

(2013) 01 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 258 of 2012, CWP No"s. 19516 of 2011, 2271 of 2012 etc. etc.

Nisha Rani and Others

APPELLANT

Vs

ADC, Sirsa and Others

RESPONDENT

Date of Decision: Jan. 10, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) LabIC 1319

Hon'ble Judges: A.K. Sikri, C.J; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: Girish Agnihotri, Arvind Seth and Mohit Garg, for the Appellant; Anil Rathee, Addl. A.G. Haryana and Amandeep S. Gill, Central Government Counsel, for the Respondent

Judgement

A.K. Sikri, C.J.

The appellants, herein, who are 51 in number, had filed writ petition No. 14753 of 2011 seeking appointment to the post of Anganwari workers. The case set up by these appellants in the writ petition was that pursuant to the process of selection undertaken by the respondents to the post of Anganwari workers, they had also made applications and had undergone the selection process. These appellants also claimed that they were selected to the post of Anganwari workers in different blocks of District Sirsa i.e. Madho Singhana, Bara Gudha and Odhan. However, in spite thereof, they were not given any appointment.

In these circumstances, the prayer made in the said writ petition was to the following effect:--

To issue a writ in the nature of Mandamus thereby giving directions to the respondents to consider the claim of the petitioners for appointment as Anganwari Workers keeping in view the selection made in pursuance to communication (Annexure-P-1) in the interest of justice and to release the consequential benefits

thereto along with interest at the rate of 12% per annum; in the interest of justice.

The aforesaid writ petition has been dismissed by the learned single Judge vide orders dated 12.8.2011, on the ground that this writ petition for appointment to the post of Anganwari workers is not maintainable. While dismissing the said writ petition, the learned single Judge has referred to the Division Bench decision of this Court in [Darshana Devi Vs. State of Haryana and Others](#), , which in turn has relied upon the judgment of the Supreme Court in the case of [State of Karnataka and Others Vs. Ameerbi and Others](#), . This order of the learned single Judge is assailed in the present appeal.

2. Since, the writ petition is dismissed as not maintainable, the matter obviously is not considered on merits. We have gone through the judgment of the Division Bench of this Court in the case of Darshana Devi (supra) which too is the judgment dismissing writ petition as not maintainable simply by referring to the judgment of the Supreme Court in the case of State of Karnataka (supra). A perusal of the said judgment of the Apex Court of State of Karnataka (supra) would disclose that in that case Ameerbi had filed an application under the Administrative Tribunal Act before the Karnataka State Administrative Tribunal. Thus, Ameerbi had approached the Karnataka State Administrative Tribunal for the same emoluments and allowances which according to them were payable under the Integrated Child Development Service (ICDS) Programme started by the Central Government in the year 1975. Though the ICDS programme was started by the Central Government in the year 1975, its application was given in the hands of the respective States under this Scheme thus Anganwari workers were employed by the State of Karnataka. The State took the preliminary objection to the maintainability of the said O.A. on the ground that they were not the holders of the Civil post and therefore, they could not moved such an application before the Administrative Tribunal. A special Bench of the Administrative Tribunal rejected the contention of the State holding the application to be maintainable on the ground that they are the holders of civil posts. It is thus, decision of the Tribunal, which was challenged by the State of Karnataka before the Supreme Court. The Supreme Court held that these Anganwari workers are not the holders of civil posts and as a consequence reversed the decision of the Tribunal and dismissed the O.A. filed by the Anganwari workers. The entire discussion of the Supreme Court revolves around this issue namely whether Anganwari workers are the holders of civil posts and the application under the Administrative Tribunal Act filed by them was maintainable? While discussing this issue, the Supreme Court also went into ICDS programme under which those Anganwari workers in the State of Karnataka were appointed. It was, inter alia, noted that that was the only scheme in the State of Karnataka for Anganwari workers; it did not entail full time work as these workers were may work for a maximum period of 4 1/2 years; these workers were allowed to do other works and even contest elections; for filling up the post of Anganwari workers no advertisement was required to be made nor were there any provision in the

recruitment rules for appointing the Anganwari workers. These are the considerations which primarily weighed with the Supreme Court in coming to the conclusion that these Anganwari workers were not holders of civil posts. In the present case, we are concerned with the maintainability of writ petition filed by the appellants herein involving the provisions of Article 226 of the Constitution of India. For filing a writ under Article 226 of the Constitution of India, there is no requirement that the petitioners are to hold civil posts which is necessary concomitant insofar as approaching the Administrative Tribunal under the Administrative Tribunal Act is concerned. Therefore, ex facie, reliance placed upon the judgment in the case of State of Karnataka (supra) to hold that writ petition is not maintainable, would be an erroneous approach. It is stated at the costs of repetition that in the judgment rendered by the Supreme Court in that case de hors that it is the Administrative Tribunal which has no jurisdiction, it is well settled that ratio of the case is what it decides as the issue raised in the said case was altogether different namely whether Anganwari workers are holders of civil posts and as to whether it has right to approach Tribunal or not and that is not the yardstick under relevant provision for approaching the High Court under Article 226 of the Constitution of India, this judgment would have no relevance to the issue at hand. We are, therefore, of the opinion that the learned single Judge was not correct in relying upon the judgment in the case of State of Karnataka (supra). No doubt the learned single Judge has referred to the judgment in the case of Darshana Devi (supra), wherein writ petition was held to be not maintainable following the case of State of Karnataka (supra). Judgment in the case of Darshana Devi (supra) is that of a Division Bench. Normally, in such a case we could not have taken a contrary view and the only other course of action was to refer the matter to the Larger Bench, however, for the reasons which we would be giving hereinafter, we come to the conclusion that the case of Darshana Devi (supra) is per incuriam as it does not take into consideration certain important material and rules which are cited before us and a reading thereof, clinches the issue in favour of the petitioners holding that the writ petition under Article 226 of the Constitution of India would be maintainable. It is for this reason that while holding that the case in Darshana Devi (supra) is per incuriam we are not referring the matter to the Full Bench. Now we proceed to give those reasons.

3. Though Mr. Agnihotri, learned senior counsel appearing for the appellants has referred to various features in the present case, it would not have been necessary to go into all those aspects in deciding the question of maintainability. The purpose would be served by referring to service rules framed by the State of Haryana which are known as the Haryana Women and Child Development Department (Grade-C) Service Rules, 1997. These rules applied to recruitment to service which comprises of various posts shown in Appendix-A to these rules. Rule 9 provides for the method of recruitment and the method for recruitment of various posts is enlisted therein. Sub-rule (j) of Rule 9 deals with the method of appointment to the post of Supervisor

(Female) and rule is as under :--

(j) In case of Supervisor (Female):--

(i) by direct recruitment :--

(a) 75% posts will be filled up by graduate candidates; and

(b) 25% posts will be filled up by Matriculate candidates having experience as Anganwari worker as Bal Sevika.

(ii) by transfer or deputation of an official, already in service of any State Government or the Government of India.

4. In Appendix-B to these rules academic qualifications and experience required for various posts is enumerated. For the post of Supervisor (female) appears at serial No. 10, experience as Anganwari workers in ICDS Scheme is stipulated which is clear from the following:--

b (iii) Eight years experience as Bal Sevika or Anganwari workers in Integrated Child Development Services Scheme or both.

A reading of the aforesaid Rule 9(j) in conjunction with serial No. 10 of Appendix B makes it clear that 25% posts are earmarked for those who have worked as Anganwari workers or Bal Sevika. Thus a quota of 25% posts in the case of Supervisor (female) is assigned and is available only to those who have worked as Anganwari workers or Bal Sevika. The experience as Anganwari workers or Bal Sevika which is required for coming under this quota is 8 years" service as Bal Sevika or Anganwari workers under ICDS Scheme or both. In those cases where candidate has 11 months training as Bal Sevika where there is no such training, then 10 years experience as Anganwari workers in ICDS Scheme is stipulated. It follows from the above that appointment as Anganwari workers is a door way to get appointment as Supervisor (female) thus appointment to the post of Anganwari workers gives certain rights to such persons and they can be appointed as Supervisor (female) and by this means they can get entry into the service which is regulated by the Haryana Women and Child Development Department (Grade-C) Service Rules, 1997. Once such right confers upon Anganwari workers, appointment to the post of Anganwari workers has to be in accordance with law. It is for this reason that the respondents herein had issued advertisement for recruitment to the post of Anganwari workers as noted in the beginning of this order. The case of the petitioner in the writ petition is that they were duly selected as Anganwari workers but had not been given appointment. Since the appointment to the post of Anganwari workers gives certain rights to such appointees, it is a illegal action on the part of the respondent when there was a cause of action to the appellants to seek enforcement of their right. This action or non-action of the respondents would thus has to be subject to judicial review and since respondent is a State which is amenable to writ jurisdiction under Article 226 of the Constitution of India, writ would clearly be maintainable. We, thus,

set aside, the judgment of the learned single Judge and remit the case back to the writ Court as per the roster for decision of the writ on merits.

Writ petitioners shall also be listed before the single Bench for decision on merits.