

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6738 OF 2012

- 1] Smt. Suwarna d/o. Bhairu Kumbhar
@ Suwarna w/o. Sheshraj Bansode,
Age: 37 Years, Occu: Service as
Bal Sevika, R/o. Dr. Padmasingh Patil
Balwadi, Hanuman Chowk, Osmanabad,
Tq. & Dist. Osmanabad.
- 2] The Secretary,
Osmanabad District Samaj Seva Mandal,
Bomble Hanuman Chowk,
Osmanabad, Ta. & Dist. Osmanabad.

[The respondent No.7 transposed as
petitioner No.2 in Writ Petition as per
permission granted by this Hon'ble
Court by order dtd.31.01.2014 passed
in Civil Appln. No.770/2014]

PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through it's Secretary,
Women and Child Development
Department, Mantralaya,
Mumbai-32.
- 2] The Director of Social Welfare
Department, Maharashtra State,
Pune.
- 3] The Chief Executive Officer,
Zilla Parishad, Osmanabad
- 4] The Deputy Chief Executive Officer,
Zilla Parishad, Osmanabad

- 5] The Child Development Project Officer,
Integrated Child Development Scheme,
Osmanabad
- 6] The Social Welfare Officer,
Class-I, Zilla Parishad, Osmanabad **RESPONDENTS**

...
Mr. P.G.Rodge, Advocate for the Petitioners
Mr. S.K.Kadam, AGP for the Respondent – State
Mr. K.J.Ghute Patil, Advocate for the Respondent Nos.3 & 6.
...

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 01.04.2015
Pronounced on: 20.04.2015

PER COURT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] By way of filing this Petition under Article 226 of the Constitution of India, petitioner No.1 has prayed for direction to the respondents authorities to absorb her as 'Balsevika', by transferring the Balwadi of Osmanabad District Samaj Seva Mandal, Osmanabad, under the Women and Child Development Department, Mantralaya, Mumbai, as per the policy of Government.
- 3] It is the case of the petitioners that, in the Year

1991, the Chief Executive Officer, Zilla Parishad, Osmanabad sanctioned Balwadi [VJNT] to the Osmanabad Zilla Samaj Seva Mandal, Osmanabad. On 25.07.1991, the petitioner No.1 was appointed as a 'Balsevika' and since then she is working. It is the further case of the petitioners that, on 28.03.2005, the Directorate Social Welfare, Maharashtra State, Pune-1 issued letter/Circular and adopted policy to close the Balwadi run under the Social Welfare Department and Zilla Parishad and transfer the same under the Women and Child Development Department. On 19.04.2006, the Divisional Social Welfare Officer called information from the Social Welfare Officer, Class-A, Zilla Parishad, Osmanabad about existing Balwadis under the Woman and Child Development Department.

4] It is the further case of the petitioners that, on 15.05.2006, the Social Welfare Officer, Zilla Parishad, Osmanabad gave detail information about existing Balwadis, which are required to be transferred under the Woman and Child Development Department as per the policy of the Government. On 16.06.2008, the Commissioner, Integrated Child Development Service Scheme, Maharashtra State, gave directions for absorption

of Balsevika of Balwadi under the Women and Child Development Department as Anganwadi Sevika. It is the further case of the petitioners that, on 04.03.2012, the District Social Welfare Officer, Zilla Parishad, Osmanabad, submitted proposal for transferring existing Balwadi under the Women and Child Development Department along with list of Balwadis. The petitioner No.2 Balwadi is at Serial No. 2 in the list of Balwadis. On 12.03.2008, the Government of Maharashtra through Women and Child Development Department, Mantralaya, Mumbai issued Government Resolution dated 12.03.2008 for absorbing the Balwadi Sevika's as Anganwadi Sevika, by transferring the Balwadi under Women and Child Development Department.

5] It is the further case of the petitioners that, on 26.11.2008, the Divisional Child Development Officer, Class-I, submitted the proposal for transfer of the Balwadi's under the Women and Child Development Department, and absorbing the Balsevikas in the Anganwadi. It is further the case of the petitioners that, on 10.02.2011, the petitioner No.1 made a representation for absorbing her as Anganwadi Sevika, by transferring the Balwadi i.e. petitioner No.2, under the Woman and Child Development

Department, as per the policy decision of the Government. On 24.08.2011, the Secretary, Osmanabad District Samaj Seva Mandal, Osmanabad also made a request by forwarding proposal dated 24.08.2011 to transfer the Balwadi under the Women and Child Development Department and absorb the petitioner No.1 as 'Anganwadi Sevika'.

6] It is the further case of the petitioners that, though there is policy for transfer of the existing Balwadi under Women and Child Development Department as Anganwadi, but the respondents authorities have not yet taken any steps to transfer and absorb the petitioner No.1.

7] The learned counsel appearing for the petitioners submits that, the respondents are not taking steps to transfer and absorb the petitioner No.1, who is qualified for '*Anganwadi Sevika*', though the petitioner No. 1 is working from the Year 1991. It is further submitted that, the Commissioner, Integrated Child Development Service Scheme, Maharashtra State, by letter dated 16th June, 2008, communicated to all the Chief Executive Officer, Zilla Parishads and Child Development Project

Officer not to terminate the services of Balwadi Sevika's. It is submitted that, the District Social Welfare Officer, Zilla Parishad, Osmanabad by its letter dated 04.03.2012, has given detail information about the existing Balwadis and recommended for transferring all 7 Balwadis under the Women and Child Development Department as per the policy of Government. It is submitted that, the Secretary of Osmanabad District Samaj Seva Mandal, Osmanabad by letter dated 24.08.2011 also requested to transfer the Balwadi under the Women and Child Development Department. The petitioner No.1 has also made a representation on 10.02.2011 to the District Social Welfare Officer, Zilla Parishad, Osmanabad, to transfer the Balwadi, under the Women and Child Development Department and to pay the honorarium and allowance, building rent, etc. But, still no decision has been taken about the absorption of the petitioner No.1. It is submitted that, petitioner No.1 is eligible for absorption on the post of Shikshan Sevika, as she has passed S.S.C., having requisite qualification, resident of Osmanabad and belonging to the OBC Category. The petitioner No.1 is working since 1991, and therefore, she is entitled for the absorption on the post of Anganwadi Sevika. Therefore, the learned counsel appearing for the

petitioner relying upon the pleadings in the Petition, and annexure thereto submits that, Petition deserves to be allowed.

8] The respondent No.5 has filed affidavit in reply, stating therein that, there is no sanctioned Anganwadi at Bomble Hanuman Chowk, Osmanabad. It seems that, the petitioner No.1 is appointed by the petitioner No.2, which is a Non Governmental Organization running Balwadi. As per the Government Resolution dated 12th March, 2008, there is specific provision not to give direct appointment to the Balwadi Shikshika as Anganwadi Sevika / Madatnis, who are appointed by a Private Sanstha or NGO, as there is no Government policy in existence to absorb the Balwadi Shikshika, who is appointed and working in a private Sanstha or Non Governmental Organization as Anganwadi Sevika. It is further stated in para No.7 that, the Balwadi in which petitioner No.1 is serving, is a Private Sanstha run by NGO and there is no Government Policy to transfer such Balwadis. It is further stated that, the Government Resolution dated 12th March, 2008 is applicable to the Balwadis, which are run by Grampanchayat, Panchayat Samiti, Zilla parishad, Corporation, Nagar Palika,

Cantonment Board, Social Welfare Department, Education Department, Central and State Social Welfare Board and not applicable to the Private Sanstha or Non Governmental Organization. As such, there is no Government policy in existence to absorb the Balwadi Shikshika, who is appointed and working in a private Sanstha or Non Governmental Organization as Anganwadi Sevika.

9] The respondent No.1 has filed affidavit in reply. It is stated in the said reply that, the candidates appointed by the private grant in aid institute or non Governmental Organization [though receiving grant from any Department] will not be eligible for appointment under the Government scheme reflected through relevant Government Resolutions. It is further stated that, clause No.1 of the Government Resolution dated 12th March, 2008 is not applicable to the Balwadi run by the Private Institute or Non Government Organization. The Government Resolution dated 5th August, 2010 was issued by the Government of Maharashtra for imposing the terms and conditions about the appointment of Anganwadi Sevika, Mini Anganwadi Sevika and Madatnis for Anganwadi, which came under the Integrated Child Development Scheme [in short 'ICDS'].

Under the ICD Scheme, the Anganwadis from Urban as well as Rural areas are included. Anganwadi, which is run for population below 400 is termed as 'Mini Anganwadi', and the Anganwadi, which is run for the population over and above 400 is termed as 'Anganwadi'. It is submitted that, at Mini Anganwadi, there is post of Anganwadi Sevika only, whereas at Anganwadi, there is post of Anganwadi Sevika as well as Anganwadi Madatnis. Anganwadi, which are functioning at Rural level are under the control of Zilla Parishad and Chief Executive Officer is the Appointing Authority, whereas the Anganwadi functioning in Urban area are under the control of Government and Child Development Project Officer in the Department working under the Department of Women and Child Development is the Appointing Authority. It is further stated in the said affidavit in reply that, the activities which are undertaken at the Balwadi are pre-primary Education only. As against the activities which are considered in the Anganwadi scheme are more beneficial to the children such as Pre-primary education, Health Checkup, supplementary nutrition, Immunization, Referral Services [such as referring child for proper Hospitalization and creating awareness about nutrition, hygiene etc. in the mind of the mother. Hence,

Anganwadi scheme is being more beneficial and for the welfare of the child and is child oriented. It is further stated in the affidavit in reply that, in spite of issuance of Government Resolution by Women and Child Development Department, Mantralaya, Mumbai dated 05.08.2010, Institution like Grampanchayat, Panchayat Samiti, Zilla Parishad, Mahanagar Palika, Nagar Palika and Cantonment Board [Katak Mandale], Social Welfare Department, Education Department, Central and State Social Welfare Advisory Board, either continued their Balwadi or even they have started new Balwadi. The honorarium received by Balwadi Mata / Balwadi Tai is ranging Rs.500/- to Rs.800/- depending upon the financial condition of the Institute which run it. As against this, the honorarium received by Anganwadi Madatnis and Sevika is about Rs.2500/- and Rs. 5000/- respectively. It is submitted that, once new Balwadi is opened then afterwards woman working in Balwadi for few years as Balwadi Teacher, Balwadi Mata, Balwadi Sevika further claims to be absorbed in Anganwadi, irrespective of the fact that, already Anganwadi under ICDS is functioning there. It is submitted that, this type of functioning has led to chaotic situation and interpretation of the contents of the Government Resolution is suitably

made so as to secure the appointment, in fact, as a back door entry.

10] It is further stated in para No.7 of the reply that, petitioner No.1 was / is working with Balwadi run by Non Governmental Organizations. It is not in dispute that, the letter dated 30.04.2012 addressed by C.D.P.O., Osmanabad is addressed to District Social Welfare Officer, Zilla Parishad, Osmanabad, which is at Page No.47. The letter pertains to handing over of Balwadi, which were functioning under the Department of Social Justice Department of Women and Child Welfare. Vide said letter, it is clearly mentioned that, the office of the C.D.P.O. has no instruction on behalf of the Government for such alleged transfer. It is made clear that, if any place any new Anganwadi was required to be started, then there is any existing Balwadi at the same place, then and then only ladies working under the said Balwadi can be absorbed in the newly open Anganwadi.

11] We have considered the case of the petitioner No.1, in the light of the relevant Government Resolution and affidavit in reply filed by the respective respondents,

and we are of the opinion that, no relief can be granted to the petitioner No.1, since the appointment of the petitioner No.1 was in a Private Sanstha / Non Governmental Organization, and therefore, as per the Government policy her absorption on the post of Anganwadi Sevika is not possible. The petitioner No.1 has not placed documents on record, showing that, as a matter of fact, Sanstha in which petitioner is working, the Government has taken a decision to absorb the employees of said Sanstha or the Private Sanstha or Non Governmental Organization as Anganwadi Sevika. Therefore, in the light of the averments in the affidavit in reply filed by the respondents, it is crystal clear that, there is no Government policy of the State Government to absorb Balwadi Shikshika, who are appointed and working in the Private Sanstha and Non Governmental Organization as Anganwadi Sevika.

12] In that view of the matter, Writ Petition fails, and accordingly same stands rejected.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE