

Court No. - 20

Case :- WRIT - A No. - 5905 of 2023

Petitioner :- Kokila Sharma

Respondent :- Union Of India Thru. Secy., Ministry Of Women And Child Welfare And 3 Others

Counsel for Petitioner :- Brijesh Kumar Tiwari

Counsel for Respondent :- A.S.G.I., Anand Dwivedi, C.S.C.

Hon'ble Manish Mathur, J.

1. Learned counsel for petitioner is granted liberty to amend prayer clause of petition to delete words (Anganwadi Workers and Helpers') during course of day.
2. Learned counsel for petitioner is also granted liberty to implead the State of U.P. through Additional Chief Secretary, Finance Department, Civil Secretariat, Lucknow as opposite party no.5 during the course of day.
3. Notices on behalf of newly impleaded opposite party have been accepted in the Office of learned Chief Standing Counsel.
4. Heard Mr. Brijesh Kumar Tiwari, learned counsel for petitioner, Mr. S. B. Pandey, learned Senior Counsel assisted by Mr. Anand Dwivedi, learned counsel for opposite party no.1 and learned State Counsel for opposite parties no.2, 3, 4 and 5.
5. Petition has been filed seeking a direction to opposite parties to provide honorarium to petitioner at par with honorarium which is being paid in other States of Country and that it should not be less than the minimum wages as declared by the State and Central Government. Further prayer for a direction for grant of gratuity to petitioner being an Anganwadi Worker has also been sought.
6. It has been submitted that petitioner was engaged as an Anganwadi Worker in the year 2012 in District Bahraich and is continuing as such till date but the honorarium being paid to petitioner is not commensurate with the honorarium being paid to such Anganwadi Worker and Anganwadi Helper (for short the "AWW and AWH") in other States. It is submitted that the honorarium is even otherwise below minimum wages notified by the State Government. It is submitted that Anganwadi Workers are appointed /engaged for providing services in Anganwadi Centres setup under the Integrated Child Development Scheme (ICDS) and since the aforesaid Centre would come within the definition of an establishment as per the payment of Gratuity Act, 1972, petitioner would be entitled to

payment of such gratuity particularly since petitioner would come within definition of worker and the honorarium paid would also be within definition of wages. It is submitted that the aforesaid aspects have already been considered by Hon'ble the Supreme Court in the case of ***Maniben Maganbhai Bhariya*** versus ***District Development Officer Dahod & Ors. Civil Appeal No.3153*** of 2022 and vide judgment and order dated 25.04.2022, Hon'ble the Supreme Court has held that the Gratuity Act of 1972 would apply to Anganwadi Centre and in turn to AWWs and AWHs and directions have therefore been issued. It is submitted that the aforesaid judgment will be applicable upon petitioner.

7. Learned counsel for opposite parties while not disputing the aforesaid proposition of law as held by Hon'ble the Supreme Court have however drawn distinction to the effect that in the case of ***Maniben Maganbhai Bhariya*** (supra), Hon'ble the Supreme Court had passed judgment considering Rules framed by the State of Gujarat in the year 2013 whereas there are no such Rules governing services of AWWs and AWHs in the State of U.P. although learned State counsel has drawn attention to the Government Order dated 21.03.2023 to submit that the said Government Order is applicable upon such persons and the same regulates their service conditions in U.P. now.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly judgment rendered by Hon'ble the Supreme Court in the case of ***State of Karnataka and others versus Ameerbi and others*** reported in (2007) 11 SCC 681, it is evident that earlier the aspect of AWWs and AWHs being covered under the aforesaid Act had been considered by Hon'ble the Supreme Court in the case of ***Ameerbi*** (supra) but the said judgment has thereafter been distinguished in the judgment of ***Maniben*** (supra) primarily on the ground that at the time of rendering judgment in the case of ***Ameerbi*** (supra) there were no rules or notification governing service conditions of AWWs and AWHs, which have subsequently been notified.

9. The ***Maniben*** judgment (supra) has dealt with aspect of applicability of the Contract Labour (Regulation and Abolition) Act, 1970, the Code of Wages 2019 and the payment of Gratuity Act, 1972 and has specifically recorded its satisfaction that Anganwadi Centres would be covered within definition of 'establishments' in terms of Section 2(e) of the Contract Labour (Regulation and Abolition) Act of 1970 as well as Section 1(3) (b) the Act of 1972. Hon'ble the Supreme Court has thereafter also referred to Section 2(e)(f)(s) of 1972 Act to hold that persons such as petitioner being AWW & AWH would come

within definition of the terminology 'employee' 'employer' 'wages' and has therefore held that honorarium paid to such persons would also be covered by the definition of wages and as the persons are employed by the State Government for wages in establishment to which the 1972 Act applies, they therefore are employees within meaning of the 1972 Act.

10. It has also been held that the 1972 Act would be applicable to Anganwadi Centre and in turn to the Workers and Helpers.

11. A perusal of aforesaid judgment would also make it evident that the only distinguishing feature is that the said judgment is based primarily taking into consideration the Rules of 2013 as notified in the State of Gujarat pertaining to service conditions of Anganwadi workers and helpers. After consideration of the aforesaid Rules of 2013, Hon'ble the Supreme Court has come to a conclusion that since the Rules provide appointment and termination to such person by Government Officials who even otherwise are within their control, as such their selection and appointments are made by the Government of Gujarat; as also the fact that remuneration is paid by the State Government.

12. The relevant paragraphs of judgment rendered by Hon'ble the Supreme Court in the case of ***Maniben Maganbhai Bhariya*** versus ***District Development Officer Dahod & Ors.*** ***Civil Appeal No.3153 of 2022*** is as follows:

"16. In the case of Ameerbi (supra), this Court dealt with the issue whether AWWs and AWHs were holding civil posts. The issue was whether the original applications filed by AWWs before the State Tribunal established under the Administrative Tribunals Act, 1985 were maintainable. This Court held that the posts of AWWs were not statutory posts and the same have been created in terms of ICDS. Therefore, there was no relationship of employer and employee between the State Government and AWWs. It was held that the AWWs do not carry on any function of the State. It was observed that no Recruitment Rules have been framed for appointing AWWs. Much water has flown after the decision in the case of Ameerbi (supra) was rendered in the year 2007. When the said decision was rendered by this Court, the 2013 Act was not on the statute book. As noted earlier, the Anganwadi centres established under ICDS have been given statutory status under the 2013 Act. Moreover, under Sections 4, 5 and 6 of the 2013 Act, the Anganwadi centres perform statutory duties under the 2013 Act. I have already referred to the Government Resolution of the Government of Gujarat dated 25th November 2019 in extenso.

17. The Resolution incorporates the said Rules which lay down selection criteria, educational qualifications, the process of selection, etc. of AWWs and AWHs. Under the said Rules, a detailed process of making appointments of AWWs and AWHs has been incorporated. It also incorporates the marking system for the selection of AWWs and AWHs. The said Rules provide that the AWWs and AWHs will continue in the

service till the age of 58 years. Even the minimum and maximum age of the candidates for participating in the process of recruitment has been laid down. There are provisions made for the termination of services of AWWs and AWHs. Though the said rules refer to their service as honorary service, the use of the word "honorary" is not determinative of the status of AWWs and AWHs.

18. In view of the provisions of the 2013 Act and Section 11 of the RTE Act, Anganwadi centres also perform statutory duties. Therefore, even AWWs and AWHs perform statutory duties under the said enactments. The Anganwadi centres have, thus, become an extended arm of the Government in view of the enactment of the 2013 Act and the Rules framed by the Government of Gujarat. The Anganwadi centres have been established to give effect to the obligations of the State defined under Article 47 of the Constitution. It can be safely said that the posts of AWWs and AWHs are statutory posts.

19. As far as the State of Gujarat is concerned, the appointments of AWWs and AWHs are governed by the said Rules. In view of the 2013 Act, AWWs and AWHs are no longer a part of any temporary scheme of ICDS. It cannot be said that the employment of AWWs and AWHs has temporary status. In view of the changes brought about by the 2013 Act and the aforesaid Rules framed by the Government of Gujarat, the law laid down by this Court in the case of Ameerbl will not detain this Court any further from deciding the issue. For the reasons stated above, the decision in the case of Ameerdi will not have any bearing on the issue involved in these appeals.

25. I may refer to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Contract Labour Act"). Establishments have been defined in clause (e) of Section 2 which reads thus:

(e) "establishment" means-

- (i) any office or department of the Government or a local authority, or -
- (ii) any place where any Industries, trade, business, manufacture or occupation is carried on."

The Contract Labour Act is applicable to establishments as provided in sub-section (4)(a) of Section 1. In view of sub-section (2) of Section 1, the Contract Labour Act is applicable to the State of Gujarat. Therefore, it is legislation in relation to establishments in the State of Gujarat. As stated above, under the said Rules, now the selection and appointments of AWWs and AWHs are being made by the Government of Gujarat. An officer of the said Government is empowered to issue an order of termination of employment of AWWs and AWHs. As stated earlier, Anganwadi centres have become an extended arm of the Government. Now, it operates as an establishment or a wing of the Government. The remuneration to AWWs and AWHs is paid by the State Government. However, the State Government gets contributions from the Central Government. Moreover, it can always be said that occupation is carried out in the establishments of Anganwadi centres. Hence, Anganwadi Centre is an establishment within the meaning of clause (e) of Section 2 of the Contract Labour Act.

27. It is not the case of the State Government that every Anganwadi centre is a separate entity. Anganwadi centres and Mini Anganwadi centres are a

part of the Anganwadi establishment of the State Government. The Anganwadi centres have been employing ten or more AWWs and AWHs in the State. Therefore, I have no manner of doubt that Anganwadi centres are establishments contemplated by clause (b) of sub-section (3) of Section 1 of the 1972 Act. The learned Additional Solicitor General relied upon a decision of this Court in *Bangalore Turf Club* (supra). It was a case arising out of the Employees' State Insurance Act, 1948. The said Act does not define "establishment". The decision has no relevance in this case.

29. The definition of 'wages' is very wide. It means all emoluments which are earned by an employee on duty. Thus, the honorarium paid to AWWs and AWHs will also be covered by the definition of wages. As AWWs and AWHs are employed by the State Government for wages in the establishments to which the 1972 Act applies, the AWWs and AWHs are employees within the meaning of the 1972 Act. In view of the said Rules of the Gujarat Government, the Anganwadi centres are not under the control of the Central Government. Therefore, the State Government will be an appropriate Government within the meaning of clause (a) of Section 2 of the 1972 Act. Accordingly, a person or authority appointed by the appropriate Government for the supervision and control of AWWs and AWHs will be the employer within the meaning of clause (f) of Section 2.

31. For the reasons recorded above, I have no manner of doubt that the 1972 Act will apply to Anganwadi centres and in turn to AWWs and AWHs. In the impugned Judgment, the Division Bench was swayed by the view taken by this Court in the case of *Ameerbi* which was followed by the Delhi High Court in the case of *Akhil Bhartiya Anganwadi Kamgar Union (Regd.)* (supra). These decisions, for the reasons recorded earlier, have no bearing on the issue involved in these appeals. The learned Single Judge was right in holding that the 1972 Act was applicable to AWWs and AWHs. The Controlling Authority has granted simple interest at the rate of 10% on the overdue gratuity amounts. All eligible AWWs and AWHs shall be entitled to the benefit of interest."

32. Hence, I allow the appeals and set aside the impugned Judgment dated 8th August 2017 of the Division Bench of Gujarat High Court and restore the Judgment of the learned Single Judge dated 6th June 2016 in Special Civil Application no. 1219 of 2016 and other connected cases by holding that the provisions of the 1972 Act apply to AWWs and AWHs working in Anganwadi centres. Within a period of three months from today, necessary steps shall be taken by the concerned authorities in the State of Gujarat under the 1972 Act to extend benefits of the said Act to the eligible AWWs and AWHs. We direct that all eligible AWWs and AWHs shall be entitled to simple interest @ 10% per annum from the date specified under sub-section 3A of Section 7 of the 1972 Act."

13. In the present case, it is also evident from a reading of the counter affidavit that in the State of U.P., service conditions of AWWs and AWHs are now governed by the Government Order dated 21.03.2023 which prescribes eligibility criteria for appointment of a person as a Worker or a Helper. The minimum and maximum age limit for being retained in service have also prescribed alongwith a selection procedure. The Rules also indicate that the Selection Committee is constituted primarily

by officials nominated by the District Magistrate concerned with the District Programme Officer being the Member Secretary. Provisions of reservation are also applicable to such recruitment and appointment is to be made only after approval by the District Magistrate. Appointing authority of AWW and AWH has been indicated as District Programme Officer. Termination of services are also to be made only after approval by the District Magistrate concerned.

14. The aforesaid Government Order therefore appears to be in conformity with the Rules of 2013 which governs service conditions of AWWs and AWHs in the State of Gujarat.

15. In view aforesaid, this Court does not find any distinguishing feature with regard to such AWWs and AWHs engaged in the State of Gujarat and State of U.P. In the considered opinion of this Court, the judgment rendered by Hon'ble the Supreme Court in the case of **Maniben** (supra) is therefore clearly applicable upon AWWs, AWHs engaged in Anganwadi Centers in the State of U.P.

16. In view of judgment rendered by Hon'ble the Supreme Court in the case of **Maniben Maganbhai Bhariya** versus **District Development Officer Dahod & Ors. Civil Appeal No.3153 of 2022** and exercising extra ordinary power under Article 226 of the Constitution of India, opposite parties collectively are directed to extend benefits of payment of Gratuity Act, 1972 to all eligible AWWs & AWHs within a period of four months from the date a certified copy of this order is produced before the concerned authority.

17. Resultantly, the petition succeeds and is **allowed**. The parties to bear their own costs.

Order Date :- 22.11.2023

Subodh/-