

SUPREME COURT OF INDIA

State of W.B.

Vs.

Kaberi Khastagir

(Altamas Kabir and Markandey Katju JJ.)

10.12.2008

JUDGMENT

Altamas Kabir, J.

1. Leave granted.

2. Respondent Nos. 1,2 and 3 herein claim to have been appointed in the Integrated Child Development Scheme Project (hereinafter referred to as 'ICDS'). The said Scheme was introduced by the Government of India through the Department of Human Resources Development for integrated delivery of certain services to pre-school children, pregnant and lactating women. The object of the Scheme was to improve the health and nutritional status of children and women and to reduce the incidences of school drop-outs and physical and social welfare and development of the child.

3. According to the writ petitioners, voluntary organizations and local bodies were given priority to act as Implementing Agencies of the Scheme. However, in some States, such as West Bengal, no voluntary organizations or local bodies were recommended and the State Government itself was appointed as the Implementing Agency to run and/or implement the Scheme within the territories of West Bengal.

4. It was also the case of the writ petitioners that the Scheme provided that all actions and decisions had to be taken by the State Government, with the approval of the Central Government, which agreed to fund the entire project. It is the further case of the writ-petitioners that according to the staff pattern for giving effect to the ICDS Project, the petitioners were appointed as Supervisors, which is the feeder post for promotion to the post of Assistant Child Development Officer (hereinafter referred to as 'the ACDPO'). The said promotional post is also the feeder post for promotion to the post of Child Development Project Officer (hereinafter referred to as 'the CDPO'). According to the writ petitioners, under the Scheme it was mandatory on the part of the State Government to fill up the post of Supervisors from female candidates only and that the same was also reflected in the Scheme where a specific observation is said to have been made to fill up most of the posts under the ICDS Project from female candidates since the entire object and motto of the said Scheme was to promote the welfare of women and children.

5. It was also the case of the writ petitioners that a specific provision had been made in the Scheme to frame rules and to set out the procedure to fill up the post of CDPO under the ICDS Project whereunder 75% of the CDPO posts were to be filled up from the female Supervisors of the ICDS Project, while the remaining 25% could be filled up by direct recruitment. The petitioners, therefore, contended that the State of West Bengal was under an obligation to fill up 75% of the posts of CDPO from the female Supervisors of the existing ICDS Project, subject however, to the fulfillment of the essential qualifications prescribed.

6. According to the writ petitioners, in the month of October, 2002, they received two interview letters whereby they were asked to appear before the Public Service Commission for selection to the post of CDPO and ACDPO. According to the writ petitioners, no panel was ever published thereafter by the State Government and its authorities in their capacity as the Implementing Agency. However, all of a sudden a list of candidates appointed on promotion to the post of CDPO was published on 23.2.2004, which did not conform to the procedure as indicated hereinabove, with the result that a large number of under-graduate male employees from different zones of the cadre were promoted to the post of CDPO and ACDPO. Despite several representations made to the State Government and the Director of Women and Child Development and Social Welfare of the State Government, no steps were taken to alleviate the grievances of the writ petitioners and, on the other hand, a second list was published which was prepared on the same basis as the earlier list.

7. Aggrieved by the said action on the part of the State Government and its authorities, the respondent Nos. 1,2 and 3 herein filed a writ petition, inter alia, for the following reliefs:

“a) A writ of and/or in the nature of Mandamus commanding the respondent authority to fill up 75% post of CDPO and ACDPO by way of promotion from the female Supervisors working under the ICDS Project as per provisions laid down under the said Scheme;

b) A writ of and/or in the nature of Mandamus directing the respondents authority to cancel, set aside and/or rescind the promotion of the candidates from the outside cadre of Supervisors under the ICDS

c) A writ of and/or in the nature of Mandamus commanding the respondents authority to set aside, cancel and/or rescind the promotion of the candidates having not fulfilled the requisite qualification of graduate in Social Science to the post of CDPO and also ACDPO.”

8. The said writ application came up for hearing before the learned Single Judge who, on an analysis of the Scheme, came to hold that although the State was acting as a nodal agency, the employees under the Scheme were not Government employees but Project employees and that if and when the Project was withdrawn, their employment would also cease. The learned Judge also held that the State Government had all throughout acted in a manner contrary to the provisions of the Scheme. However, without disturbing the status existing

when the order was made by the learned Single Judge, directions were given to the State Government to adhere to the Scheme while giving appointments thereunder. The learned Judge also directed that only 25% of the vacancies for the posts of CDPO could be filled up by direct recruitment and the rest by promotion, as prescribed under the Scheme, subject to the candidates having requisite qualifications. It was also directed that the State Government should ensure that the posts should be filled up by lady officers as far as practicable and in case a male officer was appointed, the State Government would be required to pass a reasoned order to be kept in the record to the effect that there was no suitable lady candidate available for the post.

9. The writ application was disposed of with the aforesaid observations and aggrieved thereby the State Government preferred an appeal before the Division Bench, being F.M.A. No.796/07, which was dismissed with the learned Judges endorsing the views expressed by the learned Single Judge and holding that the issues raised in the writ petition had been correctly decided and that no interference was called for with the same. While passing the said order, the Division Bench came to a definite finding that the writ petitioners were all employed in the ICDS Project and could not, therefore, be treated as State Government employees. On the aforesaid finding the Writ Appeal was also dismissed against which the present appeal has been filed by the State of West Bengal.

10. On behalf of the appellants it was submitted by Mr. K.K. Venugopal, learned Senior Advocate, that the ICDS Scheme was a Central Government Scheme which was promulgated on 2nd October, 1975, through the Department of Human Resource Development with the object of integrated delivery of certain services such as supplementary nutrition, immunization, health check-up, referral service, non- formal education and health nutrition education to pre-school children and pregnant and nursing women. In addition to improvement in the health and nutritional status of the children, the scheme aimed at reduction of the incidence of school dropouts and laying the foundation for proper psychological, physical and social development of the child. Mr.Venugopal submitted that the Scheme admittedly contemplated the implementation thereof by the State Government within their respective States. In that regard the Central Government issued guidelines from time to time and the number of ICDS projects which still required to be allotted by the Central Government.

“For implementation of the Scheme, the Government of India at each project level, sanctioned posts of Child Development Project Officer, Assistant Child Development Project Officer, Supervisors and other infrastructural posts. The Scheme categorically laid down that all the personnel under the Scheme, were to be borne on the respective cadres of the State Government/Union Territory Administration and the said posts should, therefore, be sanctioned in the appropriate pay scales of the State Government/ Union Territory Administration.”

11. The Scheme also provided that the CDPOs and Supervisors should preferably be females. Mr.Venugopal also pointed out that although the Scheme was Centrally-sponsored and the

major funding was done by the Central Government, the State Government also contributes about 40% of the costs of the projects within the State.

12. According to Mr.Venugopal, from time to time various projects under the Scheme were allotted to the State of West Bengal and on such allotment of each project the State of West Bengal issued orders for the manning of each project according to the staff pattern laid down in the Scheme and granting them scales of pay of each cadre.

13. Mr.Venugopal submitted that on 3.6.1983, in supersession of all earlier notifications in this regard the State of West Bengal issued a fresh Notification constituting the West Bengal Junior Social Welfare Services (hereinafter referred to as `WBJSWS') in which the post of CDPO in the ICDS Project stood included. Consequently, the post of CDPO in the ICDS project became part of the regularly constituted State Service.

14. Mr. Venugopal submitted that the contesting respondent No.1, Smt. Kaberi Khastagir, was appointed by the State of West Bengal in the Department of Social Welfare as Supervisor of the ICDS Project at Jagat Ballavpur in the District of Howrah in West Bengal, on a pay scale of Rs.380-910/- plus usual allowances as admissible under the Government Orders from time to time. The other conditions of service were made the same as those applicable to other Government employees of the same category under the Rules and Orders of the State Government. Similarly, other contesting respondents were also appointed in the same fashion.

15. Mr. Venugopal then submitted that on 11.10.1985 in exercise of the powers conferred by the proviso to Section 309 of the Constitution and in supersession of earlier Notifications the State Government notified Recruitment Rules for the posts included in the WBJSWS, which provided for filling up of posts in the said service by direct recruitment through the State Public Service Commission for 60% of the posts and the rest 40% were to be filled up by promotion from the feeder cadres. This apparently led to an anomaly as the direct recruit quota of posts in the WBJSWS was reduced to 50% from 60% and the promotee quota was increased from 40 to 50%. On 16.10.1989 in supersession of all earlier Notifications covering the field the State Government issued a fresh Notification framing Recruitment Rules for the posts of Supervisors of ICDS in exercise of powers under Article 309 of the Constitution. By these Recruitment Rules the method of recruitment was to be direct recruitment by selection from candidates sponsored by Employment Exchanges and from Aanganwadi workers of ICDS on the basis of the result of a written-cum-oral test to be conducted by the Directorate of Social Welfare, Government of West Bengal.

16. Mr. Venugopal urged that it was, therefore, quite clear that the State Government had always treated the posts of CDPF and Supervisor in the ICDS as posts under the State Government and granted Government scales of pay and all other service conditions, including pension benefits, as per the Rules of the State Government. In fact, all other categories of staff working in the ICDS Project were also granted Government scales of pay and all Government benefits, including pension benefits, treating all categories of staff of ICDS as Government employees. Mr. Venugopal submitted that the introduction of the new

Recruitment Rules led to the filing of the Writ Petition No.11539(W) of 2004 in the Calcutta High Court, inter alia, for the issuance of a Writ in the nature of Mandamus to command the respondent authorities to fill up 75% of the posts of CDPO and ACDPOs by way of promotion from the female Supervisors working in ICDS Projects. The grievance highlighted in the Writ Petition was that while the Scheme had provided for filling up of 75% of the posts of CDPO and ACDPO by promotion of female Supervisors and the remaining 25% by direct recruitment, the authorities were not filling up the same and were depriving the female Supervisors of promotion to the posts of CDPO and ACDPO. According to Mr. Venugopal, the stand of the Government of India was very definite in that the Supervisors and CDPOs of the Scheme were employees of the State Government and the terms and conditions of their employment, such as promotion and other service benefits were to be determined as per the Rules framed by the State Government. Mr. Venugopal submitted that as far as the State Government was concerned, promotion to the posts of CDPO and ACDPO were made following the Recruitment Rules framed by the State Government and hence there was no question of any violation of any mandatory direction under the ICDS Project. It was also the stand of the State Government that the writ petitioners were Government employees and were not, therefore, entitled to file a writ petition in the High Court regarding their service conditions and that they should have instead approached the State Administrative Tribunal for necessary relief.

17. Mr. Venugopal urged that the approach of the High Court was completely wrong since the Scheme itself stipulated that though the same was a Centrally Sponsored Scheme its implementation was left entirely to the State Governments which were funded by the Central Government to the extent of about 50% of the actual expenditure. Mr. Venugopal also emphasised that a specific provision had been made in the Scheme for its implementation and that in paragraph 47 of the Scheme it has been indicated as follows:

“Even though funds will be provided by the Central Government, the Staff will be borne on the appropriate cadres of the States and therefore, the State should sanction the posts (as per Appendix) in the appropriate corresponding State pay scale. The anganwadi workers and their helpers will be honorary workers.”

18. Mr. Venugopal urged that the finding of the learned Single Judge, that the private respondents herein were not State Government staff but Project workers in connection with the Scheme, was in complete variance with paragraph 47 of the Scheme and apparently even the Division Bench in appeal had not considered the said provision properly. Mr. Venugopal, however, urged that if the status of Project workers given to the respondents by the High Court, was to be accepted, it would amount to accepting the fact that the respondents were left with no job security and that with the completion of the Project, their services would stand the danger of being terminated without any retiral benefits. Mr. Venugopal submitted that it was in the interest of the private respondents that the orders passed by the learned Single Judge and the Division Bench holding them to be Project workers be set aside.

19. Mr. Apurba Lal Basu, learned Senior Advocate, appearing for the respondent Nos. 6 to 9, who were similarly placed as the respondent Nos. 1 to 3, adopted the submissions made by

Mr. Venugopal but also relied on the affidavit filed by the respondent No.7 on his own behalf and on behalf of the respondent Nos. 8 to 10 wherein it was also indicated that the fact that the staff of the ICDS Project were State Government employees, would be evident from the facts that their services are interchangeable in different projects of the State Government according to the needs and exigencies of the concerned Departments of the State Government. Taking the case of the respondent No.1 as an example, Mr. Basu submitted that she had been appointed on 22.3.1984 by the State Government in the Department of Social Welfare as Supervisor of the ICDS Project at Jagat Ballavpur in the District of Howrah in West Bengal in the pay-scale of Rs.380-910/- which is scale No.9 of the Revision of Pay and Allowances Rules, 1991, together with usual allowances as admissible under Government orders from time to time. He urged that the other conditions of service of the respondent No.1 were the same as those applicable to other Government employees of the same category under the Rules and orders of the State Government.

20. Mr. Basu submitted that both the learned Single Judge and the Division Bench of the High Court misconstrued the provisions of the Scheme and in particular the provisions contained in paragraph 47 thereof.

21. Ms. Amreshwari, learned Senior Advocate, who appeared for the Central Government also adopted the submissions made by Shri Venugopal and Mr. Basu, and submitted that in terms of the ICDS Scheme, the employees thereof were to be borne on the State cadre and were subject to service conditions of similarly placed State Government employees.

22. Mr. Saharangshu Bhattacharya, learned advocate, who appeared for the respondent Nos.1 to 3, submitted that under the ICDS Project the financial responsibility for the implementation of the Scheme has been mentioned in paragraph 35 of the Scheme which, inter alia, provides that the said Scheme had been classified as a Centrally- sponsored programme to be implemented through the State Government with full financial assistance from the Central Government for inputs, other than supplementary nutrition, which would have to be looked after by the State Government. The Scheme also contemplates active involvement of voluntary organizations, local bodies, Panchayati Raj Institutions, in implementing and soliciting community support. The object of the Scheme was to entrust the running of Anganwadis to voluntary organizations, local bodies and Panchayati Raj Institutions and provide them with grant-in-aid on the basis of the support required for the Anganwadis. It was also indicated that the State Government could thus run an Anganwadi only if no organization as suggested was available.

23. Mr. Bhattacharya reiterated the submissions made before the High Court that the State Government was functioning only as a nodal agency and that the writ petitioners were all Project employees and could not be regarded as State Government employees. Mr. Bhattacharya urged that both the learned Single Judge and the Division Bench of the High Court had rightly come to the conclusion that the writ petitioners before the High Court were all employed in the ICDS Project and their promotion from the post of Supervisor to the post of CDPO would have to be governed under the provisions of the Scheme itself and the State

Government could not regulate such appointment and/or promotion in any manner other than what had been set out in the Scheme.

24. Mr. Bhattacharya submitted that in the Writ Petition filed by the respondent Nos. 1 to 3 herein two-fold prayers had been made - (i) for a writ in the nature of Mandamus to command the respondents to fill up 75% of the posts of CDPO and ACDPO by way of promotion from the female Supervisors working under the Project as per the provisions of the Scheme and (ii) a further writ in the nature of Mandamus commanding the respondents to cancel and set aside the promotion of the candidates to the post of CDPO outside the cadre of Supervisor under the ICDS Scheme and in addition to cancel and/or rescind the promotion of the candidates who had not fulfilled the requisite qualification of being a graduate in Social Science. In support of his submission Mr. Bhattacharya referred to the decision of this Court in *State of Haryana vs. Piara Singh and others*¹, wherein while considering the case of ad hoc temporary employees in temporary organizations like the Adult Education Scheme and the Integrated Child Development Scheme, it was held that a person who had continued in service for more than one year without notional breaks, would be entitled to the benefits of service and the benefits of directions issued by this Court in the case of *Bhagwan Dass vs. State of Haryana*² and none of the services of such ad hoc temporary employees would be terminated except on abandonment of the Scheme.

25. Mr. Bhattacharya submitted that both the learned Single Judge and the Division Bench had rightly come to the conclusion that the writ petitioners were Project employees and not employees of the State Government and they were not, therefore, amenable to the conditions of service of State Government employees.

26. Having considered the submissions made on behalf of the respective parties, we find ourselves unable to agree with the reasoning either of the learned Single Judge or the Division Bench of the High Court in holding that the writ petitioners were Project employees in respect of the ICDS Project and not employees of the State Government and that their services were co-terminus with the Project. Paragraph 35 of the Scheme clearly provides that though the same was a Centrally-sponsored scheme, its implementation was left to the respective State Governments with 100% financial assistance from the Central Government for inputs other than supplementary nutrition which was identified as the responsibility of the State Government. In fact, paragraph 47 of the Scheme, which has been extracted hereinabove, in no uncertain terms makes it very clear that even though funds for the Scheme would be provided by the Central Government, the staff would be borne on the appropriate cadres of the States which would sanction the posts in the appropriate corresponding State pay scale. In the face of such provision it is difficult to accept that the writ petitioners were Project workers and not employees of the State Government.

27. From the various Annexures set out in the Special Leave Petition and referred to by Mr. Venugopal it will be apparent that persons appointed as Child Development Project Officers of the Integrated Child Development Scheme Project were employees of the State Government as contemplated under Paragraph 47 of the Scheme. The notification dated 3rd June, 1983, issued by the Relief and Welfare Department, Department of Government of

West Bengal provides for the constitution of the West Bengal, Junior Social Welfare Service which includes Child Development Project Officers of the ICDS Project. From the orders of appointment issued by the Director of Social Welfare, Government of West Bengal on 22nd March, 1984, 29th March, 1984 and 31st March, 1984 in favour of respondent Nos. 1, 2 and 3, it will be apparent that the service conditions of the said respondents were also to be that as were applicable to other government servants of the same category under the Rules and Orders of the Government.

28. Even the Rules made on 11th October, 1985 in supersession of the earlier Rules framed by the Department of Relief and Welfare, Government of West Bengal, dated 23rd March, 1981, which deals with the method of and the qualifications required for recruitment to posts included in the West Bengal Junior Social Welfare Services under the Welfare Branch of the Relief and Welfare Department of the State Government provides that the Appointing Authority would be the Governor of West Bengal and that the method of recruitment would be by selection on the results of the West Bengal Civil Services (Executive) Examination or by promotion on the basis of a preliminary written test to be conducted by the Public Service Commission, West Bengal, for screening of candidates, followed by interview of the successful candidates by the said Commission. Since the ICDS Project was included under the W.B.J.S.W.S., the said Rules of 1985 would no doubt be applicable to the Officers of the said Scheme as well.

29. Subsequently, on 16th December, 1989 further Rules were made in the Relief and Welfare Department (Welfare Branch) of the Government of West Bengal relating to recruitment of Supervisors in the ICDS Project which again provides that the Appointing Authority would be the Directorate of Social Welfare, West Bengal. A similar notification dated 23rd December, 2002, was issued by the Department of Women and Child Development and Social Welfare, Government of West Bengal, regarding the post of ACDPO where again the Appointing Authority is the Director of Social Welfare, West Bengal.

30. All the aforesaid Rules promulgated by the State Government under Paragraph 47 of the Integrated Child Development Scheme leaves little room for doubt that the respondent Nos. 1, 2 and 3 and others similarly situated, were, in fact, State Government employees. The learned Single Judge, as well as the Division Bench of the High Court, appear to have been swayed by the submissions made on behalf of the respondent Nos. 1, 2 and 3 (writ petitioners before the High Court) that the State of West Bengal is merely a nodal agency to supervise the implementation of the Scheme which was in the nature of a Project and that the employees thereunder were, therefore, Project employees, overlooking the overall intention and object of the Scheme that in order to provide child care and nutrition for children and lactating mothers, the Central Government was willing to fund the entire project but left the implementation thereof to the State Governments who were authorized under the Scheme to appoint the staff of the Project, who were to be borne on the appropriate cadres of the States. Paragraph 35 of the Scheme, which deals with the functional responsibilities, makes this position very clear.

31. Having regard to the above, we are unable to accept the reasoning both of the Learned Single Judge and the Division Bench of the High Court. We accordingly allow the Appeal and dismiss the Writ Petition filed by the respondent Nos. 1, 2 and 3.

32. There will, however, be no order as to costs.

¹(1992) 4 SCC 118

²(1987) 4 SCC 34