

SUPREME COURT OF INDIA

State of H P and Ors.

Vs.

Punra Devi

C.A.No.of. 2015

(Dipak Misra and Prafulla C. Pant, JJ.)

24.03.2015

JUDGMENT

Prafulla C. Pant, J.

1. Leave granted.

2. These appeals arise out of judgment and order dated 6.3.2013, passed by the High Court of Himachal Pradesh at Shimla in CWP No. 7879 of 2012-H whereby the High Court has disposed of said writ petition allowing the respondent (writ petitioner), who is Anganwari Helper at Anganwari Centre, Chori, to the post of Anganwari Worker in Anganwari Centre, Hardeeppur. The review petition filed by the appellants before the High Court has also been dismissed vide order dated 23.5.2014. The same is also challenged before us.

3. Heard learned counsel for the appellants. No one turned up on behalf of the respondent even after sufficient service reported on her.

4. Brief facts of the case are that respondent Punra Devi was appointed on 13.8.2007 as Anganwari Helper in Anganwari Centre, Chori, District Kangra, Himachal Pradesh. There are two Anganwari Centres, namely, Anganwari Centre, Chori and Anganwari Centre, Hardeeppur, which fall within the limits of village panchayat Lagnru. Appellant No. 2, Director, Department of Social Justice and Empowerment, Himachal Pradesh, Shimla, issued communication dated 10.5.2012 to all Child Development Project Officers (C.D.P.Os) of the State informing that in case the post of Anganwari Worker (AWW) falls vacant in any Anganwari Centre, the Anganwari Helper (AWH) working at the same centre can also be considered on priority basis for appointment to the post of AWW. Claiming the benefit of above communication, respondent submitted her application for the post of AWW in Anganwari Centre, Hardeeppur, to Child Development Project Officer (CDPO) Dehra, District Kangra, Himachal Pradesh. She also made a representation to appellant No. 2 seeking her appointment on the above mentioned post. When her request was not accepted,

she filed writ petition (CWP No. 7879 of 2012) before the High Court seeking following reliefs: -

"i. That the respondents may very kindly be directed to consider the petitioner for appointment to the post of Anganwari Worker in Anganwari Centre Hardeppur under the Child Development Project Officer, Dehra, District Kangra without insisting upon the conditions of prescribed limit to the family income of the petitioner, because of her already working as Anganwari Helper, in the interest of justice.

ii. That the respondents may also be directed to apply the instructions issued by the respondent No. 2 on 10.05.2012 at Annexure P-5 in the case of the petitioner also so as to consider her for appointment as Anganwari Worker in Anganwari Centre Hardeppur on account of her already working as Anganwari Helper in Anganwari Centre Chori and her possess the requisite qualifications of +2, in the interest of justice.

iii. That the respondents may also be directed to create 2 to 3 promotional avenues to the Anganwari Worker to the next higher post, in the interest of justice.

iv. That the entire record of the case may very kindly be summoned from the respondent for the kind perusal of this Hon'ble Court.

v. That any other order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the present case, may be passed in favour of the petitioner and against the respondent."

5. The High Court disposed of the above writ petition allowing the respondent to apply for the post of AWW of Hardeppur with certain observations, which is challenged before us by the appellants, after rejection of the review application.

6. The only issue involved in these appeals before us is as to whether an Anganwari Helper (AWH) of one Anganwari Centre can seek promotion to the post of Anganwari Worker (AWW) of the another Anganwari Centre, or not?

7. Be it noted, Integrated Child Development Scheme (ICDS) is a centrally sponsored flagship Scheme of the Government of India which envisages six services, i.e., supplementary nutrition, immunization, health check-up, referral services, pre-school non-formal education and nutrition and health education. The AWWs and AWHs are community based frontline honorary workers under the ICDS, and are central figure in helping the community as to the needs of their children by delivery of services under the Scheme. They are required to be appointed from the local community who come forward to render their services, on part- time basis in the area of child care and development. As per the guidelines, selections of AWWs and AWHs require that the women appointed for such services should be from local village and acceptable to the local community.

8. In the light of the guidelines of the Central Government, Government of Himachal Pradesh issued its notifications from time to time in connection with appointment of AWWs/AWHs. Paragraphs, relevant to this case, contained in the Notification No. WLF-B(14)3/87-1 dated Shimla 19.6.2010, which was issued in supersession of the previous notifications, are being reproduced below: -

"In partial modification of this department notification of even dated 5th October, 2009 and dated 8th January, 2010 the Governor, Himachal Pradesh is pleased to substitute the provision of following rules: -

Rule 4 i.e. Eligibility Criteria;

Only such female candidates are eligible to apply for the post of Anganwadi Worker or Helper who are

a) Family wise freezing of the list of families being covered in the feeder area of the AWC will be ensured as on first January of recruitment year before starting the selection process and advertising of vacancies with due publicity and only the residents of the areas as above will be entitled to apply. If the candidates are not available within the feeder area, applications can be invited from the desirous candidates residing within the area of the concerned Gram Panchayat in case the feeder area falls in 2 Gram Panchayats prior approval of the Director SJ&E H.P. will be required.

b) For Anganwadi worker minimum qualification shall be 10+2 or equivalent and for Helper minimum qualification shall be Middle.

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d) The annual income of the family of candidates does not exceed Rs.15000/- per annum which is to be certified/countersigned by an officer not below the rank of Tehsildar/Naib Tehsildar/Executive Magistrate.

Rule 5 i.e. Advertisement of vacancies: - Following provision to be added: -

Provided, where the post of AWW has fallen vacant due to any reason and the matter is not sub judice the Anganwadi Helper shall be given first opportunity to be appointed as worker if, she fulfills the minimum prescribed educational qualification for AWWs and no advertisement will be required.

xxx xxx xxx Terms and conditions of services Rule 4 i.e. Transfer/Adjustment of the Anganwadi Worker Helpers. Under ICDS programme there is no provision of transfer of Anganwadi Workers/Helpers as these are honorary workers. However, only in case of marriage of AWW or AWH if, vacancy exists at the place of her husband's normal

place or residence/ place of marriage, she can be adjusted on her request made within one month from date of arising of vacancy. Divorce/destitute women living with their parents in Anganwadi area, but working at the place of marriage can be transferred to the place of Anganwadi falling in the parental area subject to availability of vacancy. Distt. Programme Officer will be the competent authority to order transfer/adjustment of Anganwadi workers/helpers within the District. Outside district transfers will be done with the approval of Director."

9. It is not the case of the respondent that due to her marriage or divorce she is required to be transferred from one centre to another centre, nor is her case for promotion/ appointment from the post of AWH to AWW in the same Anganwari Centre. Admittedly, she was appointed in 2007 as AWH in Anganwari Centre, Chori. Now she has prayed for her appointment to the post of AWW in Anganwari Centre Hardeppur. It is not disputed that the communication dated 10.5.2012, issued by the appellant No. 2 (Director, Social Justice and Empowerment) to CDPOs of the State provides that if a post of AWW falls vacant in an Anganwari Centre, AWH of the same centre can be considered for her appointment to the post of AWW, giving her priority.

10. Considering the facts as above, we are of the opinion that the High Court has erred in law in unnecessarily interpreting the above provision, to make the same applicable for appointment/promotion of AWH from one Anganwari Centre to another Anganwari Centre by observing that honorarium which was being drawn by such candidate shall not be added to her income in the income certificate required for the post. In fact communication dated 10.5.2012 does not reflect that honorarium is required to be added in the income of AWH of that centre for her appointment as AWW in the same centre.

11. Learned counsel for the appellants submitted before us that, vide letter No. SJE-A-E(20)171/2012 dated 18.9.2013 read with notification No. SJE-A-F(1)-3/2011 dated 3.9.2013, the State Government has already clarified that the honorarium being paid to the Anganwari Helper shall not be considered for the income of family in the case of a candidate who applies for the post of Anganwari Worker. It is further pointed out to us that the condition regarding requirement of same feeder area remains unchanged.

12. In view of the above, having heard learned counsel for the appellants, and further considering the ICDS read with relevant guidelines, we are of the view that the High Court has erred in directing the appellants to consider the case of the respondent, who is AWH in the Anganwari Centre of Chori, for the post of AWW in the Anganwari Centre of Hardeppur. Needless to say that the area of one Anganwari Centre is not the feeder area of another Anganwari Centre. Therefore, in our opinion the impugned orders passed by the High Court cannot be sustained.

13. Accordingly, the appeals are allowed. The impugned orders dated 6.3.2013 passed in CWP No. 7879 of 2012-H, and the order dated 23.5.2014 passed in CMP (M) No. 12086 of

2013 (in RPST 7126 of 2013), by the High Court are hereby set aside. There shall be no order as to costs.