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

Date of decision: 28.05.2019

+ W.P.(C) 7203/2018

SUNITA KUMARI & ORS

..... Petitioners

Through Mr.K. Prabhakara Rao, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through Mr.Naushad Ahmed Khan, ASC with
Ms.Manisha Chauhan, Adv. for R-1.
Mr.Anil Kumar Yadav, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby directing the respondent no.1 to reinstate the petitioner in the posts of Anganwari Workers.

2. The petitioners are women, initially joined as Anganwari Workers in Integrated Child Development Scheme (hereinafter referred to as 'ICDS') with respondent no.1 department. After they put about 10 years of service as Anganwari Workers with respondent no.1, respondent no.2 invited applications for the post of Anganwari supervisor on 20-21.07.2016 to be

deputed to respondent no.1 department. The petitioners applied for the post. After written test and interview conducted by the officials of the respondent no.1, petitioners were selected for the post of Anganwari Supervisor on contractual/outsourced basis w.e.f. 20-21.07.2016. Just after one year, their services were discontinued as Anganwari Supervisors w.e.f. 01.10.2017 on the ground that regular appointments were being made in Anganwari Supervisor posts. Accordingly, the petitioners became unemployed.

3. Thereafter, the petitioners sent request letters to respondent no.1 seeking their reinstatement in their earlier post i.e. Anganwari Workers as they were deputed for only a short time in Supervisor's posts and also they had not resigned to the Anganwari worker posts. But the respondent no.1 has not reinstated them nor gave any reply to their representations.

4. Counsel appearing on behalf of petitioner submits that respondent no.1 is the Women and Child Welfare Department, Government of NCT of Delhi, which is operating the Integrated Child Development Scheme, 1975. Respondent no.2 is a joint venture of TCIL-A Government of India Enterprise and DSIIDC-an undertaking of Delhi Government and deploys Anganwari Supervisors on contractual basis to respondent no.1 and administrative control rests with respondent no.1.

5. It is stated that ICDS is perhaps the largest of all the food supplementation programmes in the world, was initiated in the year 1975 with the following objectives formulated by the Planning Commission:

- (i) To improve the health and nutrition status of children of 0-6 years by providing supplementary food and by coordinating with State Health Departments to ensure delivery of required health inputs.
- (ii) To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education.
- (iii) To provide pregnant and lactating women with food supplements.
- (iv) To enhance the mother's ability to provide proper child care through health and nutrition education.
- (v) To achieve effective coordination of policy and implementation among the various departments to promote child development.

6. It is further submitted that to implement the above said scheme, respondent no.1 invited applications online to fill up the vacancies of Anganwari workers. The petitioner applied online and an interview was held

before selection. After interview, the petitioners were selected as Anganwari workers. The respondent no.1 fixed honorarium of Rs.1,500/- per month for the said post. In the letters of appointment, the retirement age is fixed as 60 years. After selection as Anganwari workers, the petitioners had undergone to various training programmes conducted by respondent no.1 from time to time and had been doing their jobs to the utmost satisfaction of respondent no.1. In the year 2016, respondent no.2 invited applications for post of Anganwari supervisors posts to depute them to respondent no.1, Department on contractual/outsourced basis. The petitioners applied for the same. The officials of respondent no.1 held a written examination and also interview and selected the petitioner for the post of Anganwari supervisor posts w.e.f. 20.07.2016 and 21.07.2016. But the appointment letters were issued by respondent no.2 clearly mentioning that the petitioners were deputed to respondent no.1 on contractual/outsourced basis. After receiving these appointment letters, the petitioners gave their joining report in the same department from the post of Anganwari workers to Anganwari supervisors. The petitioners continued their job till 30.09.2017 about 14 months and thereafter respondent no.2 issued letter dated 25.09.2017 discontinuing the services of petitioners w.e.f. 01.10.2017 on the ground that Anganwari

Supervisors on regular basis are being appointed in the respondent no.1 department.

7. Counsel for the petitioner submits that from the year 2006, till the date of termination of the services of the supervisor, the petitioner continued to work as Anganwari workers and supervisors. The petitioners never resigned from the post of Anganwari workers nor their services were terminated from the said post. Thus, the petitioners are entitled to continue in the services as Anganwari workers.

8. The counter affidavit has been filed by respondent no.1 whereby it is admitted that the petitioners were initially appointed by respondent no.1 to the honorary post of Anganwari workers on the honorarium which keeps on changing as per the decision of the Government of India. The said respondents in the year 2016 proposed for the post of Anganwari supervisor on contractual basis through outsourcing from respondent no.2 (ICSI Ltd.). Thereafter, the petitioner withdrew from the honorary of Anganwari workers and applied for the contractual post of Anganwari supervisor on outsource basis. The contractual appointment on outsource basis was needed to meet the public purpose as the regular appointment/recruitment takes some time. The process for regular appointment was initiated by DSSSB with respect to

the post for Anganwari supervisor and the recruitment process has been completed and the incumbents have been appointed following the rule of regular appointment as per existing recruitment rules. The contractual/outsourced employees through the ICSI Ltd. completed their period of terms of contract as per contractual conditions, thereafter their services have been terminated by respondent no.2, therefore, the petitioners have no right to continue as Anganwari supervisor which has already been terminated.

9. Learned counsel for respondent no.1 submits that the petitioners were appointed by respondent no.1 on the basis of Anganwari workers (Honorary Post) carrying an honorarium amount and there is no scope for permanent employment in the department which is very much within the knowledge of petitioners. The similar view has been held by the Hon'ble Supreme Court in catena of the judgment viz. *State of Karnataka & Ors. Vs. Ameerbi & Ors: (2007) 11 SCC 681; and Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.: (2006) 4 SCC 1.*

10. It is further submitted that Anganwari workers are not governed by any service rules nor there provision for giving pension or paid leave salary to them. They are not covered and governed by the CCS(CCA) Rules 1965 and Conduct Rules nor do they undergo rigorous specialized training,

nonetheless, the Anganwari workers are free to continue their services on honorary post, however, in case Anganwari workers are absent from service for more than 3 months they stand terminated from service as per rule. The petitioners have withdrawn from the honorary work as Anganwari workers and have then opted for Anganwari supervisor with respondent no.2 on purely contractual/ outsourced basis as per their own choice. Moreover, the engagement letter of respondent no.2 and the terms thereof, are interalia with the terms that the engagement is purely on contractual period for a fixed period and in case contract terminated earlier by the department, engagement will automatically stand terminated and contract agreement does not confer any right to claim appointment in the department.

11. During the course of arguments, learned counsel for respondent no.1 has shown the consent of the petitioners joining Anganwari supervisors with respondent no.2 whereby the petitioners stated that they give their consent and accept the terms and conditions of the engagement for the post of Anganwari supervisors which is purely on contractual/outsourced basis. Accordingly, they joined their duties as Anganwari supervisors w.e.f. 21.07.2016.

12. I have heard learned counsel for the parties and perused the material

available on record.

13. It is not in dispute that respondent no.1 invited applications for the post of Anganwari workers and the petitioners applied for the same and gone through the interviews before finally selected for the post. On various dates, respondent no.1 issued appointment letters to the petitioners in the year 2007 and they continued as Anganwari workers till the offer of Anganwari supervisors was issued by the respondent no.2. Even after getting the appointment with respondent no.2 as Anganwari supervisor on contract basis, they continued to do the same work and from the post of Anganwari workers, the petitioners never resigned nor their services have been terminated by respondent no.1. Clandestinely, respondent no.2 came in between in the year 2016 and invited applications for the post of Anganwari supervisor to be adopted by respondent no.1 department. Accordingly, the petitioners applied for the post and after written test and interview conducted by office of respondent no.1, the petitioners were selected for the post of Anganwari supervisors on contractual/outsourced basis w.e.f. 20-21.07.2016. Thereafter, vide letter dated 25.09.2017, their appointment as Anganwari supervisors had been discontinued by respondent no.2.

14. The fact remains that the petitioners never resigned from the post of Anganwari workers nor their services have been terminated by respondent no.1 as Anganwari workers, thus, they continued till date as Anganwari workers though for around 14 months they worked as Anganwari supervisor and they received the salary for the same. Thereafter no honorarium has received either from respondent no.1 or from respondent no.2.

15. I note, vide advertisement dated 13.07.2017 published in Indian Express, it is clarified that the work of Anganwari worker is honorary and not equivalent to any employment. Presently, the monthly honorarium for the post of Anganwari worker is ₹5,000/-. Thus, by the said advertisement, respondent no.1 is not going to fill up post of Anganwari worker on regular basis. Since the petitioners are working as Anganwari worker from the year 2007 and thereafter worked 14 months as Anganwari supervisor, therefore, by the advertisement dated 13.07.2017, respondent no.1 is not going to appoint better candidates than the petitioners who served number of years for the said post.

16. Even otherwise, the settled law is that the contractual employees cannot be replaced by the other set of contractual employees. In the present case, the petitioners are working on honorarium as Anganwari workers and

they continued. Therefore, I hereby declare that the petitioners are continued in the service of respondent no.1 as Anganwari workers.

17. Since the petitioners have not worked from 01.10.2017, therefore, I hereby make it clear that no honorarium amount shall be given to the petitioners but make it clear that their services shall be continued from the date of appointment till the date they resume their duty with respondent no.1.

18. I further make it clear that they shall remain on the same terms and conditions as per the decision of the NCT of Delhi applicable as on date.

19. It is made clear that the petition has been allowed by establishing the case of the petitioners that they never resigned from the post and their services have not been terminated by respondent no.1.

20. Keeping in view of the aforesaid facts, the petition is allowed.

21. Respondent no.1 is directed to assign their place of posts within one week from the receipt of this order.

(SURESH KUMAR KAIT)
JUDGE

MAY 28, 2019
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