

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17509 of 2018

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Usha Devi, wife of Naresh Mukhiya, Resident of Village Nardah Ward No. 2
Police Station Puraini District Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Department of Social Welfare I.C.D.S Old Secretariat, Patna.
3. The Commissioner, Koshi Division, Saharsa.
4. The District Magistrate , Madhepura.
5. The District Programme Officer, Madhepura.
6. The Child Development Project Officer Puraini Madhepura.
7. The Mukhiya Gram Panchayat, Nardah PS and Block Puraini Distt Madhepura.
8. The Ward Member Gram Panchayat Nardah and Block Puraini Distt Madhepura.
9. The Panchayat Secretary, Gram Panchayat Nardah and Block Puraini Distt Madhepura.
10. Nutan Kumari wife of Anmol Kumar r/o village Nardah PS Puraini Distt Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shivnandan Sah, Advocate
For the State	:	Mr.Md. Raisul Haque – SC10
For Respondent No.10	:	Mr. Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 19-02-2024

Heard learned counsel for the petitioner, learned
counsel for the State, and learned counsel for respondent No.10.

2. The present writ petition has been filed
challenging the order dated 02.08.2018 passed in Anganbari
Appeal No. 08/2017 by the District Magistrate, Madhepura
whereby the order dated 24.04.2017 passed in Anganbadi Case



No. 47/2015 has been cancelled.

3. Learned counsel for the petitioner, learned counsel for the State and learned counsel for the private respondent jointly submit that the appointment of Anganbadi Sevika took place in the light of Anganwadi Sevika & Sahayika Guidelines, 2011. Rule 10.3 of the said guideline suggests an appeal before the Divisional Commissioner against the irregularity of the District Programme Officer. Rule 10.6 thereof suggests the provision of appeal before the District Magistrate against the order of the District Programme Officer in case of any irregularity in the running of Aanganbari Centre.

4. Learned counsel for the petitioner submits that since there is a provision to prefer appeal before the Commissioner, whereas admittedly the private respondent has preferred appeal before the District Magistrate, therefore, learned counsel for the petitioner submits that the said appeal has been decided by a wrong forum and, therefore, it should be set aside and the petitioner has to prefer an appeal before the Commissioner in the light of the guidelines under which the appointment took place.

5. Learned counsel for the private respondent on the other hand submits that this appeal was preferred in the year



2017 and in the year 2017, different guidelines came in which the appeal has to be heard by the District Magistrate only and, therefore, he has chosen the correct forum.

6. Learned counsel for the State submits that in the year 2016, new guidelines have come and the said guideline clearly indicates that the provision of two forums of appeal has been decided to be filed before the District Magistrate only against the order passed by the District Programme Officer under Rule 13. He also submits that earlier guidelines have been completely repealed.

7. After hearing the parties and going through the pleadings certain factual matrix has been filtered by this Court. All parties agree on the following parts :-

(i) Appointment of private respondent took place on the post of Anganwadi Sevika under Anganwadi Guideline of 2011;

(ii) The District Programme Officer has decided the matter in favour of the petitioner following the Guideline of 2011;

(iii) An appeal was preferred in the year 2017 by the private respondent before the District Magistrate



decided in favour of the private respondent, thereafter, the present writ petition was filed;

(iv) There is no saving clause mentioned in the Anganwadi Guidelines either in the year 2011 or in the year 2016.

8. These guidelines have been preferred under the Integrated Child Development Scheme by the Directorate of Social Welfare Department, Government of Bihar also used to provide input under WBNP scheme with a view to providing social welfare to the child in compliance with providing constitutional protection to the child at a large. One of the objectives of enacting the said guideline was to give effect to Article 47 of the Constitution of India, which is a part of the Directive Principles of State Policy, as has been discussed in the case of *Julee Kumari @ Julee Devi Vs. the State of Bihar* reported in 2023(2) PLJR 253, (CWJC No.20375 of 2011), relevant paragraphs 14, 15, 16 and 17 whereof is quoted as under :-

“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 2nd 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 5th 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 recognized 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 25th 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 25th 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.

19. In the background of the above discussions the scheme of ICDS used to help Anganwadi Sevika and Sahaika is for the purpose of implementation /fulfilling constitutional obligation shall be treated to be a regulation. According to this, the constitutional obligation has to be fulfilled.

10. In this background, this Court is of the firm opinion that this guideline must follow the provision of law laid down in the General Clauses Act, 1897 (Act 10 of 1897) where it has been discussed in Section 6 that what shall be the effect of repeal of any Act or Regulation. Section 6 of the General Clauses Act, of 1897 reads as under:-

6. Effect of repeal.—Where this Act, or any 4[Central Act] or Regulation made after



the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

11. In this background, any action which has been done in the earlier guideline of 2011 shall always be saved if, in



the new guideline, there is no saving clause mentioned then in that case, the provision of section 6 of the General Clauses Act shall prevail and according to this, the private respondent ought to prefer an appeal before the Commissioner and not before the District Magistrate.

12. In this view of the matter, this Court is of the firm opinion that the order dated 02.08.2018 passed in Anganwadi Appeal No. 08/2017 by the District Magistrate, Madhepura is bad in law and, therefore, it is set aside.

13. However, liberty is granted to the private respondent that he may prefer his appeal in the light of the said guideline of 2011.

14. In result, the writ petition stands allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23/02/2024
Transmission Date	NA

