

State Of Karnataka & Ors vs Ameerbi & Ors on 7 December, 2006

Equivalent citations: AIRONLINE 2006 SC 648

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 4953-4957 of 1998

PETITIONER:

State of Karnataka & Ors

RESPONDENT:

Ameerbi & Ors

DATE OF JUDGMENT: 07/12/2006

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B. Sinha, J.

The Central Government floated a Scheme known as Integrated Child Development Service (ICDS) Programme in the year 1975. It is funded by the Central Government. Its application, however, is at the hands of the respective States. Anganwadi workers are appointed from amongst the local inhabitants. Selection is made by a committee. Under the Scheme, about one hundred Anganwadi workers are required to be recruited from each of the urban and rural projects and 50 for the tribal projects, whereas one for each Anganwadi Worker is to be appointed as a helper. The staff pattern for ICDS Project is stated in para 3.1.18 of the Scheme which is as under:

"3.1.18 Staff for ICDS Project: Presently, a normal ICDS project has one post each of CDPO, Assistant, Statistical Assistant, Clerk/ Typist, Driver and Peon. Thus the present staff has 3 ministerial hands, namely, the Statistical Assistant, Assistant and LDC. For manning these 3 posts, the State Governments/UTs can chose any 3 suitable class III (Category C) posts and designations (such as Senior Clerk, UDC, Jr. Clerk, LDC, Accountant, Accounts Clerk etc.) and let these 3 posts be manned by them. These posts can carry pay scales as per State Government's rules and this Ministry will provide funds fully for all such posts. The redesignation of these posts would depend upon the nature and the type of work involved at the project headquarters and the precise types of personnel whom the State Government

consider fit for such work."

Anganwadi workers filed an application purported to be under Section 15 of the Administrative Tribunals Act, 1985 (for short "the Act") before the Karnataka State Administrative Tribunal. In one of such applications being Nagarathna B.K. & Others v. The Secretary, Social Welfare Dept. & Others [1992 K.S.L.J. 177], it was held that the said application was not maintainable. Correctness of the said decision came to be questioned. The matter was referred to a larger bench of the Tribunal. By reason of the impugned judgment, the Tribunal held the said application to be maintainable opining that although Anganwadi workers and helpers are paid honorarium, they hold civil post.

The State of Karnataka is before us questioning the correctness of the said judgment. This Court issued notice to Union of India also. It has also filed a counter affidavit.

Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the appellants, took us through the scheme and submitted that whereas certain posts are sanctioned and created, bulk of them are not sanctioned and required to be filled up from amongst the volunteers from the community. It was contended that they merely act as conduit to implementation of some welfare schemes. They may have to work for a maximum period of 4 and = years. They are not holders of civil posts. They can contest elections. It was submitted that for filling up of the said posts, no advertisement is required to be made, nor the provisions of the recruitment rules are required to be complied with.

Ms. Rekha Pandey, learned counsel appearing on behalf of Union of India would support the contention of Mr. Hegde supplementing that Anganwadi workers are appointed on a budget scheme and if it is to be held that they and their helpers who were to work as volunteers to render certain services, are treated to be State Government or Central Government employee, the scheme itself would become non-functional. The scheme of the Central Government, it was pointed out, is an All India scheme and in the event the judgment of the Tribunal is upheld, the same would lead to serious financial implications.

Ms. Indira Jaisingh, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that the question as to whether Anganwadi workers hold civil post or not must be considered having regard to the tests laid down by this Court in determination of the relationship of employer and employee.

The learned counsel would urge that casual railway employees, part- time employees having been held by this Court to be holders of civil post, there is no reason as to why the respondents would be treated differently. It was submitted that Anganwadi workers must not be paid wages less than the minimum wages fixed by the State as the same would amount to beggary. Emoluments of an employee, the learned counsel would urge, must be fair and reasonable.

It was further submitted that the nomenclature of payment is not decisive. Our attention in this connection has also been drawn to the definition of 'post' as contained in Section 3(k) of the Act.

The Scheme was floated by the Central Government with certain objects. The staff pattern at the project level has been laid down in the Scheme itself. What would be meant by sanctioned post is evident from paragraph 3.1.18 of the Scheme as noticed hereinbefore. Indisputably Anganwadi workers and helpers were not to be appointed on a pay scale. They are to be paid honorarium. The amount of honorarium has since been increased and just at present is as under:

"Anganwadi Workers Qualification/ Experience 1975-76 1.4.78 1.7.96 2.10.92

16.5.97 1.4.02 Non Matriculate 100/-

125/ 225/-

350/-

438/-

938/-

Matriculate 150/-

175/-

275/-

400/-

500/-

1000/-

Non Matriculate with 5 years exp.

-

-

250/-

375/-

469/-

969/-

Matriculate with 5 years exp.

-

-

300/-

425/-

531/-

1031/-

Non Matriculate with 10 yrs.

Exp.

-

-

275/-

400/-

500/-

1000/-

Matriculate with 10 yrs.

Exp.

-

-

325/-

450/-

563/-

1063/-

Anganwadi Helpers 35/-

50/-

110/-

200/-

260/-

500/-"

The Scheme is on a year to year basis. The Scheme although is to be directly under the control of the State Governments, the financial burden is to be borne by the Central Government.

There is no fixed criteria as regards honorarium. Some States pay honorarium as fixed by the Central Government but some others pay additional honorarium from their own resources. Union of India has also constituted a Review Committee pursuant to its recommendations the following benefits have been granted:

"i. The Anganwadi Workers and Helpers have been allowed 'paid absence' on maternity for a period of 135 days vide letter dated 28.12.2001 ii. The U.O.I. initiated a scheme, on a year to year basis for awards for selected Anganwadi workers on the basis of their dedication and performance. The scheme for award for Anganwadi workers was first introduced for 2000- 2001 and thereafter extended for 2002-2003 is under process. The scheme provides for

(a) Award at the Central-level comprising of cash of Rs. 25,000/- and a citation for 20 Anganwadi Workers, and

(b) Awards at the State-level comprising of cash of Rs. 2,500/- and a citation for 1275 selected Anganwadi Workers.

iii. The State Governments have been requested vide letter dated 28.02.2001 to consider and implement the following recommendations of the committee, which call within the purview of the States:-

(a) State/ UT Government should contribute some monetary incentive to these workers for the additional work assigned to the Anganwadi Workers and Helpers under various schemes and programmes.

(b) "Anganwadi Workers and Helpers Welfare Fund" may be set up by the State/ UT Governments at the State/ UT level out of the contribution from Workers/ Helpers and State/ UT Governments.

(c) State/ UT Governments should provide group insurance facilities to Anganwadi Workers and Helpers.

(d) The honorary contribution in Anganwadi centers by Anganwadi Workers and Helpers should be treated as additional qualifications for recruitment as primary school teachers, ANMs and other such village based positions. Specific quota for recruitment in these positions may be fixed up."

Recommendations of the Committee have also been directed to be implemented by the States which would fall within their purview.

The posts of Anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and Anganwadi workers but it is another thing to say that they are holders of civil post.

We are not oblivious of the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry a large number of activities, primarily amongst them being the welfare of the children.

In a written submission, the interveners state that Anganwadi workers as of necessity are required to perform a large number of functions. We, however, are not inclined to consider the correctness or otherwise of the said statements made before us for the first time. No material in this behalf was brought on the records of the Tribunal. The Tribunal proceeded to deliver its judgment applying certain principles and overruling the decision of the Division Bench, the correctness whereof falls for our decision.

We, as at present advised, are not inclined to enlarge the scope of this appeal and, thus, refuse to go to the factual details of the matter, particularly, when they do not form part of the records.

Before we advert to the rival contentions of the parties, we intend to examine the decision of this Court whereupon strong reliance has been placed by the learned course for the respondents.

In *State of Assam & Ors. v. Shri Kanak Chandra Dutta* [1967 (1) SCR 679] the question before a Constitution Bench was as to whether a Mauzadar appointed for the purpose of collection of revenue under a system prevailing in the Assam Valley would be holder of a civil post. Answer to the said question was rendered in the affirmative opining:

"The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 to 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's 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 the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post."

Applying the said principles of law, it was held that a Mauzadar holds a civil post under the State as :

- (i) the State has the power and the right to select and appoint him; (ii) he is subordinate to public servant; (iii) he receives remuneration by way of a commission and sometimes a salary; (iv) there exists a relationship of a Master and a Servant; (v) he holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached; (vi) the office falls vacant on the death or removal of the incumbent; (vii) he is a responsible officer exercising delegated powers of Government; (viii) he is appointed revenue officer.

Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. 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. No process of selection for the purpose of their appointment within the constitutional scheme existed. We do not think that the said decision has any application in the instant case.

Our attention has also been drawn to a decision of this Court in *Union of India and Others v. Deep Chand Pandey and Another* [(1992) 4 SCC 432] wherein casual employees were found to come within the purview of Section 14(1) of the Act holding:

" An examination of Section 14 and Section 3(q) clearly indicates that the Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation "

In that case, the employees were seeking temporary status. They had claimed their right to continue in employment. In view of the nature of claim, it was opined by this Court that the application under Section 14 of the Act was maintainable.

Local bodies employees having regard to the notification issued under the Act were also held to come within the purview of the Act in *R.N.A. Britto v. Chief Executive Officer and Others* [(1995) 4 SCC 8] wherein following *Shri Kanak Chandra Dutta (supra)* it was held that the Panchayat Secretaries having regard to the provisions of the Karnataka Village and Local Boards Act are government servants, stating:

"13. Another significant provision is Sub-section (2) of Section 80 of the Act which says that subject to the provisions of Rules made under the proviso to Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed.

14. The provisions in the Act to which we have adverted, clearly show that several functions which were required to be performed by the State are entrusted to the Panchayats. They also show that the properties vested in the Panchayats and the funds of the Panchayat are that of the Government and those collected by way of tax or fee by exercising the power of taxation vested in the Panchayat by the Government. Above all, provisions of the Act make it abundantly clear that the Panchayats have to function under the ultimate control of the State Government. When it comes to the Secretaries of the Panchayats appointed under the Act, their selection for appointment, their termination from service, their liability for transfer and all other conditions of their services are as provided for under the Rules made under the Act or other rules made under Article 309 of the Constitution in respect of services of the State Government servants. When Sub-section (2) of Section 80 of the Act to which we have adverted states that subject to the provisions of Rules made

under the proviso of Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed, it leaves no room for doubt that the Secretaries of the Panchayats are Government servants, like other Government servants, who are subjected to the Rules to be made under the proviso to Article 309 of the Constitution as regards their service conditions."

The said decision *ex facie* cannot be said to have any application in the instant case.

Reliance has also been placed by Ms. Jaisingh on *State of U.P. and Others v. Chandra Prakash Pandey and Others* [(2001) 4 SCC 78]. The question which was involved therein was appointment of Kurk Amins on salary basis for realization of dues of cooperative society. Again following *Shri Kanak Chandra Dutta (supra)*, it was held that Kurk Amins having been appointed by the State for the purpose of collection of revenue would be holders of civil post.

We may, however, notice that the Bench referred to a decision of this Court in *The Superintendent of Post Offices and Others v. P.K. Rajamma* [(1977) 3 SCC 94] where extra-departmental agent was held to be not a casual workers but holds a post under the administrative control of the State.

In *P.K. Rajamma (supra)*, a 3-Judge Bench of this Court made a distinction between a post held under the administrative control of a State and another who is a casual workers.

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.

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.

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-à-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.

The result of an appointment being made in violation of the Constitutional scheme has recently been noticed by a Constitution Bench of this Court in *Secretary, State of Karnataka and Others v.*

Umadevi (3) and Others [(2006) 4 SCC 1].

One of the questions which was raised before us was in regard to the right of an Anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled thereto.

In *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Another* [(1992) 4 SCC 404], this Court while considering the provisions of Article 191(1)(a) of the Constitution of India in relation to the posts held by the employees of an Integrated Tribal Development Agency opined that their employees would not be holder of office of profit although the State exercises control thereover holding:

"It is also necessary to bear in mind that the Government is undertaking several projects and activities including commercial activities through the corporations and local bodies exercising some control over such corporations or bodies. In that view of the matter they may come within the meaning of the "State" envisaged in Article 12 but that may not be a decisive factor in deciding the issue. As a matter of fact Section 10 of the Representation of People Act as well as Article 58(2) of the Constitution of India do indicate that all persons employed in such undertakings, corporations or local bodies cannot be deemed to suffer disqualification for contesting the elections except to the extent indicated therein. This aspect also has been considered in some of the above- mentioned decisions. If a strict and narrow construction is to be applied that amounts to shutting off many prominent and other eligible persons to contest the elections which forms the fundamental basis for the democratic set-up. Therefore several factors as indicated above depending upon the facts of each case have to be taken into consideration in deciding whether a particular person is disqualified by virtue of his holding an office of profit before concluding that such an office is under the Government "

The decision, therefore, is an authority for the proposition that those employees who come within the meaning of Article 12 of the Constitution of India are not necessarily government servants. A'fortiori the State in terms of a scheme may exercise control over a section of the persons working but thereby only, they do not become entitled to protection under Article 311 of the Constitution of India.

Reference to the provisions of the Minimum Wages Act, in our opinion, is also not apposite. The said Act is applicable to the workmen working in the industries specified therein. It is not the case of the respondents that the ICDS programme would constitute an 'industry' or Anganwadi workers are industrial workmen. There cannot be any doubt whatsoever that it is one thing to say that the State would be liable to pay minimum wages irrespective of its financial constraints but it is another thing to say that as to whether such a claim can be raised in respect of those who are working under a project. It is not a case where the concept of minimum wage, living wage or fair wage can be brought in service.

Different tests applied even for determining the relationship of employer and employee have recently been noticed by this Court in District Rehabilitation Officer & Ors. v. Jay Kishore Maity & Ors.[2006 (11) SCALE 545]. In that case, in almost similar project, the employees appointed by the District Rehabilitation Centre claimed themselves to be the Central Government employees. Each case, therefore, has to be considered on its own merits.

This Court cannot determine a lis only on sympathy.

In Ramakrishna Kamat and Others v. State of Karnataka and Others [(2003) 3 SCC 374] albeit in the light of right of regularization in service, this Court opined:

" It is clear from the order of the learned single Judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long (SIC) seeking employment "

[See also Maruti Udyod Ltd. v. Ram Lal and Others, (2005) 2 SCC 638, State of Bihar & Ors. v. Amrendra Kumar Mishra, 2006 (9) SCALE 549 and Regional Manager, SBI v. Mahatma Mishra, 2006 (11) SCALE 258] It is also not a case where the doctrine of parity of employment can be invoked. It is true that nomenclature of a term of payment is not decisive but the substance is as was held in Jaya Bachchan v. Union of India and Others [(2006) 5 SCC 266], but the question has to be determined having regard to the issue involved. We are concerned herein with only one question, viz., whether the respondents are holders of any civil post. We are, having regard to the materials on record, of the view they are not.

Keeping in view of the facts and circumstances of this case, we are of the opinion that the Tribunal has no jurisdiction to entertain the application. The appeals are allowed accordingly. No costs.