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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5444/2002

DIR. SOCIAL WELFARE NCD OF DELHI

..... Petitioner

Through Mr. Sushil Dutt Salwan, Advocate

versus

AKHIL BHARTIYA ANGANWADI KAMGAR UNION

..... Respondent

Through Mr. Anuj Aggarwal, Advocate with
Mr. Varun Prasad, Advocate

+ W.P.(C) 4368/2007 and C.M. Appln. Nos. 8187/2007 & 18186/2007

DEPARTMENT OF SOCIAL WELFARE

..... Petitioner

Through Mr. Sushil Dutt Salwan, Advocate

versus

AKHIL BHATIYA AGHANWARI KAMGAR

..... Respondent

Through Mr. Anuj Aggarwal, Advocate with
Mr. Varun Prasad, Advocate

+ W.P.(C) 5750/2007 and C.M. Appln. No. 10720/2007

DEPARTMENT OF SOCIAL WELFARE

..... Petitioner

Through Mr. Sushil Dutt Salwan, Advocate

versus

AKHIL BHARTIYA ANGANWARI KAMGAR UNION

..... Respondent

Through Mr. Anuj Aggarwal, Advocate with
Mr. Varun Prasad, Advocate

+ W.P.(C) 5872/2007 and C.M. Appln. No. 10958/2007

DEPARTMENT OF SOCIAL WELFARE

..... Petitioner

Through Mr. Sushil Dutt Salwan, Advocate

versus

AKHIL BHARTIYA ANGANWARI KAMGAR UNION

..... Respondent

Through Mr. Anuj Aggarwal, Advocate with
Mr. Varun Prasad, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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ORDER

07.02.2013

1. The Department of Social Welfare is the petitioner in all the four writ petitions aforesaid. Writ Petition (C) No. 5444/2002 has been preferred to assail the Award dated 18.12.1999 passed in I.D. No. 133 of 1997 by the Industrial Tribunal whereby the Industrial Tribunal has held that the Anganwadi workers engaged in Integrated Child Development Scheme (ICDS) run by the Government of NCT of Delhi are "Workman" under the

Industrial Disputes Act, 1947 and are entitled to be paid as casual workers and they be paid minimum wages as per the Minimum Wages Act. At the same time, the Industrial Tribunal held that the termination of the workers involved in the said case was legal.

2. Writ Petition (C) No. 4368/2007 has been preferred from the Industrial Award dated 22.07.2006 passed in I.D. No. 41/2002. In this case, the Industrial Tribunal held that the Anganwadi workers and helpers are entitled to extra payment for having worked from 8.00 a.m. to 4.00 p.m. on holidays. Accordingly, the management was directed to pay to the Anganwadi workers overtime at the rates fixed for skilled workers and Anganwadi helpers have been directed to be paid over time as payable to unskilled workers for Polio Immunization & Enumeration Programme done on various dates.

3. Writ Petition (C) No. 5750/2007 has been preferred against the Industrial Award dated 22.07.2006 passed in I.D. No. 42/2002 wherein the Industrial Tribunal has held that the Anganwadi workers are "workmen" under the Act and that the implementation of the ICDS Programme by the petitioner management is an "industry". In this case as well, it has been held that the Anganwadi helpers are entitled to be paid according to minimum rates of wages fixed for casual workers according to minimum rates fixed for unskilled workers under the Minimum Wages Act and appropriate directions have also been issued in this regard.

4. Writ Petition (C) No. 5872/2007 has been preferred in respect of the Award dated 22.07.2006 passed by the Industrial Tribunal in I.D. No.

43/2002 wherein the Tribunal has held that Anganwadi workers are “Workman” under the Act and the ICDS programme of the petitioner is an ‘Industry’. The Anganwadi workers have been held to be entitled to be paid minimum rates of wages as fixed for skilled workers. Necessary directions have been issued in this regard.

5. All these petitions are being decided by this common order since the core issue raised by the petitioner in all these petitions is that the ICDS Scheme of the petitioner is not an ‘industry’, and that the Anganwadi workers and helpers are not “Workman” under the Act. If this submission of the petitioner is accepted, the obvious result would be that the impugned Awards would be liable to be set aside, inter alia, on the ground that the Act would not have any application and the Industrial Tribunal would not have jurisdiction to deal with the dispute.

6. Learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in WP(C) No. 1158/1992 *Akhil Bhartiya Anganwadi Kamgar Union (Regd.) Vs. Union of India & Ors*, decided on 27.05.2011. The said petition has initially been preferred before the Supreme Court under Article 32 of the Constitution of India. The same was transferred by the Supreme Court to this Court to be treated as a petition under Article 226 of the Constitution of India. The petitioner union in the said petition had sought the status of government employee for Anganwadi workers and helpers and had prayed for pay parity with primary teachers and nurses in the pay-scale of Rs. 1400-2300 for Anganwadi workers, and in the pay scale of Rs. 800-1150 to Angwanwadi helpers on parity with ayas/peons, with past benefits of service from the date of their appointments.

Further prayer was made to merge these categories with 7 other categories of the Scheme of ICDS, stated to have been formulated in pursuance to the National Policy for children.

7. Learned counsel submits that while deciding the aforesaid writ petition, the Division Bench has threadbare examined the nature of employment granted to Anganwadi workers and helpers in the light of the pleas of the petitioner department. The Division Bench has also taken note of the decision of the Supreme Court in **State of Karnataka and Ors. Vs. Ameerbi and Ors.** (2007) 11 SCC 681 which deals with the aspect of maintainability of an application-filed by an Anganwadi worker appointed under the ICDS scheme, under Section 15 of the Administrative Tribunals Act, 1985. The Supreme Court held that the post of an Anganwadi worker is not a statutory post and their recruitment process was not governed by the Constitution or any Statute and thus the application was not maintainable before the CAT. The Division Bench referred to the said decision in **Ameerbi** (supra) and also held that the ICDS programme does not constitute an 'Industry' and Anganwadi workers/helpers are not "workmen". The relevant extract from the Division Bench judgment in WP(C) No. 1158/1992 reads as follows:-

"16. We may notice at this stage that the judgment relied upon by the respondents in State of Karnataka and Ors.v. Ameerbi and Ors."s case (supra) deals with anganwadi workers appointed under the said Scheme and the maintainability of an application filed by the workers under Section 15 of the Administrative Tribunals Act, 1985. It was held in the said case that the post of such workers was not a statutory post and their recruitment process was not governed by the Constitution or

any statute and thus the application was not maintainable. It was specifically held that ICDS Programme would neither constitute an "industry" nor anganwadi workers "industrial workmen". The post of anganwadi workers was not a statutory post and had been created in terms of the said Scheme, but it was one thing to say that there existed a relationship of employer and employee by and between the State and anganwadi workers, but it was another thing to say that they were holders of a civil post. This was so observed while simultaneously noticing that the Court was not oblivious of the fact that their presence in their respective villages is extremely important and they make significant contribution to the society. It would be useful to reproduce some of the observations made by the Supreme Court in para nos. 29, 30, 32, 33, 34, 35, 36, 37 & 39, which are as under:

"29. However, rules framed under proviso to Article 309 of the Constitution of India are not attracted in the case of the respondents. They are appointed under a scheme which is not of a permanent nature, although might have continued for a long time.

30. Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter therein. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-à-vis cases of this nature which are sui generis. Terms and conditions of services of an employee may be referable to Acts of appropriate

legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.

32. One of the questions which was raised before us was in regard to the right of an anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled thereto.

33. In *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*; AIR 1992 SC 1959, this Court while considering the provisions of Article 191(1)(a) of the Constitution of India in relation to the posts held by the employees of an Integrated Tribal Development Agency opined that their employees would not be holder of an office of profit although the State exercises control thereover holding: (SCC pp. 427-28, para 28) "28. It is also necessary to bear in mind that the Government is undertaking several projects and activities including commercial activities through the corporations and local bodies exercising some control over such corporations or bodies. In that view of the matter they may come within the meaning of the „State" envisaged in Article 12 but that may not be a decisive factor in deciding the issue. As a matter of fact, Section 10 of the Representation of the People Act as well as Article 58(2) of the Constitution of India do indicate that all persons employed in such undertakings, corporations or local bodies cannot be deemed to suffer disqualification for contesting the elections except to the extent indicated therein. This aspect also has been considered in some of the abovementioned decisions. If a strict and narrow

construction is to be applied that amounts to shutting off many prominent and other eligible persons to contest the elections which forms the fundamental basis for the democratic set-up. Therefore several factors as indicated above depending upon the facts of each case have to be taken into consideration in deciding whether a particular person is disqualified by virtue of his holding an office of profit before concluding that such an office is under the Government."

34. The decision, therefore, is an authority for the proposition that those employees who come within the meaning of Article 12 of the Constitution of India are not necessarily government servants. A fortiori the State in terms of a scheme may exercise control over a section of the persons working but thereby only, they do not become entitled to protection under Article 311 of the Constitution of India.

35. Reference to the provisions of the Minimum Wages Act, in our opinion, is also not apposite. The said Act is applicable to the workmen working in the industries specified therein. It is not the case of the respondents that the ICDS Programme would constitute an "industry" or anganwadi workers are industrial workmen. There cannot be any doubt whatsoever that it is one thing to say that the State would be liable to pay minimum wages irrespective of its financial constraints but it is another thing to say that as to whether such a claim can be raised in respect of those who are working under a project. It is not a case where the concept of minimum wage, living wage or fair wage can be brought in service.

36. Different tests applied even for determining the relationship of employer and employee have

recently been noticed by this Court in *District Rehabilitation Officer v. Jay Kishore Maity*; 2006 (11) SCALE 545. In that case, in almost similar project, the employees appointed by the District Rehabilitation Centre claimed themselves to be the Central Government employees. Each case, therefore, has to be considered on its own merits.

37. This Court cannot determine a lis only on sympathy.

39. It is also not a case where the doctrine of parity of employment can be invoked. It is true that nomenclature of a term of payment is not decisive but the substance is as was held in *Jaya Bachchan v. Union of India & Ors.*; (2006) 5 SCC 266, but the question has to be determined having regard to the issue involved. We are concerned herein with only one question viz. whether the respondents are holders of any civil post. We are, having regard to the materials on record, of the view that they are not."

17. Learned counsel for the petitioner, however, sought to distinguish the judgment by submitting that in para 39, the Supreme Court, which had noticed that they were concerned only with one question i.e. whether the anganwadi workers were holders of any civil post, decided only that issue that the Tribunal had no jurisdiction to entertain the application.

18. On an analysis of the rival submissions of the learned counsel for the parties, it is obvious to us that the judgment in *State of Karnataka and Ors. v. Ameerbi and Ors.*'s case (supra) squarely applies to the case to anganwadi workers and anganwadi helpers under the said Scheme. It is the deployment of these two categories under the said Scheme which has given rise to the claims made in the present petition as also before the Administrative Tribunal against which the judgment was rendered by the Supreme Court.

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19. We have quoted the observations of the Supreme Court at some length only to emphasize that the very controversy sought to be raised in the present petition is the one which was dealt with by the Supreme Court albeit in respect of determining the issue whether the application filed by the anganwadi workers before the Administrative Tribunal could be maintained. In fact, in the counter affidavit filed by the respondents before us, the real defence is that there was no civil post for which recruitment took place in accordance with rules qua anganwadi workers and anganwadi helpers who were part-time workers/helpers and were thus paid honorarium/stipend. The Supreme Court has held that the anganwadi workers are not holding any statutory post though a relationship of an employer and employee exists. There are no recruitment rules applicable nor is the State required to comply with the constitutional scheme of equity as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for purposes of appointment within the constitutional scheme existed. The appointment process of these workers was held in para 30 not to render incumbents thereof as holders of civil post. In this behalf, an example given is of the entitlement of an anganwadi worker to contest an election which an holder of a civil post may not be entitled to. The Supreme Court relied upon the observations in *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*; (1992) 4 SCC 404 to observe that the employees who come within the meaning of Article 12 to the Constitution of India are not necessarily government servants. Even the reference to the provisions of the Minimum Wages Act, 1948 has been held not apposite as the same applies to workmen working in the industries specified therein. The said Scheme would not constitute an "industry" nor the anganwadi workers as "industrial workmen". Thus, we have not the slightest of doubt that the judgment in *State of Karnataka and Ors. v. Ameerbi and Ors.*"s case (*supra*) would squarely apply to the facts of the present case, dis-entitling the anganwadi workers and anganwadi helpers to any relief."

From the aforesaid extract, it appears that the pronouncement of the

Division Bench of this Court, by placing reliance on the Supreme Court decision in Ameerbi (supra) is that Anganwadi workers/helpers are not 'workman' and that the ICDS Scheme does not constitute an 'industrial unit'.

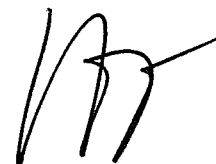
8. Learned counsel for the respondents, faced with the aforesaid judgment, has sought to make a submission which I cannot accept. He submits that the Supreme Court in Ameerbi (supra) did not return a finding that the ICDS programme is not an 'industry', or that the Anganwadi workers/helpers are not 'workman'. He submits that all that the Supreme Court did was to record a concession to the effect that ICDS programme would not constitute an 'industry' or that the Anganwadi workers/helpers are not 'workmen'. In this respect, he specifically relies to para 35 of the judgment in Ameeribi (supra)-already quoted above.

9. I cannot accept this submission of learned counsel for the respondents for the reason that the Division Bench of this Court has understood and interpreted the judgment of the Supreme Court in Ameerbi (supra) and followed the same. It is not for me, while sitting singly, to comment on whether or not the Division Bench has correctly understood the decision of the Supreme Court in Ameerbi (supra). Even otherwise, I do not find the submission of learned counsel for the respondents to be correct. The opening words of para 35 clearly show that the Supreme Court gave its opinion to the effect that the provisions of the Minimum Wages Act would not apply in the case of Anganwadi workers on the ground that the said Act is applicable to the workman working in industries specified therein. It appears that the Supreme Court while giving its own opinion on the status of

Anganwadi workers as not being 'workman' and on the non-applicability of the Minimum Wages Act, further went on to record that the respondents before it also did not urge that the ICDS programme would constitute an 'industry' or the Anganwadi workers were 'industrial workmen'. There is no concession recorded by the Supreme Court. All that is recorded is that such arguments were not raised before it.

10. In view of the aforesaid decision, I am of the view that the impugned Awards of the Industrial Tribunals in all these cases cannot be sustained and are liable to be set aside. Since the Act had no application and the Anganwadi workers/helpers are not workman, the Industrial Tribunal did not have jurisdiction in the matter to deal with them in the impugned Awards. Accordingly, all the aforesaid Awards are set aside leaving the parties to bear their own costs.

11. All the petitions stand disposed of.



VIPIN SANGHI, J.

FEBRUARY 07, 2013

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