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Andhra Pradesh High Court

Case No: Writ Petition No. 24574 of 2011

D. Mastan Reddy and Others		APPELLANT
	Vs	
State of A.P. and Others		RESPONDENT

Date of Decision: Sept. 14, 2011

Citation: (2011) 6 ALT 535

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: P.V. Krishnaiah, in W.P. No. 24574 of 2011, Vidyavathi, in W.P. No. 25405 of 2011, for the Appellant; M. Subrahmanyam, for Respondent No. 3, Ponnam Ashok Goud, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Government of India introduced the NREGS scheme. Apart from providing the mechanism to implement it, it has also evolved the process of supervision thereof by a set of persons known as "Ombudsmen" to be appointed for each District. The instructions in this regard are issued by the Ministry of Rural Development, Government of India, through order, dated 07.07.2009. The instructions are to the effect that the Ombudsmen shall be appointed for a tenure of two years extendible by one more year, based upon the performance appraisal. Such appraisal is to be undertaken by the selection committee.

2. The Government of A.P. issued a notification, inviting applications for the appointment of Ombudsmen for various Districts. The Petitioners herein and several others applied. The selection committee recommended the names of the Petitioners for the respective Districts. Through orders in G.O. Ms. No. 291, dated 10.08.2010,

the State Government appointed Ombudsmen for 17 Districts. The tenure was mentioned as one year extendible by another year.

3. The original term of the Petitioners ended by August 2011. Out of 17 Ombudsmen appointed through G.O. Ms. No. 291, four have resigned, three were given extension by one more year and 10 including the Petitioners are sought to be discontinued. Hence, these two writ petitions.

4. The Petitioners contend that when the scheme provides for appointment for a term of two years, extendible by one year, there was no justification for the Respondents in appointing them for a period of one year. They further submit that the extension by another year is a matter of course, unless the performance appraisal by the selection committee disclosed that the candidate is not eligible to be given extension.

5. The 1st Respondent filed a counter affidavit. It is stated that though the Central Government provided for appointment of Ombudsmen for a term of two years extendible by one year, the orders of appointment were issued restricting the term to one year extendible by another year and the Petitioners did not raise any objection for such a course of action. It is also stated that the performance of the Petitioners was found to be unsatisfactory and in that view of the matter, steps are initiated to fill the vacancies.

6. Heard Ms. Vidyavathi and Sri P.V. Krishnaiah, Learned Counsel for the Petitioners, learned Government Pleader for Panchayat Raj and Rural Development appearing for Respondents 1 and 2, Sri M. Subrahmanyam, Learned Counsel for Respondent No. 3 and Sri Ponnam Ashok Goud, Learned Counsel for the 4th Respondent.

7. In addition to providing the mechanism to ensure execution of the scheme, the Central Government wanted to have a set of persons to supervise and monitor the scheme. For that purpose, provision was made for appointment of Ombudsmen. Clause (2.2.5) of the order, dated 07.07.2009 issued by the Central Government reads as under:

2.2.5 The Ombudsman shall be appointed for a tenure of 2 years extendable by one year based on performance appraisal or till the incumbent attains the age of 65 years, whichever is earlier. There shall be no reappointment. Performance appraisal shall be made by the Selection Committee. A copy of the performance appraisal report shall be furnished to the State Employment Guarantee Council.

8. From this, it is evident that an Ombudsman must be appointed for a tenure of two years and the term is extendible by one year, depending upon the performance appraisal.

9. The State Government issued a notification inviting applications for selection and appointment of Ombudsmen for various Districts. 17 candidates for the respective Districts were selected and orders of appointment were issued in G.O. Ms. No. 291,

dated 10.08.2010. The appointment however was for a term of one year extendible by one more year, depending upon the performance appraisal. It is no doubt true that the term of office mentioned in G.O. Ms. No. 291, dated 10.08.2010 is at variance with Clause (2.2.5) of the order, dated 07.07.2009. However, the Petitioners did not raise any objection at the time of appointment and at this length of time, this Court is not inclined to accept their contention that the appointments ought to have been for a term of two years extendible by another year.

10. The one year term specified in the order of appointment had expired. An incumbent has a right to insist on extension of the term by one more year, as long as the performance appraisal was not in the negative. The specific allegation of the Petitioners that no assessment or appraisal of the performance as provided for under the relevant Clause has been undertaken, remains virtually unrebutted. Except making a general statement that the selection committee assessed the performance of the Petitioners, nothing is placed before this Court indicating the views of the selection committee.

11. It is true that the extension of the term cannot be claimed as of right. Where however, the order of appointment itself provides for it, the same cannot be denied, as long as the conditions imposed therefor are complied with. The provision is couched in such a way that unless anything adverse to the incumbent is noticed, his term of appointment must be extended. Except stating in general terms that the appraisal was made and it is not up to the mark, the details thereof or the parameters of appraisal are not furnished.

12. The appointment is almost a honorary assignment. The selective retention of some and rejection of extension to others would certainly effect the reputation of the Petitioners. Added to that, at no point of time, the Petitioners were informed of any deficiency in their performance.

13. For the foregoing reasons, the writ petitions are allowed and the Respondents are directed to continue the Petitioners, till they complete the term of one more year, as provided for under G.O. Ms. No. 291, dated 10.08.2010. It shall be open to the Respondents to proceed with the appointment of Ombudsmen in respect of other Districts, where vacancies exist. There shall be no order as to costs.