

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4812-2023 (O&M)

Reserved on : 26.05.2023

Date of decision: 03.07.2023

Pinky

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S.Behl, Advocate for the petitioner

Mr. D.K.Singal, Addl. AG, Punjab

ANIL KSHETARPAL, J

1. The petitioner prays for the issuance of a writ in the nature of Certiorari to quash para 5(ii) of the advertisement dated 16.02.2023 issued by the Directorate of Social Security and Development of Women and Children, Punjab, which reads as under:-

“II. Vacant Vacancies, out of the total population registered in the catchment of area of Anganwadi Centres, the vacancies belonging to the Schedule Caste category, BC Category and Disability category (Over population of Anganwadi Centres) will be reserved at the district level. Vacancies from the list of Anganwadi Centres, according to the reserved category quota, the most populous I.e increasing to decreasing. The posts of Anganwadi Centres will be reserved in orders.”

2. The petitioner claims to be belonging to the backward class category. She claims that the aforesaid para is in infringement of Article

16 of the Constitution of India, which prohibits discrimination in the matters of employment on the basis of residence.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. In order to grasp the issue that arises for consideration, certain relevant minimum facts are required to be noticed. In the year 1975, the Central Govt. came out with an integrated child development scheme, which was run by the respective State Governments, however, the said scheme was financed by the Central Government. On 16.02.2023, a public notice regarding the recruitment of the Anganwadi Workers and the Anganwadi Helpers was issued. As per the stand taken in the written statement, Anganwadi Centres provide services including nutritional supplementation, immunization, health check up, referral services, pre-school non formal education, nutrition and health education. In this context, the pivotal issue which would require adjudication is, “Whether the Anganwadi Workers or Anganwadi Helpers hold any civil post or does the nature of their engagement falls within the meaning of public employment as per the expression that has been used in Article 16 of the Constitution of India?” In this regard, it may be noted that the Hon’ble Supreme Court in the **State of Karnatka and others vs. Ameerbi and others 2007 (11) SCC 681** has held as under:-

“13. The posts of anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

14. We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.

20. Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case.

28. However, rules framed under proviso to Article 309 of the Constitution of India are not attracted in the case of the respondents. They are appointed under a scheme which is not of a permanent nature, although might have continued for a long time.

29. Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter therein. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-à-vis cases of this nature which are sui generis. Terms and conditions of services of an employee may be referable to Acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.

30. The result of an appointment being made in violation of the constitutional scheme has recently been noticed by a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753].”

5. From the careful reading of the paragraphs extracted above, it is evident that their recruitment is not governed by the Constitution or any other statute and they do not hold a civil or statutory post. The particular post have been created under a scheme and Anganwadi Workers do not carry on any function of the State. Article 16 of the Constitution of India uses the expression 'public employment' or 'appointment to any office under the State'.

6. In light of the Supreme Court's judgment, it would be inappropriate to deliberate further on the issue.

7. The learned counsel representing the petitioner relies upon the judgments passed in **Kailash Chand Sharma etc. etc. vs. State of Rajasthan 2002 (6) SCC 562, A.V.S Narsimhas Rao and others vs. State of Andhra Pradesh and another 1969 (1) SCC 839 and Maniben Maganbhai Bhariya vs. District Development Officer Dahod & others 2022 AIR (SC) 2119.**

8. The judgment passed by the Five Judges Bench in **A.V.S Narsimhas Rao's case (supra)** deals with Article 16 of the Constitution of India. As already noticed, Anganwadi Workers do not hold a civil post. The position of the judgment passed in **Kailash Chand's case (supra)** is also not different. This judgment has been passed in the context of the public employment under the authority of the State. In **Maniben Maganbhai Bhariya's case (supra)**, the Court dealt with the issue with regard to the applicability of the Payment of Gratuity Act, 1972 to the Anganwadi Workers/Helpers. Thus, it is evident that none of

the judgments relied upon by the learned counsel representing the petitioners are applicable to the facts of the present case.

9. As is evident from the reply of the State, Anganwadi Workers and Anganwadi Helpers are engaged to fulfill the Directive Principles of the State Policy specifically the principle envisaged under Article 47 of the Constitution of India, which deals with raising the level of nutrition and the standard of living of the people and to improve public health. It may be noted here that Scheduled Caste is not a 'caste' within the meaning of Article 15 and 16 of the Constitution of India. The term 'caste' holds a special meaning as per the notification by the President of India under Article 366 (24) of the Constitution of India. Reference in this regard can be made to the **Akhil Bhartiya Soshit Karamchari Sangh (Railway) vs. Union of India 1981 (1) SCC 246**. The discussion with respect to caste is succinctly given in para 41, which reads as under:-

“41. The President notifies Scheduled Castes not with reference to any caste characteristics, but their abysmal backwardness, as is evident from the scheme of Part XVI. He appoints, under Article 338, a Special Officer whose duty is to investigate into all matters relating to safeguards for the SC & ST. The Constitution provides not merely for adequate representation of SC & ST to services and posts under the Union and States, but also provides for reservation of seats for SC & ST in the legislatures. The cursory study of the articles relating to the status and safeguards of SC & ST puts it beyond doubt that the founding fathers have assigned to them a special place and shown towards them special concern and charged the State with special mandates to redeem these handicapped human sectors from their grossly retarded situation. Indeed, they are not merely backward, but are the backwardmost and cannot be equated with just any other caste in the Hindu fold. It

is, therefore, problematic whether Article 16(2) when it refers to equality among castes deals with the Scheduled Castes which, as shown above, may even be made of a plurality of castes or groups or races and may vary from State to State. Also, a caste, subjected qua caste, to the most humiliating handicaps may be a backward class although the court will hesitate to equate caste with class except where the degree of dismalness is dreadful. The relevance of this point will be clear when we deal with the legal submissions of counsel.”

10. In the present case, as projected by the State, the purpose of the scheme is to provide nutritional supplementation and immunization to the poorest section of the Society. Special services are provided by the Anganwadi Workers to pregnant women and lactating mothers. In this situation, it becomes incumbent for the respondents-State to engage the local residents who are well versed not only with the area but also the residents of the locality. Moreover, for the implementation of such scheme that relates to food and health, it becomes preferable to engage the services of someone who belongs to the same caste. It is in this context that the Government of India laid down the following norms on 24.02.2009, which are extracted as under:-

“3. Recognizing this, it has been decided to continue the implementation of the scheme of ICDS in the 11th Five Year Plan and expand its coverage. With this end in view, third phase of expansion of the scheme has been approved by Government to universalize the Scheme with particular focus on SC/ST/Minority habitations. Based on the received from States/UTs, the administrative sanctions have been issued in December, 2008 with a condition that for location of AWCs.

(a) Villages pre-dominantly inhabited by population belonging to SC/ST and minority community should be given priority;

(b) Within a village also, location of an AWC as far as feasible, should be in the areas inhabited by population from SC/ST and minority community and

(c) The State Government to certify that all SC/ST and minority community habitations have been saturated.”

11. It is not disputed by the petitioner that members of the Scheduled Castes that reside in the particular area are in majority.

12. Once Anganwadi Workers or Anganwadi Helpers are not the holders of civil posts and their recruitment is not governed by the Article 16 of the Constitution of India, hence, finding no merit, the writ petition is dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

03.07.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE