

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-1124-2015

Date of Decision: 22.10.2018

Janki Devi

...Appellant.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.**

PRESENT: Mr. Rakesh Nagpal, Advocate for the appellant.

Mr. Randhir Singh, Additional Advocate General, Haryana.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal is to the order dated 4.5.2015 passed by the learned Single Judge whereby CWP-23058-2014 filed by the appellant was dismissed being not maintainable.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. Initially, the appellant was appointed as House Mother on 3.8.1992. She was matriculate and had also passed the NTT and Foundation Course. She requested the respondents to promote her to the post of Nursery Teacher. In the meeting of the Standing Committee held on 20.6.1992, the qualification of Nursery Teacher was re-considered and the House Mothers were allowed to be promoted on the post of Nursery Teacher. Since the appellant was teaching

Teacher vide order dated 25.7.2011 but in her own pay scale of House Mother. She requested the respondents to allow her the pay scale of Nursery Teacher, but to no effect. Accordingly, the appellant filed CWP-23058-2014. The learned Single Bench vide order dated 4.5.2015 dismissed the said writ petition being not maintainable against respondents No.2 to 4 on the basis of the order dated 26.3.2015 passed by this Court in CWP-22199-2013. Hence, the present Letters Patent Appeal.

3. We have heard learned counsel for the parties.

4. The solitary question in this appeal that arises for consideration is whether the Haryana Welfare Society for Hearing and Speech Handicapped in the State of Haryana is 'State' under Article 12 of the Constitution of India or not?

5. The Full Bench of this Court in **Shakuntla Devi v. The Deputy Commissioner and another (CWP-1286-1987 and other connected cases)** decided on 13.8.2010, after relying upon the decisions of Seven Judges' Bench in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002) 5 SCC 111** and Five Judges' Bench in **Zee Telefilms Ltd. and another v. Union of India and others (2005) 4 SCC 649**, had held that the respondent District Council for Child Welfare is 'State' under Article 12 of the Constitution. Accordingly, it was opined that it is 'authority' within the meaning of Article 226 of the Constitution amenable to writ jurisdiction. Further, it was expressed that when a private body exercises its public functions even if it is not a State, the aggrieved person had a remedy not only under the ordinary law but also under the Constitution by way of a writ petition under Article 226 of the Constitution of India. Merely because a non-governmental body exercises some public

duty that by itself would not suffice to make such body a State for the purpose of Article 12 of the Constitution of India.

6. It was not disputed by the learned counsel for the parties that in view of Full Bench judgment in **Shakuntla Devi's case (supra)**, the writ petition was maintainable.

7. Accordingly, the appeal is allowed and the order dated 4.5.2015 passed by the learned Single Bench is set aside. The matter is remitted back to the learned Single Bench for deciding the same on merits, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

October 22, 2018
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes