

(2015) 05 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 43 of 2015

Baby Choudhary	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 162, 226

Citation : (2015) 4 CDR 2000 : (2015) 3 RLW 2285 : (2015) 4 SCT 105 :
(2015) 4 WLN 278

Hon'ble Judges : Sunil Ambwani, C.J.; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Awar Dan Ujjwal, for the Appellant

Final Decision : Dismissed

Judgement

Sunil Ambwani, C.J.

1. We have heard learned counsel appearing for the petitioner.
2. By the present writ petition presented before learned Single Judge, the petitioner has challenged the appointment of respondent No. 6, vide appointment order dated 14.11.2014 issued by the Bal Vikas Pariyojna Adhikari, Jayal District Nagaur appointing her as Anganwadi Karyakarti at Anganwadi Kendra, Anganwadi Fardod-First Tehsil Jayal District Nagaur. The appointment was challenged on the ground that the petitioner was more meritorious and thus, she was entitled to be selected under the scheme dated 15th September, 2008 framed by the Director and Special Secretary, Women and Child Development Department, Government of Rajasthan, Jaipur.
3. The appointment was also challenged on the ground that the respondent No. 6 is less than 21 years of age. However, no such complaint was made in the representation made with regard to her age nor any pleadings are made to that effect in the writ petition.

4. Learned Single Judge by the order dated 20.2.2015, noticing a conflict between the judgment of this Court in Harsha Choudhary Vs. State of Rajasthan and Ors. (D.B. Civil Special Appeal (Writ) No. 435/2010) decided on 9.9.2011 and Smt. Gumani Vs. State of Rajasthan and Ors. (S.B. Civil Writ Petition No. 8806/2014) decided on 8.1.2015, referred the matter to a Larger Bench.

5. By an order dated 7.5.2015, the matter referred by learned Single Judge was required to be considered by a Division Bench.

6. In State of Karnataka and Others Vs. Ameerbi and Others, (2007) 1 JT 279 : (2007) 1 LLJ 996 : (2006) 13 SCALE 319 : (2007) 11 SCC 681 : (2006) SCR 329 Supp , the Supreme Court, considering the appointment of Anganwadi workers under the Integrated Child Development Service (ICDS) Programme floated by the Central Government in the year 1975, and in which the selections of Anganwadi workers are held amongst the local inhabitants by a Committee, it was held that the Anganwadi workers under the scheme do not carry on any functions of the State. They do not hold any post under a statute. Their posts are not sanctioned or created, nor their financial liability is undertaken by the State Government from out of its funds. The Recruitment Rules applicable to the employees of the State Government are not applicable in their cases. 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, as the process of their selection is neither statutory nor exists under the constitutional scheme.

7. The Supreme Court considered its previous judgments in State of Assam and Others Vs. Shri Kanak Chandra Dutta, AIR 1967 SC 884 : (1967) 14 FLR 299 : (1968) 1 LLJ 288 : (1967) 1 SCR 679 , Union of India and others Vs. Deep Chand Pandey and another, AIR 1993 SC 382 : AIR 1992 SC 382 : (1992) 65 FLR 798 : (1992) 5 JT 276 : (1993) LabIC 98 : (1992) 2 SCALE 440 : (1992) 4 SCC 432 : (1992) 1 SCR 49 Supp : (1992) 3 SLJ 71 : (1992) 2 UJ 714 , R.N.A. Britto Vs. Chief Executive Officer and others, AIR 1995 SC 1636 : (1995) 4 JT 582 : (1995) 3 SCALE 166 : (1995) 4 SCC 8 : (1995) 3 SCR 932 : (1995) 2 SLJ 222 , State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc., AIR 2001 SC 1298 : (2001) 89 FLR 477 : (2001) 4 JT 145 : (2001) LabIC 1389 : (2001) 2 SCALE 602 : (2001) 4 SCC 78 : (2001) SCC(L&S) 661 : (2001) 2 SCR 506 : (2001) 2 SCT 666 : (2001) 1 UJ 764 : (2001) AIRSCW 1178 : (2001) AIRSCW 4077 : (2001) 7 Supreme 359 : (2001) 2 Supreme 429 and Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 and held in paragraphs 27 to 29 as follows:-

"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 power under Articles 77 or 162 of the Constitution of India or under a statute vis-a-vis cases of this nature who 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."

8. Answering an argument that the Anganwadi workers are appointed under a Scheme, for which the funds are provided by the Central Government and thus, the constitutional scheme of equality in appointment is available and amenable to writ jurisdiction under Article 226 of the Constitution of India, the Supreme Court in *State of Karnataka Vs. Ameerbi* (supra) held that so long as the appointments are not made under any statutory provisions nor are covered by the Service Rules made under the proviso to Article 309 of the Constitution of India or by any statute made by the State Government, the appointment cannot be claimed or challenged by way of filing a writ petition under Article 226 of the Constitution of India.

9. The judgment in *State of Karnataka Vs. Ameerbi* (supra) has been followed by this Court in *Smt. Gumani Vs. State of Rajasthan and Ors.* (supra) decided on 8.1.2015.

10. In *Harsha Choudhary Vs. State of Rajasthan and Ors.* (supra), the Division Bench of this Court did not have the occasion to consider whether a writ petition under Article 226 of the Constitution would be maintainable, in the absence of any statutory scheme or applicability of the Rules made by the State Government under the proviso to Article 309 of the Constitution of India or any statute made by the State Government. The Division Bench did not have the privilege of considering the judgment of the Supreme Court in *State of Karnataka Vs. Ameerbi* (supra), which is binding upon it under Article 141 of the Constitution of India.

11. In *Harsha Choudhary Vs. State of Rajasthan and Ors.* (supra), the Special Appeal was filed against the judgment of learned Single Judge dismissing the writ petition on the ground of alternative remedy. The Division Bench was of the

opinion that on the facts, the reliefs claimed by the writ petitioner could be examined by the Writ Court under Article 226 of the Constitution of India because it did not involve any disputed question of fact, as expressed by the Writ Court so as to relegate the petitioner to file a civil suit in the Civil Court. Looking to the nature of the reliefs coupled with the averments made in the writ petition, the matter did not involve any disputed question of fact and thus, referring to the settled principles of law that if any relief is claimed against the State or any of its instrumentality on admitted facts and if there is no statutory alternative remedy available under any law to the writ petitioner, then writ petition under Article 226/227 of the Constitution can be entertained by the High Court, notices were issued with observation that the writ petition will be decided after returns are filed by the respondents.

12. As observed by us, in *Harsha Choudhary Vs. State of Rajasthan and Ors.* (supra), no argument was raised nor the judgment of the Supreme Court in *State of Karnataka Vs. Ameerbi* (supra) was cited before the Division Bench, which clearly held that Anganwadi workers are not protected by any statutory scheme. The appointment of Anganwadi workers is not on the post under any statute and the State Government 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 existed (para 20).

13. The judgment in *State of Karnataka Vs. Ameerbi* (supra) clearly holds that the Anganwadi workers do not have any statutory right to hold the post nor the constitutional scheme is applicable.

14. In view of the ratio of the judgment of the Supreme Court in *State of Karnataka Vs. Ameerbi* (supra), which is binding on this Court under Article 141 of the Constitution of India, the grounds of challenge, which are based on the principles of equality under Articles 14 and 16 of the Constitution of India, are not maintainable. The judgment in *Harsha Choudhary Vs. State of Rajasthan* (supra) is per incuriam (in ignorance of), the binding precedent in *State of Karnataka Vs. Ameerbi* (supra) decided by the Supreme Court.

15. The reference is answered accordingly and the writ petition is dismissed.