-hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad-hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad-hoc basis is very large indeed. If the teachers had been appointed regularly they would have been

¹ AIR 1987 SC 478

entitled to the benefits of summer vacation along with the salary and allowance payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad-hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad-hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy."

In view of the decision of the Supreme Court, disengagement of the services of the petitioner on 30.4.2015, on the basis of the revised certificate issued by respondent No.3 that her performance was not satisfactory, is practically in the nature of hire and fire, at the absolute and arbitrary discretion of the respondents, which is constitutionally impermissible.

Therefore, the Writ Petition is allowed and the action of the respondents in disengaging the services of the petitioner as Data Entry Operator in the Mandal Resource Center, Narsaraopet from 30.4.2015 is declared as illegal, arbitrary and violative of Articles-14 and 21 of the Constitution of India and the respondents are directed to appoint the petitioner as Data Entry Operator on contract basis or in any other suitable post in Guntur District within four weeks from the date of receipt of a copy of this order. Respondent No.3 shall also pay costs of Rs.3,000/- (Rupees Three thousand only) to the petitioner.

As a sequel, the Miscellaneous Petitions pending, if any, shall stand disposed of as infructuous.

JUSTICE M.S.RAMACHANDRA RAO

09th February, 2018
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