

**High Court of Judicature at Allahabad
Lucknow Bench, Lucknow**

Neutral Citation No. – 2024:AHC-LKO:86301-DB

Judgment Reserved On: 03.12.2024

Judgment Delivered On: 20.12.2024

A.F.R.

Court No. - 1

1. Case :- WRIT - A No. - 9466 of 2018

Petitioner :- Smt. Sushila Devi And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Women And Child Welfare And Ors.

Counsel for Petitioner :- Rajeev Narayan Pandey, Atul Kumar Dwivedi, Shivam Sharma

Counsel for Respondent :- C.S.C.

AND

2. Case :- WRIT - A No. - 10066 of 2018

Petitioner :- Smt. Madhuri Singh And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Woman And Child Welfare And Ors.

Counsel for Petitioner :- Atul Kumar Dwivedi, Seema Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

(Delivered by Subhash Vidyarthi, J.)

1. Heard Sri Shivam Sharma, learned counsel for the petitioners and learned Standing Counsel appearing for the State-respondents.
2. Both the aforesaid writ petitions have been filed by the persons, who were working as Anganwadi Workers under Directorate of Child Development Services and Nutrition, Uttar Pradesh challenging the *vires* of Rule 5 of Uttar Pradesh Child Development and Nutrition (Subordinate) Service (Second Amendment) Rules, 1998 (here-in-after referred to as 'the Second Amendment Rules, 1998) as well as Uttar Pradesh Child Development and Nutrition (Subordinate) Service (4th Amendment) Rules, 2006 (here-in-after referred to as 'the Fourth Amendment Rules, 2006) as *ultra vires* to the extent that the aforesaid rules prescribed cut off age of 45 to 50 years respectively for

Anganwadi Workers to be considered for selection for the post of Mukhya Sevika.

3. The petitioners have also sought quashing of a Circular dated 09.01.2018 issued by the Director, Child Development Services and Nutrition, U.P. Lucknow to all the District Program Officers/In-charge in the State of U.P. directing them to collect applications for selection on the post of Mukhya Sevika from such Anganwadi Workers, who have completed 10 years of service on 01.07.2017 and who are not more than 50 years of age. The petitioners have further sought a Writ of Mandamus commanding the opposite parties to consider them for promotion to the post of Mukhya Sevika.
4. Writ-A No.9466 of 2018 has been filed by three petitioners, whereas Writ-A No.10066 of 2018 has been filed by eighteen petitioners. As the questions involved in both the writ petitions are the same, the same are being decided by this common judgment.
5. All the petitioners have completed more than ten years of service as Anganwadi Workers and they are claiming promotion to the post of Mukhya Sevika and their contention is that the fixation of cut off age of 50 years is arbitrary and it disentitles more experienced Anganwadi Workers for being considered for promotion to the post of Mukhya Sevika.
6. In the counter affidavit filed on behalf of the opposite parties, it has been stated that Anganwadi Workers are engaged on payment of honorarium basis and they are not in regular service of the establishment. No gradation list of Anganwadi Workers is prepared like regular employees and there is no provision for promotion of Anganwadi Workers.
7. On 05.04.2018, an interim order was passed by this Court by providing that the applications of the petitioners for promotion to the post of Mukhya Sevika may be accepted by the opposite parties, however, any decision taken on such consideration of their claim would not be declared.

8. On 24.04.2023 this Court had passed an order recording the submission of the learned counsel for the petitioners that there does not appear to be any nexus with the object sought to be achieved for making amendment in the Service Rules. As the counter affidavit is silent on this aspect, the State was directed to file a supplementary counter affidavit. The State Government has filed a supplementary affidavit stating that this was also a long standing demand of U.P. Rajya Anganwadi Karamchari Sangh to increase the upper age limit of 45 years to 50 years for consideration for selection to the post of Mukhya Sevika.
9. A second supplementary affidavit was also filed annexing therewith a copy of the Government Order dated 21.03.2023 which provides exhaustive mechanism for appointment of Anganwadi Workers on honorarium basis. The recruitment age of Anganwadi Workers is 18 years to 35 years, whereas the recruitment age of Mukhya Sevika is 21 years to 40 years. The object behind making amendment in the U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 (here-in-after referred to as 'the Rules of 1992') is that those Anganwadi Workers who are working on honorarium basis and who do not have any promotional avenues, be provided with the benefit of participating in selection process for recruitment to the post of Mukhya Sevika. The object of the Fourth Amendment made in the Rules of 1992 was to provide participation of maximum number of Anganwadi Workers to be considered for selection on the post of Mukhya Sevika.
10. While challenging the *vires* of the Rules prescribing maximum age for selection to the post of Mukhya Sevika, Sri Shivam Sharma, the learned counsel for the petitioners, has submitted that fixation of cut off age of 50 years has no reasonable nexus with the purpose sought to be achieved, which would be selecting the most experienced Anganwadi Workers, who would be the best and most suitable candidates. Putting a cap on the age limit for selection when the criterion for selection is age based merit, is self-contradictory. By

fixing cut off age of 50 years, Anganwadi Workers, who are younger to the petitioners and who have lesser experience of working as Anganwadi Workers are eligible for selection, whereas the petitioners, who are more experienced Anganwadi Workers, have been ousted from the zone of consideration. The deprivation of Anganwadi Workers, aged more than 50 years, who are more experienced, from participation in selection for the post of Mukhya Sevika is arbitrary and unreasonable. He has further submitted that earlier the criterion for selection to the post of Mukhya Sevika was interview and by the amendment made in the year 1998, it has been made merit, which is determined by experience. One mark is awarded for each year's service. Thus, longer the number of years, higher would be the merit of the candidate. In these circumstances, fixation of upper limit of 50 years of age is unreasonable.

11. The learned counsel for the petitioners has also submitted that the fixation of upper age limit takes away the fundamental right of the petitioners to be considered for promotion and, therefore, the provision for fixation of upper age limit is *ultra vires* and is liable to be quashed.
12. *Per contra*, the learned Standing Counsel has submitted that the post of Anganwadi Worker is an honorarium based post. Neither salary is paid to Anganwadi Workers, nor is there any provision for their promotion. Appointments to the post of Mukhya Sevika are not made by way of promotion but by direct recruitment. 50% of the posts of Mukhya Sevika have been reserved for selection from amongst those Anganwadi Workers, who have not completed 50 years of age. Earlier this age limit was 45 years, which was subsequently increased to 50 years as per the long standing demand of U.P. Rajya Anganwadi Karamchari Sangh, to provide for participation of maximum number of Anganwadi Workers in selection for the post of Mukhya Sevika. The post of Mukhya Sevika in the pay scale of Rs.1350-2200 is a regular post in the establishment. Unless the upper age limit of 50 years is fixed for selection to the post of Mukhya Sevika, the persons appointed on the post of Mukhya Sevika will not get the minimum of

ten years of service, in which case they will not be eligible for pensionary benefits.

13. Learned counsel for the petitioners has relied upon the judgments in the cases of **Zee Telefilms Ltd. & another vs. UOI & Others:** (2005) 4 SCC 649 and **Arnit Das vs. State of Bihar:** (2000) 5 SCC 488.
14. The learned Standing Counsel has relied upon the judgments in the cases of **Urmila Tripathi and another vs. State of U.P. :**1998 (16) LCD 1227 and **State of U.P. and other vs. Shanti Devi:** Civil Appeal No. 5207 of 2022 decided on 08.08.2022.
15. U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 were promulgated on 16.11.1992. Part III of the aforesaid Rules deals with Recruitment. Rule 5(4) provides that recruitment of Mukhya Sevika shall be made by direct recruitment through Departmental Selection Committee on the basis of interview. Essential qualification for selection to the post of Mukhya Sevika is a Bachelor's Degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child Development from a University established by law in India or a degree recognized by the government as equivalent thereto. Preferential qualification is having practical experience of doing welfare work amongst children and women in rural areas. The candidate must have attained the age of 21 years and must not have attained the age of more than 35 years on the first day of the year of the recruitment in which vacancies for direct recruitment are advertised by the Commission. The upper age limit shall be greater in respect of candidates belonging to Scheduled Castes, Scheduled Tribes and such other category as may be notified by the government.
16. U.P. Child Development and Nutrition (Subordinate) Service (Second Amendment) Rules, 1998 amended the aforesaid Rules so as to provide that 50% posts of Mukhya Sevika will be filled by direct recruitment on the basis of competitive examination and interview held by a Selection Committee and 50% posts shall be filled by direct

selection from Anganwadi Workers, who have passed High School or equivalent examination, who have completed 10 years of continuous service and who have not attained 45 years of age on the initial date of the year of recruitment.

17. The U.P. Child Development and Nutrition (Subordinate) Service (4th Amendment) Rules, 2006 further amended the aforesaid Rules so as to enhance the upper age of limit from 45 years to 50 years.
18. Thus, it is clear that the post of Mukhya Sevika is filled by direct recruitment and not by promotion. The essential qualification for appointment to the post of Mukhya Sevika is a Bachelor's Degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child Development from a University established by law in India or a degree recognized by the government as equivalent thereto. 50% posts have been reserved for direct recruitment from amongst such Anganwadi Workers, as have passed High School examination, have completed more than ten years of service and have not attained the age of 50 years. It appears that experience of working as Anganwadi Workers for a period of ten years or more has been treated as equivalent to the qualification of possessing a Bachelor's Degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child Development from a University established by law in India or a degree recognized by the government as equivalent thereto. Anganwadi Workers work on fixed honorarium basis.
19. U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 contain provisions for recruitment of Field Reporter, Nutritionist, Law Assistant, Mukhya Sevika, Social Work Instructor, Health Instructor, Pre-School Instructor, Statistical Assistant, Investigator-cum-Computer (Sic), Senior Auditor, Auditor, Assistant Accountant (Headquarters), Accounts Clerk and Junior Accounts Clerks. It does not make any mention of Anganwadi Workers. Therefore, it is clear that Anganwadi Workers are not a part of regular establishment working under the U.P. Child Development and

Nutrition (Subordinate) Service Rules, 1992. There is no provision for promotion of persons working on the post of Anganwadi Workers. Mukhya Sevikas are appointed by way of direct recruitment and not by way of promotion.

20. Upper age limit of 45 years fixed by the Second Amendment Rules was challenged before this Court in the case of **Urmila Tripathi** (Supra) and while upholding the decision, it was held as under: -

“It is evident from the aforesaid Rule that upper age limit of forty five years in the year of recruitment as provided originally remained the same. The amendment was only in the procedure of appointment. The promotees originally used to be appointed on the basis of interview. The amended Rule changed the procedure and provided for appointment/promotion in accordance with Rule 15 of the Rules. The submission made by the learned Counsel for the petitioner that the Second Amendment in the Rules provided for the upper age limit as 45 years and the same was invalid, therefore, cannot be accepted. The petitioners since the very beginning of their services knew the fact that upper age limit for promotion to the post of Mukhya Sewika was forty five years have got no right to challenge the same. Further the fixation of upper age limit as 45 years for promotion on the post of Mukhya Sevika is quite reasonable, judging the same from the angle of service which are required to be performed by Mukhya Sevikas Mukhya Sevikas are required to do supervisory work in the villages. They are supposed to supervise the work of anganbari centres by visiting from place to place. The ladies beyond forty five years of age are, therefore, not fit to be appointed as Mukhya Sewikas. In my opinion, the said Rule is neither arbitrary nor discriminatory in any manner.”

21. Sri Shivam Sharma, the learned counsel for the petitioners has relied upon judgments rendered in the case of **Zee Telefilms Ltd.** (Supra) and **Arnit Das** (Supra), wherein it has been held that a decision is not an authority for the proposition which did not fall for its considerations. He has submitted that the Fourth Amendment Rules, 2006 were not there for consideration before this Court while deciding the case of **Urmila Tripathi** (Supra) and the question of lack of nexus between fixation of upper age limit and the object sought to be achieved was not decided in that writ petition and therefore the

decision in the case of **Urmila Tripathi** (Supra) is not binding upon this Court.

22. We agree with the aforesaid submission made by the learned counsel for the petitioners. Even otherwise, **Urmila Tripathi** (Supra) was decided by a learned Single Judge and it is not binding upon this Division Bench. We are examining the plea of fixation of upper age limit being ultra *vires* on the basis of merits of the submissions made in support thereof without being bound by the ratio laid down in the case of **Urmila Tripathi** (Supra).
23. A policy can be challenged on the ground of being unreasonable. The test of unreasonableness was laid down in **Associated Provincial Picture Houses, Limited V. Wednesbury Corporation**: [1948] 1 K.B. 223, in which the defendant corporation had granted a license to the plaintiff company, who was the owner and licensee of Gaumont Cinema, Wednesbury, Staffordshire, a licence to give performances on Sunday under Section 1 (1) of the Sunday Entertainments Act, 1932; but the license was granted subject to a condition that “no children under the age of fifteen years shall be admitted to any entertainment whether accompanied by an adult or not.” The plaintiffs brought an action for a declaration that the condition as ultra vires and unreasonable. While dismissing the claim, the King’s Bench laid down the following proposition of law, which came to be known as ‘the Wednesbury principle’ and which is being consistently followed by the Court’s in India: -

“It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. ...It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a local authority on matters of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse, and all over the country I have no doubt on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that are set in that position and, provided they act, as

they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere.”

24. We have to examine the challenge to the Rule laying down the policy of fixing an upper age limit of 50 years for Anganwadi workers to apply to selection for direct recruitment to the post of Mukhya Sevika on the test of Wednesbury unreasonableness.
25. In furtherance of Child Development and Nutrition Project launched by the Central Government, U.P. Child Development and Nutrition (Subordinate) Service Rules, 1992 were framed by the State Government under Article 309 of the Constitution of India. The post of Mukhya Sevika in the pay scale of Rs.1350-2200 was created under these rules and the post was to be filled by direct recruitment. Essential qualification for selection to the post of Mukhya Sevika is a Bachelor's Degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child Development from a University established by law in India or a degree recognized by the government as equivalent thereto. Preferential qualification is having practical experience of doing welfare work amongst children and women in rural areas. The candidate must have attained the age of 21 years and must not have attained the age of more than 35 years on the first day of the year of the recruitment in which vacancies for direct recruitment are advertised by the Commission. Considering the plight of Anganwadi Workers, the Central Government wrote a letter dated 28.04.1995 to the State Government for making a provision for reservation of 25% posts of Mukhya Sevika for being filled up by Anganwadi Workers. Accordingly, the State Government amended the Rules of 1992 in the year 1996, whereby it was provided that 25% posts of Mukhya Sevika would be filled through interview from those Anganwadi Workers who had completed ten years of their engagement as Anganwadi Worker and were not more than 45 years of age as on the first day of the recruitment year. The Rules were further amended in the year 1998 by increasing the aforesaid reservation from 25% to 50% and the criterion of recruitment was changed from interview to merit.

26. Rule 4(2) of Child Development and Nutrition (Subordinate) Rules, 1992 as amended by the Second Amendment Rules notified on 19.06.1998 and by the Fourth Amendment Rules notified on 25.07.2006 provides as follows:-

“50 percent high school or equivalent examination passed Anganbadi Karyakatris, who have completed ten years of continuous service and have not attained the age of more than 50 years from the initial date of their year of recruitment, in accordance with Rule 15-B through selection committee by direction recruitment.

- (1) Selection Committee in the following manner shall prepare the eligibility list of the candidates-*

(a) Each candidate will be given 10 points for 10 years of eligible service and after one point for each subsequent full year of service.

(b) Each candidate will be given three points, two points and one point for first division, second division and third division in high school and higher examinations.

- (2) Under section (a) and (b) of Sub Rule (3) all the marks obtained by each candidate shall be added and on the basis of total marks obtained the final eligibility list will be prepared. In case two or more candidates obtain equal marks then the candidate senior in age shall be placed on top of the eligibility list. The name of candidates in the list shall be more than the number of vacant posts (more than 50 percent). Selection Committee shall forward the list to the Appointing Authority.”*

27. The upper age limit for consideration for selection to the post of Mukhya Sevika from amongst the persons working as Anganwadi Workers was previously fixed as 45 years, which was enhanced to 50 years by the Fourth Amendment Rules on the demand of U.P. Rajya Anganwadi Karamchari Sangh so as to provide for participation of maximum number of Anganwadi Workers for consideration for recruitment to the post of Mukhya Sevika, which cannot be said to be unreasonable and it has not been challenged by any person. The petitioners are challenging the fixation of the upper age limit altogether and they claim that all Anganbadi workers should be allowed to participate in the recruitment irrespective of their age.
28. In this regard, it should be noted that all appointments to government services are subject to a maximum age of the candidate at the cut-off date fixed by the employer. The post of Mukhya Sevika itself carries

the upper age limit of 35 years for candidates who possess a Bachelor's Degree in Arts with Sociology or Social Work or Home Science as one of the subjects or Nutrition and Child Development. Fixation of upper age limit for Anganwadi workers who are not Graduate, but have merely passed the High school examination and who possess at least 10 years' work experience, cannot be said to be unreasonable and, in any case, this decision cannot be said to be so unreasonable as no reasonable person or authority could have arrived at it. Enhancement of maximum cut off age from 45 years to 50 years cannot give rise to a ground for claiming waiver of upper age limit altogether so as to make all Anganwadi Workers, irrespective of their age, eligible for consideration for recruitment to the post of Mukhya Sevika.

29. Regarding the submission of the learned Counsel for the petitioner, that the fixation of upper age limit has no reasonable nexus with the purpose sought to be achieved, we find no unreasonableness in the explanation of the State that the object behind making amendment in the Rules of 1992 is that those Anganwadi Workers who are working on honorarium basis and who do not have any promotional avenues, be provided with the benefit of participating in selection process for recruitment to the post of Mukhya Sevika and the object of the Fourth Amendment made in the Rules of 1992 was to provide participation of maximum number of Anganwadi Workers to be considered for selection on the post of Mukhya Sevika. The object of fixing the upper age limit at 50 years is that the persons appointed as Mukhya Sevika may serve for a decade before they attain the age of superannuation. The fixation of upper age limit at 50 years cannot be said to be having no reasonable nexus with the object sought to be achieved.
30. In the case of **State of U.P. and others vs. Shanti Devi** (Supra), the issue involved was whether an applicant was entitled to claim age relaxation in making promotion to the post of Mukhya Sevika, as was ordered by a learned Single Judge of this Court, which was affirmed by a Division Bench in a Special Appeal. While allowing the appeal,

Hon'ble Supreme Court has held that the respondent who was working as Anganwadi Worker since the year 1987, had crossed the upper age limit of 50 years on the relevant date. She filed a writ petition seeking age relaxation in terms of U.P. Public Services (Relaxation of the Age Limit for Recruitment) Rules, 1992, which was allowed by the High Court. Setting aside the order passed by the High Court, Hon'ble Supreme Court held that no individual candidate can claim a vested right to age relaxation, which lies in the discretion of the appointing authority. Eligibility criteria should be uniform and there cannot be any scope or arbitrary selection. A candidate cannot have a vested right to claim an exemption from a uniformly applicable criteria. A selective grant of an age relaxation will cause serious prejudice in the process of selection rendering the process arbitrary.

31. Since the Fourth Amendment Rules, 2006 have universal application, those are not discriminatory.
32. In view of the aforesaid discussion, we are of the considered view that the Second Amendment Rules, 1998 and the Fourth Amendment Rules, 2006 do not violate the letter and spirit of any superior legislation and the same are not *ultra vires* the provision of any law.
33. The writ petitions lack merits and the same are **dismissed**.

(Subhash Vidyarthi, J.) (Attai Rahman Masoodi, J.)

Order Date: 20.12.2024

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