

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6195 of 2023

=====

Sunaina Devi @ Sunaina Kumari Wife of Kamta Singh, daughter of Arjun Singh, Resident of Village-Vaidbigha, P.S.-Kurtha, District-Arwal, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary Social Welfare Department, Govt. of Patna.
2. The C.D.P.O. Kurtha, Arwal, Bihar.
3. The D.P.O. Arwal, Bihar.
4. The Commissioner, Magadh Division, Gaya.
5. Sudha Kumari, Wife of Nirbhay Kumar, Resident of Village-Vaidbigha, P.S.-Kurtha, District-Arwal, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Singh, Advocate
For the State : Mr. Prasant Pratap, (GP 2)

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 26-11-2024 Heard Mr. Anirudh Kumar Singh, learned counsel

 appearing on behalf of the petitioner and Mr. Prasant Pratap,

 learned GP 2 for the State.

2. Petitioner has *inter alia* prayed for following reliefs

in the paragraphs No.1 of the writ petition:-

“(i) To issue an appropriate writ order or direction in the nature of mandamus commanding the respondents to select appoint to the petitioner as a Anganwari Sahaika in the village Vaidbigha, Panchayat Nadora ward No. 03, District - Arwal.

(ii) To this Hon'ble Court may adjudicate and hold that the action of respondents in selection of Sahaika in Vaidbigha in spite of petitioner Sudha Kumari wife of Nirbhay Kumar was appointed is an act of Malafide and complete arbitrary exercise of authority and the same has no valid in the eye of law.

(iii) that Hon'ble Court may further adjudicate and



hold that the action of respondent authorities is not taken action upon the application which was submitted by petitioner about the illegal Atcitty of opposite party (Sudha Kumari) is an act of malafide and complete artritary exercise of Authority.

(iv) To this Hon'ble Court may award the cast of litigation and suitable composition to the petitioner for the loss and damage caused on account of illegal actions of the respondents to appoint Sudha Kumari.”

3. Learned counsel appearing on behalf of the petitioner submits that for redressal of the grievance the petitioner seeks to avail appropriate remedy by filing suit before the competent civil court having jurisdiction in light of the law laid down by the Apex Court in case of ***State of Karnataka & Ors. vs. Ameerbi & Ors.*** reported in ***(2007) 11 SCC 681***.

4. The Apex Court in the case of ***Ameerbi (supra)*** has held that there is no straitjacket formula that all the employees, who fall under the purview of Article 12 of the Constitution would be government employees. Only because the State controls the Integrated Child Development Services (I.C.D.S.) Programme, its employees cannot take shelter under Article-311 of the Constitution that in any manner, the selection process has not taken place in accordance with law.

5. I would also like to refer the case of ***Maniben Maganbhai Bhariya V. District Development Officer Dahod*** reported in ***AIR 2022 SC 2119*** wherein the Apex Court in



Paragraph nos.32, 38 and 52 of the judgment has held that the writ petition is maintainable. In this regard, I would like refer to paragraph nos.32, 38 and 52, which are re-produced hereinafter :-

“32. The mission and mandate of the scheme of ICDS is to promote social and economic empowerment of women through crosscutting policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them to realize their human rights and develop to their full potential. The second is to ensure development, care and protection of children through crosscutting policies and programmes, spreading awareness about their rights and facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential”.

38. Anganwadi workers/helpers are the key facilitators of child nutrition initiatives at the ground level and involved in performing the work of dissemination, publicity, building awareness, and implementation of various schemes of the Government. No wonder, the strength of Anganwari Centres has increased manifold by passage of time in the country.

52. Before parting with the order, I would like to observe that the time has come when the Central Government/State Governments has to collectively consider as to whether looking to the nature of work and exponential increase in the Anganwadi centers and to ensure quality in the delivery of services and community participation and calling upon Anganwadi workers/helpers to perform multiple tasks ranging from delivery of vital services to the effective convergence of various sectoral services, the existing working conditions of Anganwadi workers/helpers coupled with lack of job security which albeit results in lack of motivation to serve in disadvantaged areas with limited sensitivity towards the delivery of services to such underprivileged groups, still being the backbone of the scheme introduced by ICDS, time has come to find out modalities in providing better service conditions of the voiceless commensurate to the nature of job discharged by them.”

6. Further, in the judgment dated 08.01.2024 passed



by the Apex Court in case of *Anjum Ara vs. The State of Bihar in Civil Appeal No. 208 of 2024 (Arising out of SLP(C) No. 2233 of 2023)*, wherein, the notice in respect of selection of *Anganwadi Sevika* was published by the District Programme Officer and the same was challenged by the appellants. The Hon'ble Supreme Court while considering the order passed by the learned Single Judgment in CWJC No. 17585 of 2015 and the Division Bench of this Court in L.P.A. No. 1853 of 2016, by which, the relief as prayed for by the petitioner of the said case was not allowed, has been set aside by the Apex Court. The Apex Court has set aside the order passed by the Division Bench of this Court in L.P.A. No. 1853 of 2016 on the ground that the selection, which had taken place was completed following Clause 4.9 of Anganwadi Sevika Guidelines, 2011, which was struck down by the High Court vide order dated 27th September, 2022 passed in CWJC No. 13210 of 2014, it ceased to exist. The order of selection of *Anganwadi Sevika* communicated by the District Programme Officer was interfered by the Apex Court by setting aside the judgment passed by the Division Bench in L.P.A. No. 1853 of 2016 arising out of CWJC No. 17585 of 2015. I believe that once the Hon'ble Supreme Court has set aside the order passed by the Division Bench of



this Court in L.P.A. No. 1853 of 2016 on the ground that the engagement of *Anganwadi Sevika* are on contractual basis and not permanent appointment under the State, the order under challenge was not required to be interfered, has been set aside by the Apex Court. In similar circumstances, the case of the petitioner, even considering the fact that they are not employee of the State Government and their employment is not permanent employment and they are engaged on contractual basis still carries the policy of the State and its instrumentality, which calls for interference by this Court.

7. I also find that the Apex Court has not found any reason to rely upon or distinguish the law laid down in case of *Ameerbi (supra)*, in which, it has been held that the *Anganwadi* Workers don't hold civil post being not a statutory post having created under a Scheme and *Anganwadi* Workers don't carry on any function of the State.

8. It is further made clear that in the State of Bihar, the guidelines in respect of 'Anganwari Sevika and Sahaikaa', cannot be said to have been enacted in accordance with Article-309 of the Constitution and the procedure followed as per the requirement of Article-311 of the Constitution necessitates in case of the 'Anganwari Sevika'.



9. Recently, the Gujarat High Court in case of ***Adarsh Gujarat Anganwadi Union & Ors. Vs. State Of Gujarat & Ors. (R/Special Civil Application No. 8164 of 2015)*** has observed by taking reliance on the case of ***Ameerbi (supra) and Maniben Maganbhai Bhariya (supra)*** and other relevant judgments of the Apex Court that although Anganwadi Workers (AWWs) and Helpers (AWHs) are not formally part of State Civil Services, they perform a "unique role" as well as onerous statutory duties under the Right to Education Act (RTE) and the National Food Security Act (NSF). I find it apt to refer para n0. 56, 57 & 58, which are reproduced hereinatfer:-

56. Having regard to the above discussion, to this Court, it would be undoubtedly clear that the AWWs and AWHs are entitled for benefit of regularization and the posts of AWWs and AWHs which are declared to be statutory posts should be directed to be absorbed in the State Government service giving them equivalent status to comparable posts.

57. Having observed as above, the question would be what should be the exercise that should be undertaken for ensuring that AWWs and AWHs are placed at par with employees doing similar or near about similar work, who have been appointed after regular selection on permanent posts with either the Central or the State Government, as the case may be. In this regard, while it would appear to this Court that the work done by AWWs is similar to work done by Class-III employees i.e. clerical or semi supervisory posts, whereas the work done by AWHs is comparable with work done by



employees on Class-IV posts. Again, these are prima facie observations of this Court.

58. In the considered opinion of this Court, the Central Government and the State Government through the Ministry of Women and Child Development Department of both the Governments along with any other relevant departments, as may be deemed appropriate, should be directed to undertake a holistic exercise to formulate a scheme whereby AWWs and AWHs are paid salary, emoluments and other benefits at par with regularly appointed permanent employees of the State Government or the Central Government, as the case may be, on comparable posts. It would be open for the respective Governments to also undertake an exercise to identify the class which could be assigned to the posts in question etc.

10. Considering the submission made on behalf of the petitioner, the present writ petition stands disposed of with liberty to the petitioner to file suit before the competent civil court having jurisdiction.

(Purnendu Singh, J.)

Ashishsingh/-

U			
---	--	--	--

