

HIGH COURT OF JAMMU AND KASHMIR

AT SRINAGAR

SWP No. 1002/2018

Tasleema Jan

...Petitioner

Through: Nemo

v.

State of J&K & ors.

...Respondent(s)

Through: Mr. Sheikh Feroz Ahmad, Dy AG.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

ORDER

17.09.2020

1. The petitioner in this petition, *inter alia*, seeks a direction to the respondents to issue the engagement order for the post of Aganwari Worker in ward 13 with further direction for quashment of engagement order No. 1 of 2017 dated 20.06.2017. The petition in short relates to recruitment as Anganwadi worker.

2. When this petition was taken up today and the Court was considering whether it needed to be transferred to the Central Administrative Tribunal, Jammu (the Tribunal), the learned counsel for the petitioner submitted that Anganwadi helpers neither constitute a service, nor do they hold civil posts, therefore, recruitment thereto or any matter in relation to recruitment thereto or even any service matter concerning thereto would not fall within the purview of the provisions contained under Chapters III and V of the Administrative Tribunals Act, 1985 (the CAT Act), especially Sections 14, 15, 28 and 29 thereof, and, consequently, the Tribunal would not have the jurisdiction to entertain this petition. To buttress his submission, the learned counsel cited and relied upon a decision of the Supreme Court in *State of Karnataka v. Ameerbi*, (2007) 11 SCC 681.

3. Heard counsel for respondents and considered the matter on the above limited issue.

4. Admittedly, this petition relates to recruitment against the position of Anganwadi Helper, and the prayers prayed for in the petition evolve around the said relief. Chapter III of the CAT Act provides for jurisdiction, powers and authority of the Central Administrative Tribunals. Section 14 thereunder reads as under:

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal. –

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts, except the Supreme Court, in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person, not being a member of an All-India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All-India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence;

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a

person whose services have been placed by a State Government or any local or other authority or any corporation ⁴ [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation.— For the removal of doubts, it is hereby declared that references to ‘Union’ in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts, except the Supreme Court, in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person, other than a person referred to in clause (a) or clause (b) of sub-section (1), appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

It is thus seen that Section 14, delineating the matters in relation with which the Tribunals have been prescribed to have the jurisdiction, speaks of recruitment, and matters concerning recruitment, *inter alia*, to any

civil service of the Union or a civil post under the Union. The word 'Union' in terms of Explanation appended under Section 14(1)(c) has reference also to a Union Territory. The words used are 'civil service' or 'civil post'.

5. In *State of Karnataka v. Ameerbi* (supra), Anganwadi Helpers in the State of Karnataka filed an application purported to be under Section 15 of the CAT Act before the Karnataka State Administrative Tribunal. In one of such applications, it was held by the said Tribunal that the application was not maintainable. Correctness of the said decision was questioned and the matter was referred to a larger Bench of the said Tribunal. The larger Bench of the Tribunal held the said application to be maintainable, opining that although Anganwadi workers and helpers were paid honorarium, they hold civil posts. The State of Karnataka challenged the said decision of the larger Bench of the Karnataka State Administrative Tribunal before the Supreme Court. The Supreme Court, referring to the scheme known as Integrated Child Development Service (ICDS) Programme floated by the Central Government under which these Anganwadi helpers and workers were being engaged, and examining its various earlier decisions in *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884; *Supdt. of Post Offices v. P. K. Rajamma*, (1977) 3 SCC 94; *Nagarathna B. K. v. Secy., Social Welfare Deptt.*, 1992 KSLJ 177; *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (1992) 4 SCC 404; *Union of India v. Deep Chand Pandey*, (1992) 4 SCC 432; *R. N. A. Britto v. Chief Executive Officer*, (1995) 4 SCC 8; *State of U. P. v. Chandra Prakash Pandey*, (2001) 4 SCC 78; *Ramakrishna Kamat v. State of Karnataka*, (2003) SCC 374; *Maruti Udyog Ltd. v. Ram Lal*, (2005) 2 SCC 638; *State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1; *Jaya Bachchan v. Union of India*, (2006) 5 SCC 266; *Secy. State of Bihar v. Amrendra Kumar Mishra*, (2006) 12 SCC 561; *District Rehabilitation Officers v. Jay Kishore Maity*, (2006) 12 SCC 380; and *SBI v. Mahatma Mishra*, (2006) 13 SCC 727, held that

the Tribunal had no jurisdiction to entertain the application filed by the Anganwadi Helpers, and allowed the appeal(s).

6. While examining its earlier decision in *State of Assam v. Kanak Chndra Dutta* (supra), wherein the question involved before the Constitution Bench of the Supreme Court was as to whether a Mauzdar appointed for the purpose of collection of revenue under a system prevailing in the Assam Valley would be holder of a civil post, quoting paras 9 and 10 thereof, the Supreme Court in paras 19 and 20 of the judgment observed as under:

“19. Applying the said principles of law, it was held that Mauzdar holds a civil post under the State as : (i) the State has the power and the right to select and appoint him; (ii) he is subordinate to public servant; (iii) he receives remuneration by way of a commission and sometimes a salary; (iv) there exists a relationship of master and servant; (v) he holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached; (vi) the office falls vacant on the death or removal of the incumbent; (vii) he is a responsible officer exercising delegated powers of the Government; (viii) he is appointed Revenue Officer.

20. Anganwadi workers and helpers, 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...”.

Further, in paras 27, 28 and 29 of the judgment, the Supreme Court observed and held as under:

“27. Each of the decisions referred to hereinbefore centers round application of a statute. In all those cases, posts are statutory ones. Terms and conditions of services of the holder of the posts were governed by statutes.

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 thereinto. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their powers under Articles 77 or 162 of the Constitution of India or under a statute *vis-a-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 powers 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.

In para 31, the Supreme Court also observed as under:

“31. One of the questions which was raised before us was in regard to the right of an Anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled thereto.”

As to the existence of a relationship of employer and employee and applicability of doctrine of parity of employment, the Supreme Court in paras 35 and 38 of the judgment, observed as under:

“35. Different tests applied even for determining the relationship of employer and employee have recently been noticed by this Court in *District Rehabilitation Officer v. Jay Kishore Maity*. In that case, in almost similar project, the employees appointed by the District Rehabilitation Centre claimed themselves to be the Central Government employees. Each case, therefore, has to be considered on its own merits.”

“38. It is also not a case where the doctrine of parity of employment can be invoked. It is true that nomenclature of a term of payment is not decisive but the substance is as was held in *Jaya Bachchan v. Union of India* but the question has to be determined having regard to the issue involved. We are concerned herein with only one question viz.

whether the respondents are holders of any civil post. We are, having regard to the materials on record, of the view that they are not.”

7. So, it is thus settled that appointments made under a scheme which is not of a permanent nature, and appointees, although might have continued for a long time, do not hold a civil post, and that Anganwadi workers do not hold a civil post, they do not come within the purview of Section 14 of the CAT Act, and that the Tribunal would not have the jurisdiction to entertain their petition. Resultantly, it is held that this Court would have the jurisdiction to entertain a petition, including this petition, as a Court of first instance in relation to recruitment and matters concerning recruitment to the position of Anganwadi worker(s) and this petition would not need to be transferred to the Tribunal.

8. Registrar Judicial, High Court, Srinagar, to take follow up action.

9. While parting with the file, it may be observed that this Court is pained to notice that this petition seeking a mandamus upon the respondents to issue the engagement order for the post of Anganwadi worker in ward-13 has remained pending for about three years now. The petitioner’s counsel has also been sloppy, inasmuch as he has not taken any steps to get it listed for hearing and disposal. Be that as it may, list this petition on 04.11.2020 for final hearing. Meanwhile, if some pleadings have to be filed, let the parties complete the process and be prepared for arguments on the date fixed.

(Ali Mohammad Magrey)
Judge

Srinagar,
17.09.2020
Syed Ayaz, Secretary

- i) Whether order is reportable: Yes/No
- ii) Whether order is speaking: Yes/No
- iii) Whether order is non-speaking: Yes/No