

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

WRIT PETITION NO. 11514 OF 2014

Smt. Soni D/o Narayan Khandare,
Age : 32 Years, Occu. : Nil,
R/o At and Post Khandegaon,
Taluka Basmat, Dist. Hingoli. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Women and Child Development Department,
Mantralaya, Mumbai.
2. The Deputy Commissioner (Anganwadi),
Women and Child Development,
M. S. Pune - 1.
3. The Zilla Parishad, Hingoli,
(Through its Chief Executive Officer),
Hingoli.
4. The Deputy Chief Executive Officer,
(Women and Child Development)
Zilla Parishad, Hingoli.
5. The Child Development Project Officer,
Basmat, Dist. Hingoli. .. Respondents

Ms. P. S. Talekar h/f Shri S. B. Talekar, Advocate for the
Petitioner.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2.

Shri R. K. Ingole Patil, Advocate for Respondent Nos. 3 to 5.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.
DATE : 27TH JANUARY, 2016.**

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2. Miss Talekar, the learned counsel for the petitioner submits that, the petitioner was appointed as Anganwadi Madatnis in the year, 2008. Thereafter she was promoted as 'Anganwadi Sevika' on 03rd May, 2010. The learned counsel submits that, the abruptly the respondent No. 5 issued an order of termination on 08.12.2014. The said order of termination was without notice to the petitioner and without adhering to the principles of natural justice. The learned counsel submits that, while terminating the services of the petitioner as 'Anganwadi Sevika' reliance was placed on Government Resolution dated 05th August, 2010, and more particularly to the definition of small family. The learned counsel submits that, the petitioner gave birth to the fifth child on 04th November, 2010. The Government Resolution came into effect on 05th August, 2010. Prior to the promulgation of the said Government Resolution, the petitioner was already promoted as 'Anganwadi Sevika' on 03rd May, 2010. The said Government Resolution cannot have a retrospective effect. The learned counsel further submits that,

on the date when the Government Resolution came into effect, the petitioner had already conceived. According to the learned counsel the child and foetus in the womb was already of six months old. As such, the petitioner could not have also taken any other steps. The order of termination per-se is illegal.

2. Mr. Ingole, the learned counsel for respondent Nos. 3 to 5 submits that, the action has been taken against the petitioner on account of the birth of the fifth child, after the Government Resolution dated 05th August, 2010. No error is committed by the authority in passing the order. The inquiry was also conducted and it was found that, the fifth child was delivered by the petitioner after the cut off date.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. The factum of the petitioner being appointed as a Anganwadi Madatnis in the year 2008 by following due procedure of law is not disputed. It is also not a matter of debate that, the petitioner was promoted as 'Anganwadi Sevika' on 03rd May, 2010 i. e. prior to the Government Resolution dated 05th August, 2010. Perusal of the order of termination dated 08.12.2015, it is manifest that, same has been effectuated only on the ground that the petitioner has given birth to fifth child after the Government

Resolution.

5. The child *en ventre sa mere* was already of six months on 05th August, 2010, when the Government Resolution came into effect, considering the birth of the child on 04th November, 2010. The said Government Resolution was not in force when the petitioner was appointed as 'Anganwadi Madatnis' and thereafter promoted as 'Anganwadi Sevika' on 03.05.2010. It is also not a case of fresh appointment being made after 05th August, 2010. The child having been born within three months after promulgation of the Government Resolution dated 05th August, 2010, the services of the petitioner needs to be protected.

6. Considering the fact that, it was not a case of new appointment and the promotion had already taken effect prior to the Government Resolution and that within a period of three months from the date of Government Resolution the child was born, no sufficient time gap was there. The order of termination cannot be sustained.

7. This Court vide an interim order had directed that the post which was held by the petitioner be kept vacant. As such, the respondent No. 5 shall reinstate the petitioner as a 'Anganwadi Sevika' on the post, which the petitioner was holding immediately within a period of fifteen days from the date of this

order. The respondents shall grant continuity of service to the petitioner and all consequential benefits, however, petitioner shall not be entitled for any backwages.

8. In light of above, the writ petition is allowed. Rule is made absolute in terms of prayer clause "A".

Sd/-

[A. M. BADAR, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Jan. 16