



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: Maniben Maganbhai Bhariya v District Development Officer Dahod

Prankur Vats^a

^aRajiv Gandhi National University of Law, Patiala, India

Received 25 June 2022; Accepted 18 July 2022; Published 20 July 2022

INTRODUCTION

Anganwadi workers play a pivotal role in implementing various social security services ranging from immunization, nutritional support, cooking mid-day meals, etc. in rural and backward areas. Despite their contribution, they are being paid very meagre remuneration. They are not civil post holders which further deprives them of other benefits available to the employees of the State. Finally, the Division Bench of the Supreme Court of India in this judgment recognized their valuable contribution and held that Anganwadi workers/helpers under Integrated Child Development Scheme ('ICDS') are entitled to gratuity under the provisions of the Payment of Gratuity Act, 1972 ('the Act').

PRELIMINARY DETAILS OF THE CASE

Case No. -	Civil Appeal No. 3153 of 2022
Jurisdiction -	Civil Appellate Jurisdiction, Supreme Court of India

Case filed on -	3 rd November 2017
The case was decided on -	25 th April 2022
Judge(s)/ Coram -	Justice Ajay Rastogi and Justice Abhay Shreeniwas Oka

BACKGROUND OF THE CASE

The facts of the instant case manifest from the record that the five Appellants joined as Anganwadi workers/helpers between the period 1982-1985 and served for 21-31 years and stood retired between February 2006 and February 2012. When gratuity was not paid to them, each of them filed their applications before the prescribed authority. After taking note of the claim of each of the Appellants, the prescribed authority held in their favour with a direction to the Respondents to pay gratuity in terms of the procedure for computation referred to under Section 4¹ of the Act 1972. The order of the prescribed authority under the Act, 1972 came to be confirmed by the appellate authority and also by the Single Judge of the high court of Gujarat vide judgment dated 6th June 2016.

In Letters Patent Appeals, the Division Bench of the High Court set aside the orders passed by the Controlling Authority and held that Anganwadi workers and helpers could not be called employees under Section 2(e)² of the Act, and the Integrated Child Development Scheme cannot be said to be an 'industry'. It was held that they are disentitled to gratuity. Hence the present appeal.

ISSUES

The main issue that arose in this case is:

- I. Whether the Anganwadi workers ('AWWs') and Anganwadi Helpers ('AWHs') entitled to gratuity under the provisions of the Payment of Gratuity Act, 1972 or not?

¹ Payment of Gratuity Act, 1972, s 4

² Payment of Gratuity Act, 1972, s 2E

ARGUMENTS OF PARTIES

Appellants

- i. Anganwadi centers set up under ICDS are ‘establishments’ within the ambit of Section 1(3)(b) of the 1972 Act.³
- ii. The concept of ‘establishment’ under the 1972 Act is much broader than the definition of ‘industry’ under Section 2(j) of the Industrial Disputes Act, 1947.⁴
- iii. It was submitted that as there is a systematic and organized activity carried out in Anganwadi centres with the cooperation of the employer and employees for rendering services, Anganwadi centres will have to be treated as ‘industry.’
- iv. In the alternative, it was submitted that even if clause (b) of Section 1(3)⁵ of the 1972 Act does not apply to Anganwadi centers, clause (c) of Section 1(3) will apply as the government of India has exercised power under clause (c) of Section 1(3) by notifying educational institutions as a class of establishment to which the 1972 Act will apply. Under the ICDS scheme, preschool nonformal education is provided in Anganwadi centres to children of 3 to 6 years. Even teaching about nutrition and health is imparted in Anganwadi centres. Hence, the Anganwadicenters are educational institutions.
- v. Merely because the monthly remuneration paid to AWWs is styled as honorarium, it cannot be conclusive. The definition of ‘wages’ in the Act is very wide to include both categories. AWWs and AWHs are doing full-time jobs involving multiple duties concerning women and children.

Respondents

- i. Under ICDS, AWWs and AWHs are appointed from amongst local inhabitants. Usually, women who are well-versed in cooking, processing food, cleaning, etc., are appointed every year. They are being paid an honorarium and not wages.

³ Payment of Gratuity Act, 1972, s 1(3) (b)

⁴ Industrial Disputes Act, 1947, s 2(j)

⁵ Payment of Gratuity Act, 1972, s 1(3)

- ii. Clause (b) of Section 1(3) refers to 'establishments' within the meaning of any law for the time being in force concerning shops and establishments in a State. ICDS is not an establishment as it does not carry on any business, trade or profession, or any activity connected, incidental or ancillary thereto. The term 'establishment' used in the 1972 Act presupposes an element of commercial activity, which is not in this case. So, the Act is not applicable.
- iii. The honorarium payable to AWWs and AWHs has been enhanced in the year 2020. Though the share of the Central Government in the honorarium has not been increased, under the Government Resolution dated 21st March 2020, the State Government has increased its contribution, and now the remuneration of AWWs is Rs. 7,800/- per month. Also, several other benefits have been made available by the State and Center Government to AWWs.
- iv. It is pointed out that there are 53,029 Anganwadi centers established under the ICDS in the State of Gujarat, and presently there are about 51,560 AWWs and 48,690 AWHs in the entire State. There will be a substantial financial burden of Rs 25 crores on the State if the gratuity is held to be payable.

PROVISIONS/LAW APPLICABLE

- Payment of Gratuity Act, 1962.
- National Food Security Act, 2013
- Right to Education Act, 2009. (RTE Act)
- Industrial Disputes Act, 1947.

CASES REFERRED

- State of Karnataka and others v Ameerbi and Others⁶.
- Bangalore Water Supply and Sewerage Board v A. Rajappa and Others⁷

⁶ *State of Karnataka and others v Ameerbi and Others* (2007) 11 SCC 681

⁷ *Bangalore Water Supply and Sewerage Board v A. Rajappa and Others* (1978) 2 SCC 213

- Ahmedabad Pvt. Primary Teachers' Assn. v Administrative Officer and Others⁸
- Jaya Bachchan v Union of India and Others.⁹
- Sant Ram v Rajinder Lal and Others.¹⁰
- Akhil Bhartiya Anganwadi Kamgar Union (Regd.) v Union of India and Ors.¹¹

JUDGMENT

The bench gave the judgment unanimously, both J. Abhay S. Oka and J. Ajay Rastogi held that the appeal was maintainable and set aside the impugned judgment dated 8th August 2017 of the Division Bench of Gujarat High Court and restored the judgment of the learned Single Judge and other connected cases by holding that the provisions of the 1972 Act apply to AWWs and AWHs working in Anganwadi centers.

It was held that the role of Anganwadi workers/helpers is not only at war against malnutrition but played a pivotal and significant role during the Covid-19 pandemic which was the unprecedented health war faced by the nation in responding to the various challenges posed.

The definition of 'wages' in the Act was widened by the court to include all emoluments which are earned by an employee on duty. "Therefore, the honorarium paid to AWWs will also be covered in wages. Since AWWs are employed by the State Government in the establishments to which the Act applies, they were held to be employees within the meaning of the Act."¹² In view of the said Rules of the Gujarat Government, the Anganwadi centers are not under the control of the Central Government. Therefore, the State Government will be an appropriate Government within the meaning of Section 2(a)¹³ of the Act. Accordingly, a person or

⁸ *Ahmedabad Pvt. Primary Teachers' Assn. v Administrative Officer and Others* (2004) 1 SCC 755

⁹ *Jaya Bachchan v Union of India and Others* (2006) 5 SCC 266

¹⁰ *Sant Ram v Rajinder Lal and Others* (1979) 2 SCC 274

¹¹ *Akhil Bhartiya Anganwadi Kamgar Union (Regd.) v Union of India and Ors.*, (2014) 9 SCC 657

¹² Manu Sebastian, 'Anganwadi Workers & Helpers Are Entitled To Payment Of Gratuity; Anganwadi Centres Are "Establishments" Under 1972 Act: Supreme Court' (*Live Law*, 25 April 2022) <<https://www.livelaw.in/top-stories/anganwadi-workers-helpers-are-entitled-to-payment-of-gratuity-supreme-courtmaniben-maganbhai-bharia-197496>> accessed 25 June 2022

¹³ Payment of Gratuity Act, 1972, s 2(a)

authority appointed by the appropriate Government for the supervision and control of AWWs and AWHs will be the employer within the meaning of Section 2(f)¹⁴.

In the Anganwadi centers, “the activity of running a preschool for the children in the age group of 3 to 6 years is being conducted. It is purely an educational activity. The job of teaching is done by AWWs and AWHs. The State Government is running pre-schools in Anganwadi centers in accordance with Section 11¹⁵ of the RTE Act. Therefore, the Act will apply to AWWs.”¹⁶ Thus, the court directed the State of Gujarat to take necessary steps to extend benefits of the said Act to Anganwadi workers/helpers within 3 months from the date of judgment. They shall be entitled to simple interest at the rate of 10% per annum from the date specified under Section 7(3)(A)¹⁷ of the Act.

ANALYSIS AND CONCLUSION

This is a landmark judgment recognizing the rights of Anganwadi workers to gratuity. There will be several implications of this judgment which are as follows:

Improvement in Job security and Economic conditions of AWWs: Gratuity is a social security measure that will help in improving the job security of AWWs. Although the economic needs of AWWs will not be fulfilled completely just by gratuity only, it is a step toward improving their conditions. It is the duty of the State to provide them more benefits as now they are the grassroots level workers of the welfare state. Better pay and benefits will attract more people to work as AWW which in turn help the State to implement its policies more effectively.

Disguised Nomenclature: An honorarium is the quantum of money offered/conferred to somebody who is especially a professional or well-honoured person for providing services. It is a voluntary process. However, what was being paid to Anganwadi workers/helpers with a nomenclature used by the respondents in projecting the term ‘honorarium’, was in reality the ‘wages’ that have been paid for the services rendered at the end of the month. It is the form of emoluments that is being earned on the discharge of duty in accordance with the terms of

¹⁴ Payment of Gratuity Act, 1972, s 2(f)

¹⁵ Right to Education Act, 2009, s 11

¹⁶ Manu Sebastian (n 12)

¹⁷ Payment of Gratuity Act, 1972, s 7(3) (a)

employment as specified by Section 2(s)¹⁸ of the Act. By clearing this, the Supreme Court has deprecated the practice of the State using disguised nomenclature to avoid payment of Gratuity under the Act. Also, the scope of wages has been widened under the Act.

Improvement in Social Security Services and their Implementation at the grass-root level:

The improvement in working conditions will lead to better services being provided by AWWs to society due to increased job satisfaction. The current pay scale applicable to AWWs is less than the minimum wages of a labourer and it is not possible to survive in that meagre amount. Due to this, they have to search for work somewhere else to provide for the family. This leads to less time and attention to duties of Anganwadi Centers and results in poor quality of services. Improving the working conditions will eventually help the State in tackling this problem efficiently.

Recognition as full-time employment: The wide range and the nature of the duties that AWWs/AWHs have to do daily are time-consuming. The court refused to accept the respondent's contention regarding it is a part-time job, instead, it declared it as a full-time job keeping in mind the pervasive duties.

¹⁸ Payment of Gratuity Act, 1972, s 2(s)