

(1995) 06 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : CWP No. 20 of 1995

Satya Devi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 22-06-1995

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 2
Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (1995) 3 ILR HP 1623

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; Inder Singh, General for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, C.J.—In this writ petition under Article 226 of the Constitution, the writ Petitioner Smt. Satya Devi has prayed for an appropriate writ of mandamus inter-alia for quashing condition NO.6 at Annexure P-3 and condition No. 4 at Annexure P-5 to the writ petition, on the ground that the said conditions are illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution and further for directing the Respondents to consider the case of the Petitioner as Anganwari Worker as she is duly qualified for the job.

2. Briefly stated, the facts are as follows. A post of Anganwari Worker fell vacant at Anganwari Centre, Bela. The Petitioner applied for the said post along with Ors. and she was interviewed on 22nd September 1994. The Petitioner, however, was not selected for the post. As no suitable candidate was found, Respondent No. 3, namely, the Child Development Project Officer, Shillai called for fresh applications. Hence, the present writ petition.

3. In the reply affidavit filed by the Director Social and Women's Welfare, Himachal Pradesh in behalf of the Respondents, it has been urged that the Petitioner was not found suitable for the post as her husband was already

employed as a volunteer teacher in the Education Department of the State Government. It has also been stated that for the post of helper in Angawari Centre, Bela, one person was selected and the Petitioner neither applied for the post nor attended the interview.

4. We have heard learned Counsel for the parties.

5. The guidelines for selection of Anganwari Workers have been annexed as Annexure P-3 to the writ petition. Clause 6 of the said guidelines inter-alia provides that at the time of selection of Anganwari Workers, it should be specifically ensured that none of the family member of the Applicant is in the Government/Semi Government service. There is no dispute that the Petitioner is qualified for the post. Therefore, the only question that has to be determined is whether the husband of the Petitioner being a volunteer teacher can be said to be in employment of the Government vis-a-vis the Petitioner.

6. The appointment letter of the husband of the Petitioner including the scheme for volunteer teachers have been annexed to the rejoinder vide Annexure P-6/A.

7. The learned Counsel for the Petitioner has urged that the husband of the Petitioner is neither a Government servant nor is holding any post as would appear from Rule 2 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 more particularly Clause (h) of the said Rules. This Rule defines "Government servant" a person who is a member of a service or holds a civil post under the Union. It is not necessary to quote Other provisions of the said clause. Whether a volunteer teacher is a Government servant or not shall be discussed in view of the law laid down by the Apex Court. We may mention here that though as per the scheme of volunteer teachers, the period is only for two years, the appointment letter was issued to the husband of the Petitioner on 15th February 1992 who is still in service and is getting honorarium of Rs. 625/- per month. We have been informed at the par that the above amount has since been increased. We have also been informed at the Bar ,that so long Himachal Pradesh Volunteer Teachers Scheme, 1992 continues the husband of the Petitioner will remain in service and he has got a chance to be regularised as a permanent teacher alongwith Ors. .

8. Our attention has been drawn to the decision of the Apex Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, In that case the question came up as to whether a Mauzadar in the State of Assam is a Government servant or not. A Mauzadar in Assam collects revenue in the State and he is not entitled to get full time salary but only sntitled to get commission out of the revenue collected by him for the State Government. The Apex Court held that a Mauzadar is a holder of sivil post under the State Government and as such entitled for protection under Article 311 of the Constitution.

9. In State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, a question came up before the Apex Court whether members of Gujarat Panchayat Service under the Gujarat Panchayats Act, 1961 were Government servants or

not. The Apex Court after considering all the relevant requirements held that there was relationship of master and servant and that they are members of the State Government and accordingly they are Government servants.

10. In a recent decision of the Apex Court in *Sri R.N.A. Britto v. The Chief Executive Officers and Ors.* 1995 (3) Scale 29 166, the question which came up before the Court is whether employees of Panchayat established under Karnataka Village and Local Boards Act, 1959 are Government servants or not more particularly Secretary of the Panchayat. After referring to *Kanak Chandra Dutta's* case (supra) and *Raman Lal Keshav Lal Soni's* case (supra) it was held that the Secretary is a Government servant.

11. To be a Government servant we have to decide whether there is any relationship of master and servant between the State and a person holding a post which will indicate as to whether the State Government has a right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing work and its right to determine the mode of payment of his wages and remuneration. The relationship of master and servant may be established by all or some of the above said factors in conjecture with other circumstances.

12. In the case in hand, on perusal of the appointment letter as well as scheme of volunteer teachers we find that the said teachers are appointed by selection committee after due advertisement in newspapers. They are also paid fixed amount per month and they are under control of the State Government and their services are terminable by the State Government. The Government has the power to relax the terms and conditions mentioned in the Scheme. Therefore, we hold that there is a relationship of master and servant between the State Government and a volunteer teacher. Accordingly, we hold that volunteer teacher is an office under the State Government.

13. The learned Counsel for the Petitioner has urged that there is no post of volunteer teacher under the State Government. This point was duly considered by the Apex Court in *Kanak Chandra Dutta's* case (supra) and observed that under Article 311 of the Constitution there is no formal definition of "post" and "civil post" and that post under the State means a post under the administrative control of the State. Therefore, even assuming that no specific post has been created for volunteer teacher, the argument is not tenable. That apart, from the Scheme as at Annexure P-6/A, we find that the State Government clearly indicated the number of posts in each district and, therefore, the contention of the learned Counsel for the Petitioner has no force.

14. For the reasons stated above, we hold that as the husband of the Petitioner is holding a post of volunteer teacher under the State Government, the Petitioner is not qualified to be appointed as Ananganwari Worker.

15. The Petitioner has also challenged condition No. 6 of the guidelines for selection of Anganwari Worker on the ground of arbitrariness. This condition

specifically mentions that a person shall be appointed as such worker if none of the family member of the candidate is in Government/semi Government service. In our considered opinion, this condition cannot be stated to be arbitrary inasmuch as the object to be achieved is to give employment to one member of the family. This is a quite reasonable condition keeping in view that more than 70% of the population of our country live below the poverty line. The learned Counsel for the Petitioner has placed reliance on State of H.P. Vs. Amar Nath Sharma and Others, to bring home the point that family defined in that case does not include the spouse. We have perused the Judgment and in our opinion it is not applicable to the case in hand inasmuch as the definition of family was for the purpose of recruitment to class III and class IV posts/service. We say so as in the present case there is specific scheme providing that a person shall not be appointed as Anganwari Worker if any of the family member, is in Government/semi Government service, of the candidate. There cannot be two opinions that the husband of the Petitioner is a member of the family for the present purpose. Though the learned Counsel for the Petitioner has drawn our attention to Clause (h) of Rule 2 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for the purpose of definition of the Government servant, we hold that in view of the discussion stated above, it cannot be said that the husband of the Petitioner is not a Government servant.

16. For the above reasons, the writ petition is dismissed. No costs.