

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20375 of 2011**

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Julee Kumari @ Julee Devi, Wife of Dilip Prasad Sah Resident Of Village-  
Amarpur, Police Station-Amarpur, District-Banka.

... .. Petitioner

Versus

1. The State of Bihar
2. The Director, I.C.D.S. Social Welfare Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Banka.
5. The District Programme Officer, Banka.
6. The Child Development Project Officer, Amarpur, District-Banka.
7. The Chairman, Nagar Panchayat Amarpur, Banka.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. Balram Kapri, Advocate  
For the Respondent/s : Mr. Umesh Narayan Dubey, AC to GP-27

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

3      14-02-2023                      Heard learned counsel for the petitioner and learned  
AC to GP-27 for the State.

2. The petitioner in the present case is seeking a direction to the District Magistrate, Banka (respondent no. 4) to dispose of the matter which was remanded by the Divisional Commissioner, Bhagalpur (respondent no. 3) vide his order dated 01.06.2011 passed in Misc (Anganwadi) Appeal No. 34 of 2010-11.

3. Learned counsel for the petitioner submits that this petitioner was appointed as Anganwadi Sevika. She was removed vide order dated 26.06.2007 passed by the District



Magistrate, Banka in complete violation of principles of natural justice. She applied for review of the order but that was rejected. The petitioner moved this Court in earlier round in CWJC No. 5203 of 2010. It was submitted that the Commissioner was the competent authority to hear the appeal against the order of the District Magistrate under the regulation as framed in 2006 read with the Amendment dated 25.07.2008. Taking note of the submissions of learned counsel for the petitioner and the State, this Court vide order dated 21.09.2010 disposed of the writ application with a direction to the Divisional Commissioner, Bhagalpur to hear the appeal and adjudicate the matter on merit after hearing all concerned within the maximum period of four months.

4. Learned counsel submits that on receipt of the order of this Court in CWJC No. 5203 of 2010, though the Commissioner, Bhagalpur called for the records from the office of District Magistrate, Banka and also issued notices to the parties but ultimately he took a view that in absence of certain records, it would not be possible for him to reach on a just and proper conclusion, therefore, it would be proper to get this matter decided by the District Magistrate, Banka from his own level after hearing all the parties.



5. Learned counsel submits that on the one hand, the Commissioner, Bhagalpur abdicated his power as Appellate authority and at the same time, the District Magistrate, Banka has remained sitting over the matter for all these period. It is, thus, submitted that the order as contained in Annexure '9' passed by the Commissioner is in the teeth of the direction of this Court issued vide order dated 21.09.2010 in CWJC No. 5203 of 2010.

6. On the other hand, Mr. Umesh Narayan Dubey, learned AC to GP-27 has raised a preliminary objection as to the maintainability of this writ application on the strength of an order of a learned Co-ordinate Bench of this Court in CWJC No. 21963 of 2014. Learned counsel submits that the learned Co-ordinate Bench has held that the post of Anganwadi worker does not fall within the purview of the State or Subordinate Services and is a post under a scheme regulated by guidelines which are not enforceable in law. It has been held that the writ petition would not lie with regard to the selection process of Anganwadi worker.

7. In reply, learned counsel for the petitioner has placed before this Court a recent judgment of the Hon'ble Supreme Court in the case of **Maniben Maganbhai Bhariya**



**versus District Development Officer Dahod & Ors.** reported in **AIR 2022 SCC 2119 : 2022 SCC online SC 507** wherein while considering the case of the Anganwadi workers (in short 'AWWs') and Anganwadi helpers (in short 'AWHs'), it has been held that the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act of 1972') will apply to them. It has been further held that Anganwadi Centres are the establishments contemplated by clause (b) Sub-Section (3) of Section 1 of the Act of 1972. Learned counsel submits that it is well-settled in law that a writ court can examine the decision making process of the executives. It is submitted that while it is true that the Anganwadis have been established under a scheme, the Hon'ble Supreme Court has taken note of the fact that Section 4 of the National Food Security Act, 2013 (hereinafter referred to as 'the Act of 2013') acknowledges and recognizes the entitlement of the pregnant and lactating mothers and it is in relation to the child's health who are in special needs. Provisions have been made thereunder to entitle such women meal free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II of the Act of 2013. It is pointed out that Integrated Child Development Scheme (in short 'ICDS



Scheme’) would be implemented through Anganwadi. The AWWs and AWHs play a vital role in the matter of implementation of this scheme. The role of these AWWs and AWHs have been examined by the Hon’ble Supreme Court in the context of community support and participation and it has been held that “A conjoint reading of Sections 3, 4, 5, 6 & 7 of the National Food Security Act, 2013 would unerringly point to the fact that effective implementation of the aforementioned provisions of the Act largely depends on the Anganwadis, which are run by AWWs/AWHs, etc., who are village level workers/ward level workers and in charge for delivery of the various services envisaged under the Act.”

8. Learned counsel has drawn the attention of this Court towards paragraph ‘18’ of the judgment of the Hon’ble Supreme Court in the case of **Maniben Maganbhai Bhariya** (supra) to submit that in unequivocal words the Hon’ble Supreme Court has held that Anganwari Centres are performing statutory duties, therefore, even the AWWs and AWHs perform statutory duties under the Act of 2013.

9. Let it be recorded that at this stage learned counsel for the State has save and except issue of maintainability of the writ application not raised any other point to contest the writ



petition.

**Consideration**

**10.** Having regard to the facts and circumstances of the case wherein this Court finds that earlier the writ petition filed on behalf of the petitioner was entertained by this Court and a specific direction was issued to the Divisional Commissioner, Bhagalpur to decide the matter. The Divisional Commissioner, Bhagalpur was not at all justified in sending the matter to the District Magistrate, Banka for consideration by merely citing non-availability of certain records. It was bounden duty of the Commissioner, Bhagalpur to obtain all relevant records and to act in terms of the direction of this Court.

**11.** At this stage, this Court finds that neither learned counsel for the petitioner nor learned counsel for the State is aware as to what happened after the matter was remitted from the Commissioner, Bhagalpur to the District Magistrate, Banka.

**12.** The only prayer which is to be considered by this Court in the present writ application is as to direct the District Magistrate, Banka to consider and dispose of the matter, if not already disposed of within a reasonable period.

**13.** To this Court, it appears that the issue of maintainability of the writ application would not come in the



way of issuing an appropriate direction.

**14.** There is already a ‘Mandamus’ of this Court in earlier writ proceeding. This Court has noticed the objection of learned counsel for the State which is to be examined in the light of the judgment of the Hon’ble Supreme Court in the case of **Maniben Maganbhai Bhariya** (supra). At this stage, it would only be appropriate to reproduce paragraphs ‘59’, ‘60’, ‘61’ and ‘62’ of the judgment of the Hon’ble Supreme Court as under:-

“**59.** I have given careful consideration to the submissions. The Government of India launched ICDS on 2<sup>nd</sup> October 1975. Under ICDS, six services are being provided:—

- (i) supplementary nutrition,
- (ii) pre-school non-formal education,
- (iii) nutrition and health education,
- (iv) immunization,
- (v) health check-up and
- (vi) referral services.

The cost of running ICDS and Anganwadi centres is being shared by the Government of India and the State Governments.

**60.** The 2013 Act came into force on 5<sup>th</sup> July 2013. One of the objectives of enacting the 2013 Act was to give effect to Article 47 of the Constitution of India, which is a part of the Directive Principles of State Policy. Article 47 reads thus:

**“ARTICLE 47 : DUTY OF THE STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of



intoxicating drinks and of drugs which are injurious to health.”

**61.** It is the duty of the State to improve the level of nutrition which is one of the best methods to improve public health. Apart from Article 47, India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. The said convention casts responsibilities on all States to recognize the right of citizens to adequate food. As provided in the Statement of Objects and Reasons of the 2013 Act, one of its objectives is to improve the nutritional status of women and children. The object of the 2013 Act was to bring about a shift in addressing the issue of food security. The approach was changed from the welfare approach to the rights-based approach. The role of Anganwadi centres finds a place in paragraph 7 of the Statement of Objects and Reasons of the 2013 Act.”

**62.** Anganwadi centres were statutorily recognised under the 2013 Act. Sub-section (1) of Section 2 of 2013 Act reads thus:

“(1) “anganwadi” means a child care and development centre set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub-section (1) of section 5 and section 6.”

**15.** In the case of **Maniben Maganbhai Bhariya** (supra), the Hon’ble Supreme Court observed that AWWs and AWHs constitute backbone of Anganwadi Centres and they have onerous responsibility of extending the benefits under the 2013 Act. The Hon’ble Supreme Court further noticed that the State of Gujarat had come out with Government Resolution dated 25<sup>th</sup> November, 2019 laying down exhaustive provisions regarding



selection criteria, duties, disciplinary action, rules, etc. in respect of AWWs and AWHs. In fact the said resolution provided selection criteria, honorary service, review and discipline rules for AWWs and AWHs.

16. The Hon'ble Supreme Court thereafter referred **The State of Karnataka and others Vs. Ameerbi and Others** reported in (2007) 11 SCC 681 wherein it was held that the posts of AWWs were not statutory posts and the same have been created in terms of ICDS Scheme. The Hon'ble Supreme Court observed in paragraph '66C', '67', '68' and '69' as under:-

“66C. 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 25<sup>th</sup> November 2019 *in extenso*.

**67.** 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.

**68.** 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.

**69.** 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 *Ameerbi* will not detain this Court any further from deciding the issue. For the reasons stated above, the decision in the case of *Ameerbi* will not have any bearing on the issue involved in these appeals.”



**17.** In the aforementioned background, when this Court examines the matter in the context of the State of Bihar, it is noticed that the State of Bihar has also framed rules relating to selection of AWWs and AWHs. Earlier it was known as Bihar Angadwadi Sevika Patrata Pariksha Niyamavali, 2013. It lays down eligibility for selection and other things. The Government has been amending the provisions from time to time. The Government has been issuing directions in the matter of grant of leave to AWWs and AWHs. The District Programme Officer and the Child Development Project Officer have been assigned the duty to monitor the selection and selection related complaints at the Block levels. As per the guidelines issued in the year 2016, the vacant posts of AWWs and AWHs are to be filled up after advertising the same in two daily Hindi newspapers. The District Magistrate is the competent authority to hear an appeal against the order of the District Programme Officer. Now, provision has also been made to prefer a revision before the Divisional Commissioner.

**18.** The guidelines issued by the Government has been amended in the year 2019 again wherein the previous guidelines have been superseded. The Department of Social Welfare, Government of Bihar has come out with eligibility criteria, the



manner in which advertisement for selection is to be made, the quorum of Aam Sabha and the provisions relating to resolutions of disputes in appeal etc. have been provided. The guidelines also provide for Appendix 1 to 3 which are the forms required to be filled up by a candidate seeking appointment/engagement as AWWs and AWHs, the form in which merit list is to be prepared and the form in which letter of selection is to be issued. The post of Woman Supervisor is to be filled up to the extent of 50% from amongst AWWs and AWHs and 50% are to be filled up from direct recruitment.

**19.** From the aforementioned facts, it is crystal clear that like the State of Gujarat AWWs and AWHs in the State of Bihar also are being governed by rules/guidelines framed by the Government of Bihar. The entire selection process and complaint redressal mechanism are in the hands of the Government, therefore, this Court has no iota of doubt that the decision making process of the executives in the matter of selection of AWWs and AWHs who are performing statutory duties and the orders of the competent authorities under the rules/guidelines would be amenable to the writ jurisdiction of this Court. Apparently, the judgment of the Hon'ble Supreme Court in the case of **Maniben Maganbhai Bhariya** (supra) has brought about a sea change in the status of AWWs and AWHs.



20. This writ application is, thus, disposed of with a direction to the District Magistrate, Banka to dispose of the matter, if pending till date after giving opportunity of hearing to both the sides within a period of four months from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J)

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