

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 3153 OF 2022**

**(@ SLP(CIVIL) No. 30193 of 2017]**

**MANIBEN MAGANBHAI BHARIYA**

**... APPELLANT(S)**

**v.**

**DISTRICT DEVELOPMENT OFFICER**

**DAHOD & ORS.**

**... RESPONDENT(S)**

**WITH**

**CIVIL APPEAL NO(S). 3154 OF 2022**

**(@ SLP(CIVIL) No. 30834 of 2017]**

**CIVIL APPEAL NO(S). 3155 OF 2022**

**(@ SLP(CIVIL) No. 30809 of 2017]**

**CIVIL APPEAL NO(S). 3156 OF 2022**

**(@ SLP(CIVIL) No. 30820 of 2017]**

**CIVIL APPEAL NO(S). 3157 OF 2022**

**(@ SLP(CIVIL) No. 5392 of 2018]**

**AND**

**CIVIL APPEAL NO(S). 3158 OF 2022**

**(@ SLP(CIVIL) No. 29011 of 2018]**

## J U D G M E N T

**Rastogi, J.**

1. I have had the advantage of going through the judgment penned by my brother Abhay S. Oka, J. I entirely agree with the conclusions which my erudite Brother has drawn, based on the remarkable process of reasoning. I wish to add few lines and express my views not because the judgment requires any further elaboration but looking for the question of law that emerged of considerable importance.

2. The moot question which has been raised in the instant appeals for our consideration indeed is a question which may not only determine the rights of the contesting appellants working as Anganwadi workers/helpers who are discharging a pivotal role in the society at the grassroot level and are the role model of the ICDS

scheme which is one of the extended arm of the Ministry of Women and Child Development, at the given time, it may also give a thought process to the Legislature to consider as to whether the applicability of gratuity being a social security measure, be extended to the employees who served the establishment in an organized or unorganized sector and, in one way or the other, contributing in the sustainable development of the nation.

3. Looking to the large number of persons working in the organized/unorganized sector by passage of time, different social security legislations have been introduced in this largest democratic country, which can be divided into two broad categories, namely, the contributory and non-contributory. The contributory laws are those which provide for financing of the social security programmes by contributions paid by employees and employers and in some cases supplemented by contributions/grants from the Government. At the same time, we have major non-contributory laws such as the Employee's Compensation Act, 1923, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972 with which we are presently concerned.

4. When we talk about social security legislations, two broad categories are social insurance legislation and social assistance legislation. In social insurance, benefits are generally made available to the insured persons under the condition of having paid the required contributions and fulfilling certain eligibility conditions and as regards social assistance, the beneficiaries receive benefits as a matter of right, but they do not have to make any contributions and to support thereof, the finance is made available either by the State or a source provided by the State/Central Government.

5. Before the enactment of the Payment of Gratuity Act, 1972 (hereinafter referred to as “Act, 1972”), there were two State Laws providing for payment of gratuity. These were the Kerala Industrial Employees’ Payment of Gratuity Act, 1970 and the West Bengal Employees’ Payment of Gratuity Act, 1971. The question of having a central legislation on the subject was discussed at length in the Labour Minister’s Conference held on many occasions and after general consensus was reached, the Central Legislation was

enacted in the form of The Payment of Gratuity Act, 1972, which was brought into force on 16<sup>th</sup> September, 1972.

6. When we talk about the mandate of the Act 1972, if one looks into the scheme in a holistic manner, gratuity is a reward for good, efficient and faithful service rendered for a considerable period and the employee who remains in continuous service for 5 years or more including superannuation/retirement/resignation/untimely death becomes qualified to claim gratuity in terms of the computation as has been provided under Sub-section (2) of Section 4 of the Act, 1972 which covers in its fold, the large sector of organized/unorganized workers/employees who are employed in various class of establishments covered under Section 1(3)(a) & (b) and also notified by the Central Government under Section 1(3)(c) of the Act 1972. Such of the employees working under the establishments referred to under Section 1(3) (a),(b) and (c), as the case may be, shall be eligible to claim payment of gratuity in terms of Section 4 of the Act, 1972 and so far as the term 'wages' defined under Section 2( s) of the Act 1972 is concerned, it appears to be only for the purpose of computation as provided under Sub-section

(2) of Section 4 of the Act and withholding of gratuity is not permissible under any circumstances other than those enumerated under Sub-section (6) of Section 4 of the Act, 1972. The employee defined under Section 2(e) has a right to claim gratuity as a statutory right while working in the establishment covered under Section 1(3) of Act 1972. Section 1(3) and 2(e) and 2(s) of Act, 1972 relevant for the purpose are referred to as under:-

“1(3) It shall apply to –

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, or, any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

2. **Definitions.** – In this Act, unless the context otherwise requires,

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.....

(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

.....

(s) “wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

7. Act, 1972 on the genre of statutes like The Minimum Wages Act, Employees State Insurance Act, etc. is a welfare measure to secure social and economic justice to employees to assist them in old age and to ensure them a decent standard of life on retirement.

8. Derived from a Latin word ‘Gratuitas’, the term Gratuity means a ‘Gift.’ In the industrial sector, gratuity is considered as a gift from the employers to their employees. Gratuity is a lump sum payment paid by an employer to the employee for his/her past dedicated services. It is a gesture to appreciate the efforts of a person towards the betterment, development and prosperity of an establishment and that is the reason for which gratuity is considered to be a social security, and with passage of time, it has become a statutory obligation on the part of employers.

9. Thus, gratuity, as a social welfare legislation, its effective implementation is of paramount importance to fulfil the legitimate

expectation of the employees. So far as the unorganized sectors are concerned, these Acts have been pillars in social security and laid the foundation for improvement in standards of living of the employees.

10. The Act 1972 is a social security legislation to wage earning population in industries, factories and establishments, etc. Therefore, considering the inflation and wage increase even in case of employees engaged in private sector, the Government decided that the entitlement of gratuity should be revised in respect of employees who are covered under Act, 1972 and accordingly, the Government initiated the process for amendment to Act, 1972 to increase the maximum limit of gratuity to such amount as may be notified by the Central Government from time to time.

11. This will indeed ensure harmony amongst employees in the private sector and in Public Sector Undertakings/Autonomous Organizations under Government who are not covered under CCS (Pension) Rules. These employees will be entitled to receive higher



amount of gratuity may not be at par with their counterparts in Government sector.

12. That appears to be the reason for which amendments are made in the year 2007 to widen the definition of the term “employee” and to bring under its fold the large number of employees working in various establishments employed for wages or in any kind of work or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or any other establishment. Even by later notification, teachers have also been held eligible to claim gratuity.

13. When social security legislations are being interpreted, it always has to be interpreted liberally with a beneficial interpretation and has to be given the widest possible meaning which the language permits, known as Beneficial Interpretation. When a statute is meant for the benefit of a particular class and if a word in the statute is capable of two meanings, i.e., one which would preserve the benefits and one which would not, then the former is to be adopted.

14. Maxwell on Beneficial Construction holds the following:

“The construction of a statute must not strain the words as to include cases plainly omitted from the natural meaning of the

language. Nevertheless, even where the usual meaning of the words falls short of the object of the legislature, a more extended meaning will be attributed to them if they are fairly susceptible to it. The relaxation of strictly literal rule of interpretation is known as beneficial construction.”

15. This Court had an occasion to examine discussions in detail about constructive and welfare legislations. The judgment in **State Bank of India Vs. Shri N. Sundara Money**<sup>1</sup> followed with **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others**<sup>2</sup>; **Sant Ram Vs. Rajinder Lal and others**<sup>3</sup> and later the Constitution Bench in **Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others**<sup>4</sup> are the exposition of law on the subject.

16. When we examine the judicial precedents while interpreting the Act 1972, we come across certain judgments of this Court in **State of Punjab Vs. Labour Court, Jullundur and others**<sup>5</sup>; **Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer**

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1 1976(1) SCC 822

2 1978(2) SCC 213

3 1979(2) SCC 274

4 2001(7) SCC 1

5 1980(1) SCC 4

***and others***<sup>6</sup>; ***Jaya Bachchan Vs. Union of India and others***<sup>7</sup>;  
***State of Karnataka and others Vs. Ameerbi and others***<sup>8</sup> and  
***Birla Institute of Technology Vs. State of Jharkhand and others***<sup>9</sup>  
may be in the different context.

17. While advertng to the facts of the instant cases, it manifests 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 4 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 learned Single Judge of the High Court vide judgment dated 6<sup>th</sup> June, 2016 but the finding returned by the learned Single Judge came to be

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6 2004(1) SCC 755

7 2006(5) SCC 266

8 2007(11) SCC 681

9 2019(4) SCC 513

reversed by the Division Bench of the High Court under the impugned judgment primarily relying on the judgment of this Court in **Ameerbi** (supra). The details of each of the appellant who had served in Anganwadi workers/helpers are reproduced below:-

	Date Of Joining	Date of Retirement	Number of Years of Service	Amount directed to be paid towards gratuity
SCA 1219/2016	1982	27.02.2011	29	Rs.20,913/-
SCA 1220/2016	19.01.1984	30.04.2011	27	Rs.38,942/-
SCA 1221/2016	03.08.1983	30.04.2006	23	Rs.13,269/-
SCA 1222/2016	16.04.1981	29.02.2012	31	Rs.22,356/-
SCA 1223/2016	03.06.1989	20.02.2006	21	Rs.15,144/-

18. This Court took a judicial notice that after the incumbent has served for 21-31 years but because of the wages being admissible at the relevant time being Rs. 1000/- or Rs. 1250/- per month, the amount which has been computed towards gratuity in terms of the provisions of the Act 1972 is only into thousands of rupees.

19. The role of Anganwadi workers (AWW) and Anganwadi helpers (AWH) is not only at war against malnutrition but have 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. These frontline women workers are the backbone of the ICDS. The ICDS scheme was introduced on 2<sup>nd</sup> October, 1975 and by this time has successfully completed its journey of 47 years and established its roots. The record shows that ICDS is the world's largest programme for early childhood care and development, covering over 158 million children as per 2011 census, and pregnant and lactating mothers in the country. If we go as per the statistics as of June 2018, there were 1.36 million functional Anganwadi centres spread across all the districts in the country. These districts are staffed by frontline health staff: one Anganwadi worker and one Anganwadi helper. Majority of these centres are located in difficult terrains and these women have to trek for kilometres every day to discharge their duties. In the pandemic, these workers took the additional duty to home-deliver ration to ICDS beneficiaries and also educate rural

people about dos and don'ts of coronavirus and prepare a list of outsiders visiting the villages.

20. ICDS scheme is not just a welfare scheme but a means of protecting the rights of children under six- including their right to nutrition, health and joyful learning and rights of pregnant and lactating mothers. The survival, well-being and rights of children become social issues of interest to the whole community and not just to the mothers of the families concerned. "Socialised childcare" also contributes to the liberation of women: it lightens the burden of looking after children, provides a potential source of remunerated employment for women and gives them an opportunity to build women's organizations. In light of these rich contributions of childcare to social progress, ICDS deserves far greater attention in public policy since ICDS acts as an institutional mechanism for realization of child and women rights. Yet these services are regarded as State largesse rather than as enforceable entitlements.

21. If we take a holistic view of the matter, extending social security to the early child care and development of millions of

children of this country, health and nutrition services to children is a good investment. The study indicates that returns to child nutrition are quite high, or at least can be quite high in this country. Thus, ICDS is an extended arm of the Ministry of Women and Child Development and their nature of services been provided to a common man must be acknowledged by the legislation.

22. The National Family Health Survey (2005-06) indicates that 48% of children under five are stunted and 43% are underweight for their age. There is a worldwide consensus among psychologists, educationists, pediatricians and sociologists regarding the significance of early years of life for the optimum development of child. Early childhood is a time of remarkable brain development that lays the foundation for later learning and any damage or impoverishment suffered at this stage is likely to be irreparable. These are years of extreme vulnerability and tremendous potential during which adequate protection, care and stimulation are essential to provide the foundation for the child's well-being and development. A lack of adequate nutrition and proper care has irreversible consequences. Poor nutrition has a negative impact on

school enrollment and readiness. Undernourished children are less likely to enroll in school and would drop out, if enrolled. A severe or chronic lack of essential nutrients in childhood impairs language, motor and socioemotional development. In addition, extending the provision of safe drinking water and proper sanitation would reduce infant and child mortality drastically.

23. When we talk about fundamental rights and rights of children under six years, recognizing the significance of child-care and development in realizing the goal of national progress, the Founding Parents enacted several provisions concerning welfare and development of children, especially in Parts III and IV of the Constitution. The Fundamental Rights and Directive Principles of State Policy have provided an inspiration to all legislations concerning child welfare, education and development.

24. Article 15(3) provides for affirmative action for women and children and is of great significance under which several beneficial laws and programmes have been passed. Jurisprudence developed by passage of time under Article 21 of the Constitution by this



Court underlines the primary importance of early childhood developments. As right to food, nutrition and health have been judicially crafted as being part and parcel of the Right to Life to which every citizen, including a child is entitled to. It is taking this approach that right to free education up to the age of 14 years was read into Article 21 by this Court in ***Unni Krishnan J.P. and others Vs. State of Andhra Pradesh and others***<sup>10</sup>.

25. This Court, while creating such right made an important observation that Right to Life has to be read in light of Directive Principles of State Policies, viz. Articles 41, 45 and 46, eventually, give specificity of the needs of children under six, and the value of having a positive right ensuring to the child the right to full development, Article 21-A was inserted through the 86<sup>th</sup> Amendment Act, 2002 in the Constitution, recognising the fundamentality of the right to education for children between the age group of six to fourteen. Although the 86th Amendment brought a Directive Principle of State Policy, ignored until now, within the folds of Part III of the Constitution, it excluded children

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10 (1993)4 SCC 111

below the age of six, thus denying them education for proper growth and development.

26. When we talk of national development, their concerns were amply reflected in the enactment of Articles 39(e) and (f) of the Constitution. These two provisions provide for health care and protection of its citizens, including children. While Article 39(e) stipulates that the State shall direct its policy towards securing “that the health and strength of workers, men and women and the tender age of children are not abused” and “that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”. At the same time, Article 39(f) requires the State to ensure that “the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.”

27. Article 45 provides that “the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years”. This provision makes the right to

early childhood care and education an explicit Constitutional Objective, which can be further supported by later enactment in October 2010, i.e., the Right of Children to Free and Compulsory Education Act, 2009 (RTE), that came to be introduced “with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children”.

28. Health and nutrition are other sectors which are also primary area for young child. The right to nutrition and healthcare in fact constitutes the most basic and fundamental right of children. Absence of legally enforceable entitlements makes children especially under-six more vulnerable to neglect and discrimination.

29. At the same time, health, especially the reproductive health of the mother and the health of the infant child are closely related. Recognizing this close relationship, this Court in a petition (popularly known as petition for right to food) filed by the PUCL

held Central and State Government responsible for providing ICDS services including supplementary nutrition, nutrition and health, education, etc. not only to every child under the age of six but to pregnant women and lactating mothers as well – a clear endorsement of binding relation of mother and child’s health.

30. Further recognizing the special needs of pregnant and lactating mother and its relation to child’s health, which has been acknowledged and recognized under Section 4 of the National Food Security Act, 2013 wherein provisions have been made entitling such women to “meal, free of charge during pregnancy and six months after the child-birth, through local Anganwadi, so as to meet the nutritional standards specified in Schedule II of the Act.”

31. The vision of ICDS scheme is to empower women living with dignity to contribute as equal partners in development in an environment free from violence and discrimination along with well nurtured children with full opportunities for growth and development in a safe and protective environment.

32. The mission and mandate of the scheme of ICDS is to promote social and economic empowerment of women through cross-cutting policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them to realize their human rights and develop to their full potential. The second is to ensure development, care and protection of children through cross-cutting policies and programmes, spreading awareness about their rights and facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential.

33. When we go further and take note of ICDS scheme implemented through Anganwadis, a pivotal role is being played by Anganwadi workers and Anganwadi helpers, by taking care of children in the age group 0-6 years, which, as already observed, constitutes around 158 million children as per 2011 census. These children are the future human resource of the country. The Ministry of Women and Child Development is implementing various schemes for welfare, development and protection of children.

34. ICDS Scheme is one of the flagship programmes of the Government of India and represents one of the world's largest and unique programmes for early childhood care and development. It is the foremost symbol of country's commitment to its children and nursing mothers, as a response to the challenge of providing pre-school non-formal education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality on the other. The beneficiaries under the Scheme are children in the age group of 0-6 years, pregnant women and lactating mothers.

35. The objectives of the Scheme are:

- to improve the nutritional and health status of children in the age-group 0-6 years;
- to lay the foundation for proper psychological, physical and social development of the child;
- to reduce the incidence of mortality, morbidity, malnutrition and school dropout;
- to achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and
- to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

36. If we examine the role of Anganwadi workers/helpers, in the context of community support and participation, they have played a significant role in facilitating child nutrition. A conjoint reading of Sections 3, 4, 5, 6 & 7 of the National Food Security Act, 2013 would unerringly point to the fact that effective implementation of the aforementioned provisions of the Act largely depends on the Anganwadis, which are run by Anganwadi workers/helpers, etc., who are village level workers/ward level workers and in charge for delivery of the various services envisaged under the Act.

37. Their daily tasks include taking responsibility for pre-school activities for children in the age group of 3-6 years, arranging supplementary nutritional food for children of age group 6 months to 6 years and expectant and nursing mothers, giving health and nutrition education to mothers, making home visits for educating parents, eliciting community support and participation, assisting the Primary Health Centre Staff in implementation of immunization, among others.

38. Anganwadi workers/helpers are the key facilitators of child nutrition initiatives at the ground level and involved in performing the work of dissemination, publicity, building awareness, and implementation of various schemes of the Government. No wonder, the strength of Anganwadi Centres has increased manifold by passage of time in the country.

39. Anganwadi workers/helpers also function as a bridge between the Government and the targeted beneficiaries in delivering a bouquet of services stipulated under the NFSA. They work in proximate quarters with the beneficiaries and their services are utilized by the respective State Governments for a wide range of activities - be it survey, promotion of small savings, providing health care, group insurance, or non-formal education.

40. If we look towards the problems plaguing the Anganwadi workers/helpers, the first and foremost, they are not holders of civil posts due to which they are deprived of a regular salary and other benefits that are available to employees of the State. Instead of a salary, they get only a so called paltry '*honorarium*' (much lower



than the minimum wages) on the specious ground that they are part-time voluntary workers, working only for about 4 hours a day.

41. The other argument which has been advanced by the learned counsel for the respondents denying them parity with other employees is that their work is stated to be of a community participation and their names are neither sponsored from the employment exchange nor they are bound by the code of conduct. The further objection raised is that posts have been filled up without advertisement and there is no requirement to comply with any statutory recruitment rules.

42. It may be relevant to note that the contribution of Anganwadi workers/helpers at the grassroot level under the ICDS scheme is being well acknowledged by the Government of India, Ministry of Women and Child Development and in the last few years, it has also witnessed not only an exponential increase in the Anganwadi centres/workers but also significant specific efforts aimed at ensuring quality in the delivery of services and community participation. Indeed, the responsibilities of the Anganwadi

workers/helpers have tremendously increased which now require to perform multiple tasks ranging from delivery of vital services, involving Community/women's groups/Mahila Mandals and for ensuring the effective convergence of various sectoral services. For restructuring and strengthening of ICDS, provisions have been made for rationalization of appointment of Anganwadi workers as Supervisors which is a cadre post under the Government.

43. The relevant part of the policy decision dated 15<sup>th</sup> September, 2015 is referred to as under:-

“The above position has been reviewed keeping in view the aspirations of these field functionaries, to encourage their participating in the higher posts vis a vis their merit and to improve their career prospects. The following guidelines on promotion and appointment of AWWs to the posts of Supervisors, in supersession of earlier guidelines, are conveyed to the States/UTs for compliance:

- (i) The 50% of vacancies in the posts of Supervisors would be filled up by promotion from amongst AWWs with 10 years of experience as AWWs and having the prescribed educational qualifications as per the Recruitment Rules for the post of Supervisor, failing which the vacancies would be filled up by direct recruitment; and
- (ii) The remaining 50% vacancies in the posts of Supervisors would be filled up by direct recruitment.

...

It is requested that the States/UTs may amend recruitment Rules for the posts of Supervisors as per the above guidelines on urgent

basis and a copy of such Recruitment Rules, after being notified, may be sent to the Ministry.”

44. This appears to be the reason that on acknowledging their services on account of an exponential increase in Anganwadi centres/workers which has been recognized by Government of India, the opportunities are made available to Anganwadi workers/helpers being brought into the mainstream and to become Government employee, with a passage of time.

45. That apart, the Government of Gujarat has also come with a composite scheme vide its Resolution dated 25<sup>th</sup> November, 2019 laying down the procedure according to which selections shall be made through a transparent procedure to be followed laying down the eligibility criteria (including academic qualification) according to which the merit list of the candidates who had participated in the selection process for post of Anganwadi workers/helpers shall be made and if any participant/applicant is dissatisfied or aggrieved by the process of selection held by the authorities, can prefer an appeal to the Committee constituted for the said purpose.

46. Further, those who are finally selected and appointed as Anganwadi workers/helpers shall be governed by the Code of Conduct and they could also to be terminated, if any misconduct being committed in discharge of duties or on attaining the age of superannuation.

47. Thus, the in-built transparent procedure has been prescribed by the State of Gujarat under its Resolution dated 25<sup>th</sup> November, 2019 laying down the mode of selection along with service conditions to be regulated while working as Anganwadi workers/helpers at Anganwadi centres and they shall retire at the age of superannuation. This controls the effective working of Anganwadi workers/helpers in various Anganwadi centres.

48. Learned counsel for the State has given much stress on the honorarium paid to the Anganwadi workers/helpers. Suffice it to say that the honorarium is basically the quantum of money offered/conferred to somebody who is especially a professional or a well honoured person for providing services. It is a voluntary process. However, what is being paid to Anganwadi

workers/helpers with a nomenclature used by the respondents in projecting the term 'honorarium', is in fact the 'wages' that has been paid for the services rendered at the end of the month. It is the form of emoluments which is being earned on discharge of duty in accordance with the terms of employment defined under Section 2(s) of the Act 1972.

49. So far as the judgment in ***Ameerbi*** (supra) on which the Division Bench of the High Court has placed reliance is concerned, it was a case where the question raised for consideration was as to whether those who are appointed as Anganwadi workers/helpers are holders of civil posts and are entitled to seek protection of Article 311 of the Constitution. In that context, it was held by this Court that they are not holders of civil posts and protection of Article 311 of the Constitution is not available and that was the reason for which the application which was filed at the behest of Anganwadi workers/helpers under Section 15 of the Administrative Tribunal Act, 1985 was held to be not maintainable.

50. In the instant cases, the question which has been raised for consideration is limited to the extent as to whether those who are working as Anganwadi workers/helpers are eligible to claim gratuity under the provisions of the Act, 1972.

51. The judgment of ***Ameerbi*** (supra) relied upon by the Division Bench of the High Court and placed by the respondents before this Court is of no assistance and has no application so far as the question raised before us in the instant appeals.

52. Before parting with the order, I would like to observe that the time has come when the Central Government/State Governments has to collectively consider as to whether looking to the nature of work and exponential increase in the Anganwadi centers and to ensure quality in the delivery of services and community participation and calling upon Anganwadi workers/helpers to perform multiple tasks ranging from delivery of vital services to the effective convergence of various sectoral services, the existing working conditions of Anganwadi workers/helpers coupled with lack of job security which albeit results in lack of motivation to

serve in disadvantaged areas with limited sensitivity towards the delivery of services to such underprivileged groups, still being the backbone of the scheme introduced by ICDS, time has come to find out modalities in providing better service conditions of the voiceless commensurate to the nature of job discharged by them.

53. In my considered view, the appeals deserve to succeed and are accordingly allowed and the impugned judgment dated 8<sup>th</sup> August, 2017 of the Division Bench of Gujarat High Court being unsustainable in law is hereby set aside.

.....**J.**  
**(AJAY RASTOGI)**

**NEW DELHI**  
**APRIL 25, 2022.**

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## **J U D G M E N T**

**ABHAY S. OKA, J.**

Leave granted.

1. The issue involved in these appeals is whether Anganwadi workers and Anganwadi helpers appointed to work in Anganwadi centres set up under the Integrated Child Development Scheme (for short “ICDS”) are entitled to gratuity under the Payment of Gratuity Act, 1972 (for short “the 1972 Act”). The appellants are Anganwadi workers and/or their organisations. The appeals arise out of writ petitions filed by the District Development Officer and two other officers for taking exception to the orders passed by the Controlling Authority under the 1972 Act. The finding rendered by the Controlling Authority which was confirmed by the Appellate Authority was that Anganwadi Workers (AWWs) and Anganwadi Helpers (AWHs) are entitled to gratuity under the 1972 Act. The Appellate Authority confirmed the said orders. The learned Single Judge dismissed the writ petitions. In

Letters Patent Appeals, a Division Bench of Gujarat High Court interfered and set aside the orders passed by the Controlling Authority and the appellate authority under the 1972 Act. The Division Bench held that AWWs and AWHs could not be said to be employees as per Section 2(e) of the 1972 Act, and the ICDS project cannot be said to be an industry. It was held that as the remuneration or honorarium paid to them cannot be treated as wages within the meaning of Section 2(s) of the 1972 Act, they are disentitled to gratuity. The Judgment of the Division Bench is the subject matter of challenge before this Court.

### **SUBMISSIONS OF THE APPELLANTS**

**2.** Detailed submissions have been made on behalf of the appellants in support of the appeals. The submissions have been made by Shri Sanjay Parikh, the learned Senior Counsel, and Shri P.V. Surendranath, the learned Senior Counsel. The submissions can be summarised as under:

- a) The 1972 Act is a social security welfare legislation. The 1972 Act recognizes that all persons in the society need

protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age, etc.

- b) Anganwadi centres set up under ICDS are ‘establishments’ within the meaning of clause (b) of Section 1(3) of the 1972 Act.
- c) 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 (for short, “the 1947 Act”).
- d) Relying upon a decision of this Court in the case of **Bangalore Water Supply and Sewerage Board v. A. Rajappa and others**<sup>11</sup>, 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.’

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111978 (2) SCC 213

- e) In the alternative, it was submitted that even if clause (b) of Section 1(3) of the 1972 Act does not apply to Anganwadi centres, 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, pre-school non-formal education is provided in Anganwadi centres to children in the age group of 3 to 6. Even teaching about nutrition and health is imparted in Anganwadi centres. Hence, the Anganwadi centres are educational institutions.
- f) Placing reliance on a decision of this Court in the case of **Ahmedabad Pvt. Primary Teachers' Assn. v. Administrative Officer and others**<sup>12</sup>, it was submitted that as per the notification mentioned above, teaching as well as non-teaching staff of educational institutions has been covered. It is submitted that the effect of the said

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122004 (1) SCC 755

decision is that the 1972 Act will even cover employees other than teachers in educational institutions.

- g) While deciding the **Ahmedabad Primary Teachers' Association case**, this Court relied upon the definition of 'employee' in the 1972 Act, which was restricted by the words "to do any skilled, semi-skilled or unskilled.....". By Act No. 47 of 2009, these words were deleted, and therefore, the definition of 'employee' under Section 2(e) of the 1972 Act has become very wide.
- h) This Court in the case of **State of Karnataka and others v. Ameerbi and others**<sup>13</sup> held that AWWs and AWHs are not the employees of Anganwadi centres or the ICDS scheme. In the said case, the dispute was confined to an issue of whether AWWs can be said to be holding civil posts to attract the jurisdiction of the Karnataka State Administrative Tribunal established under Section 15 of the Administrative Tribunals Act, 1985. Hence, the said decision is not relevant in this case.

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132007 (11) SCC 681

- i) Merely because the monthly remuneration paid to AWWs is styled as honorarium, it cannot be conclusive. Under Section 2(s) of the 1972 Act, the definition of 'wages' is very wide to include both the categories. AWWs and AWHs are doing full-time jobs involving multiple duties concerning women and children. Reliance was placed on a decision of this Court in the case of **Jaya Bachchan v. Union of India and others**<sup>14</sup>.
- j) Reliance was placed on definitions of 'establishment' and 'industrial establishment' under various statutes. On this behalf, a reference was made to a decision of this Court in the case of **State of Punjab v. Labour Court, Jullundur and others**<sup>15</sup>.
- k) The submission is that the provisions of the 1972 Act apply to AWWs and AWHs.

## **SUBMISSIONS OF THE RESPONDENTS**

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142006 (5) SCC 266

151980 (1) SCC 4

**3.** Ms. Aastha Mehta, learned counsel appearing on behalf of the State of Gujarat submitted that ICDS is a Central Government scheme which the State Governments are implementing. Her submission is that AWWs and AWHs are appointed from amongst local inhabitants. Usually, women who are well-versed in cooking, processing food, cleaning, etc., are appointed on a yearly basis. They are being paid an honorarium and not wages. It is pointed out that the honorarium payable to AWWs and AWHs has been enhanced in the year 2020. She submitted that though the share of the Central Government in the honorarium has not been increased, under the Government Resolution dated 21<sup>st</sup> March 2020, the State Government has increased its contribution, and now the remuneration of AWWs is Rs.7,800/- per month. She submitted that a number of other benefits have been made available by the State Government to AWWs, set out in the counter affidavit. It is pointed out by learned counsel that there are 53,029 Anganwadi centres 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. If gratuity is held to be payable to them, there will be a substantial financial burden on the State exchequer as the amount payable towards gratuity will be more than Rs.25 crores.

**4.** Ms. Aishwarya Bhati, the learned Addl. Solicitor General of India submitted that while the Government of India acknowledges the important role of Anganwadi centres in implementing the ICDS scheme and consequently the role of AWWs and AWHs, the provisions of the 1972 Act do not apply to them. She pointed out that clause (b) of Section 1(3) refers to 'establishments' within the meaning of any law for the time being in force in relation to shops and establishments in a State and therefore, in this case, the provisions of Gujarat Shops and Establishments Act, 1948 (for short "the Gujarat Act") as applicable to the State of Gujarat will have to be considered. Referring to the definitions of 'commercial establishments' and 'establishments' under the Gujarat Act, she submitted that ICDS is not an establishment as it does



not carry on any business, trade or profession or any activity connected, incidental or ancillary thereto. She submitted that ICDS is a welfare scheme designed and implemented to benefit children, pregnant women, and lactating mothers. Relying upon a decision of this Court in the case of **Bangalore Turf Club Limited v. Regional Director, Employees' State Insurance Corporation**<sup>16</sup>, she submitted that the term 'establishment' used in the 1972 Act presupposes an element of commercial activity. She submitted that what is being paid to AWWs is an honorarium which cannot be described as wages. In support of the said submission, she relied upon a decision of the Delhi High Court in the case of **Akhil Bhartiya Anganwadi Kamgar Union (Regd.) v. Union of India & Ors.** She also pointed out that the decision of this Court in the case of **Bangalore Water Supply and Sewerage Board** (supra) has been referred to a larger Bench. She pointed out that as AWWs and AWHs render valuable assistance, there is insurance coverage provided to them by the Central

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162014 (9) SCC 657

Government as set out in the counter affidavit. Apart from insurance benefits, other benefits are being extended to AWWs.

### **REJOINDER OF THE APPELLANTS**

5. The learned counsel appearing for appellants pointed out that Anganwadi centres are performing the statutory duty of implementing provisions of Sections 4, 5 and 6 of the National Food Security Act, 2013 (for short “the Act of 2013”). By pointing out the duties of AWWs and AWHs, which are placed on record along with IA No. 161608 of 2021, it was pointed out that their responsibilities extend not only to running Anganwadi centres but to running pre-primary schools in Anganwadis. Apart from that, they are obligated to make home visits for various purposes. It is certain that they are doing full-time jobs and are discharging onerous responsibilities.

### **ROLE OF ANGANWADI WORKERS AND HELPERS**

**6.** I have given careful consideration to the submissions. The Government of India launched ICDS on 2<sup>nd</sup> October 1975. Under ICDS, six services are being provided: -

- (i) supplementary nutrition,
- (ii) pre-school non-formal education,
- (iii) nutrition and health education,
- (iv) immunization,
- (v) health check-up and
- (vi) referral services.

The cost of running ICDS and Anganwadi centres is being shared by the Government of India and the State Governments.

**7.** The 2013 Act came into force on 5<sup>th</sup> July 2013. One of the objectives of enacting the 2013 Act was to give effect to Article 47 of the Constitution of India, which is a part of the Directive Principles of State Policy. Article 47 reads thus:

**“ARTICLE 47: DUTY OF THE STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.”

**8.** It is the duty of the State to improve the level of nutrition which is one of the best methods to improve public health. Apart from Article 47, India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. The said convention casts responsibilities on all States to recognize the right of citizens to adequate food. As provided in the Statement of Objects and Reasons of the 2013 Act, one of its objectives is to improve the nutritional status of women and children. The object of the 2013 Act was to bring about a shift in addressing the issue of food security. The approach was changed from the welfare approach to the rights-based approach. The role of Anganwadi centres

finds a place in paragraph 7 of the Statement of Objects and Reasons of the 2013 Act.

**9.** Anganwadi centres were statutorily recognised under the 2013 Act. Sub-section (1) of Section 2 of 2013 Act reads thus:

“(1) “anganwadi” means a child care and development centre set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub-section (1) of section 5 and section 6.”

**10.** Anganwadi centres have been entrusted with a very vital and significant role in implementing Sections 4 to 6 of the 2013 Act, which read thus:

**“4. Nutritional support to pregnant women and lactating mothers.-** Subject to such schemes as may be framed by the Central Government, **every pregnant woman and lactating mother shall be entitled to—**

**(a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and**

**(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:**

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b).

**5.Nutritional support to children--(1) Subject to the provisions contained in clause (b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—**

**(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II:**

Provided that for children below the age of six months, exclusive breast feeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, every day, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II.

**(2) Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:**

Provided that in urban areas facilities of centralised kitchens for cooking meals may be

used, wherever required, as per the guidelines issued by the Central Government.

**6. Prevention and management of child malnutrition.-The State Government shall, through the local anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.”**

*(emphasis added)*

**11.** The provisions mentioned above lay down the entitlements of pregnant women, lactating mothers, and children in the age group of 6 months to 6 years. In addition, the children who suffer from malnutrition are entitled to the benefit of free meals through Anganwadi centres. These entitlements confer corresponding rights on the said beneficiaries. The benefits referred to in Sections 4,5 and 6 of the 2013 Act are provided through Anganwadi centres as set out in the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2017 (for short “The Supplementary Nutrition Rules”). Rules 3 and 4 of the Supplementary Nutrition Rules are relevant which read thus:

**“3. Nature of entitlements.** - (1) The entitlements referred to in sections 4, 5 and section 6 of the Act shall be provided under the Supplementary Nutrition Programme of Anganwadi Services (Integrated Child Development Services Scheme) of the Central Government to every pregnant woman and lactating mother till six months after childbirth, and every child in the age group of six months to six years (including those suffering from malnutrition).

(2) The Supplementary Nutrition under the Anganwadi Services (Integrated Child Development Services) is primarily designed to bridge the gap between the Recommended Dietary Allowance and the Average Daily Intake.

**4. Place of serving meal.** - (1) The Anganwadi Services (Integrated Child Development Services) is a self-selecting scheme and **the entitlements, as mentioned in clause (a) of section 4, clause (a) of sub-section (1) of section 5 and section 6 shall be available to those who enroll themselves and visit the nearest anganwadi centre during its working hours,** as notified by the State Government or the Union territory Administration from time to time.

(2) **The meal shall be served at the nearest anganwadi centres** where the beneficiary is registered or enrolled.”

*(emphasis added)*



**12.** Thus, Anganwadi centres have been entrusted with the onerous responsibility of implementing some of the most important and innovative provisions of the 2013 Act. It can be said that Anganwadi centres perform a pivotal role in discharging the statutory obligation of the State to provide nutritional support to pregnant women, lactating mothers and children in the age group of 6 months to 6 years. A free meal is provided to pregnant mothers during pregnancy and 6 months after childbirth through the Anganwadi centres. In the case of children in the age group of 6 months to 6 years, an age-appropriate free meal is to be provided in Anganwadi centres. In addition, the important duty of providing free meals to the children who suffer from malnutrition has been entrusted to Anganwadi centres. The free meals to be provided through Anganwadi centres must satisfy the nutritional requirements and standards specified in Schedule II of the 2013 Act. Therefore, under sub-section (2) of Section 5, there is a provision that every Anganwadi centre shall have a proper facility of cooking meals, drinking water and sanitation. Another crucial statutory duty assigned to local Anganwadi centres is to identify

children who suffer from malnutrition so that free meals can be provided to such identified children. The AWWs and AWHs constitute the backbone of Anganwadi centres and therefore, this onerous responsibility of extending benefits under the 2013 Act to the beneficiaries is on them. Anganwadi centres are responsible for ensuring the healthy growth of the children in the age group of 6 months to 6 years and the children who suffer from malnutrition.

**13.** Now, coming to the State of Gujarat, the Government Resolution dated 25<sup>th</sup> November 2019 (Annexure A-1 of IA no. 161608 of 2021) lays down exhaustive provisions regarding selection criteria, duties, disciplinary action, rules, etc. in respect of AWWs and AWHs. In fact, by the said Resolution, the State Government has framed the Anganwadi Worker/Helper (Selection Criteria, Honorary Service, Review and Discipline) Rules (for short “the said Rules”). Duties of AWWs and AWHs have been laid down in Appendix-1 to the Government Resolution. Very important functions and responsibilities have been assigned to AWWs in Appendix-1. We are reproducing some of the onerous duties and functions assigned to AWWs :

- (a) The AWWs shall carry out the survey within their area of duty and shall update the record regularly by taking note of the occurrence of new events;
- (b) Apart from providing health and nutrition services to the children within their jurisdiction, AWWs are under a duty to monitor the growth-development of all children. They are also under an obligation to identify severely malnourished children and children in need of medical attendance;
- (c) AWWs have a duty of monitoring the growth of the children in the age group of 0 to 3 years, including monitoring their weight. They are responsible for maintaining a growth chart for measuring the child's individual growth. They must identify children who are significantly underweight and take special care of such children;
- (d) To make four follow-up visits every fortnight to the children rehabilitated at Children Malnutrition Treatment Centres/Nutrition Rehabilitation Centres

and ensure that the said children get supplementary food at Anganwadi centres;

- (e) AWWs are also required to cater to vaccination services with the help of Aasha workers. They are also duty-bound to undertake activities relating to health, nutrition, and hygiene education;
- (f) They are responsible for following safety and hygiene norms in respect of food materials in Anganwadi centres;
- (g) AWWs must make home visits at least three times a week and meet children below the age of 3 years, pregnant women, and lactating mothers;
- (h) With a view to ensuring public participation in the activities of Anganwadis, they are required to celebrate various special days on all four Tuesdays;
- (i) It is the duty of the AWWs to identify handicapped children or children with slow growth and provide referral services to them by referring them for health screening;

- (j) AWWs are required to conduct pre-primary education activities for the children of the age group of 3 to 6 years following pre-school timetable and using pre-school kit;
- (k) Appendix-1 provides for AWWs attending meetings of various committees;
- (l) The AWWs are required to look after the implementation and coordination of various other services under various Government schemes;
- (m) Their duties are to carry out Aadhar registration of the children attached to Anganwadis; and
- (n) They are required to maintain several reports, registers, records relating to beneficiaries, deaths of children, registration of births and deaths, and submit monthly or annual reports.

**14.** The duties and functions of AWHs are also very onerous.

Some of the important duties are as under:

- To report half an hour before the working hours of Anganwadi centres and clean Anganwadi centres every

day. To maintain a neat and clean environment within the Anganwadi centres;

- To cook and serve healthy food to the beneficiaries;
- To bring children to Anganwadi and to drop them at their houses;
- To clean the utensils used for cooking and serving;
- To maintain personal hygiene of children;
- To help AWWs in public relations and public participation works; and
- To perform all duties relating to ICDS as may be assigned by the Child Development Program Officer and the State Office of ICDS.

**15.** One of the important functions of Anganwadi centres is to conduct pre-primary education activities for the children of the age group of 3 to 6 years by following the pre-school timetable and by using the pre-school kit. That is the specific provision in the Government Resolution dated 25<sup>th</sup> November 2019. It is also provided therein that the Anganwadi children admitted to primary schools shall be issued a certificate of pre-primary education signed

by the Child Development Programme Officer. On this aspect, Section 11 of the Rights of Children to Free and Compulsory Education Act, 2009 (for short, 'the RTE Act') is relevant. Section 11 reads thus:

**“11. Appropriate Government to provide for pre-school education.** —With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.”

The appropriate Government, in this case, is the Government of Gujarat. For giving effect to Section 11 of the RTE Act, a provision has been made by the State Government to conduct pre-primary schools for children above the age of three years in the Anganwadi centres. Moreover, as specifically laid down in the aforesaid Government Resolution, it is the duty of AWWs to provide a pleasant educational environment at Anganwadi centres. It is also the duty of AWWs to assess the growth of children and make entries in the booklet titled “My Growth Story”. Thus, Anganwadi centres are also running pre-primary schools for children in the age group

of 3 to 6 years. The educational activity of running pre-school is an integral part of Anganwadi centres. AWWs and AWHs who are managing the Anganwadi centres have a duty to look after pre-primary schools as well. We may also note here that on 8<sup>th</sup> March 2018, the Government of India has launched the National Nutrition Mission by the name “The Prime Minister’s Overarching Scheme for Holistic Nourishment”. The responsibility of implementing a part of the scheme is of the Anganwadi centres. Under the National Education Policy, 2020, there is a proposal to make available Early Childhood Care and Education (ECCE) to children having socio-economic disadvantaged backgrounds. It is provided that ECCE will be extended through Anganwadi centres.

### **THE DECISION IN THE CASE OF AMEERBI**

**16.** In the case of **Ameerbi** (supra), this Court dealt with the issue whether AWWs and AWHs were holding civil posts. The issue was whether the original applications filed by AWWs before the State Tribunal established under the Administrative Tribunals Act, 1985 were maintainable. This Court held that the posts of AWWs were



not statutory posts and the same have been created in terms of ICDS. Therefore, there was no relationship of employer and employee between the State Government and AWWs. It was held that the AWWs do not carry on any function of the State. It was observed that no Recruitment Rules have been framed for appointing AWWs. Much water has flown after the decision in the case of **Ameerbi** (supra) was rendered in the year 2007. When the said decision was rendered by this Court, the 2013 Act was not on the statute book. As noted earlier, the Anganwadi centres established under ICDS have been given statutory status under the 2013 Act. Moreover, under Sections 4, 5 and 6 of the 2013 Act, the Anganwadi centres perform statutory duties under the 2013 Act. I have already referred to the Government Resolution of the Government of Gujarat dated 25<sup>th</sup> November 2019 *in extenso*.

**17.** The Resolution incorporates the said Rules which lay down selection criteria, educational qualifications, the process of selection, etc. of AWWs and AWHs. Under the said Rules, a detailed process of making appointments of AWWs and AWHs has been incorporated. It also incorporates the marking system for the

selection of AWWs and AWHs. The said Rules provide that the AWWs and AWHs will continue in the service till the age of 58 years. Even the minimum and maximum age of the candidates for participating in the process of recruitment has been laid down. There are provisions made for the termination of services of AWWs and AWHs. Though the said rules refer to their service as honorary service, the use of the word “honorary” is not determinative of the status of AWWs and AWHs.

**18.** In view of the provisions of the 2013 Act and Section 11 of the RTE Act, Anganwadi centres also perform statutory duties. Therefore, even AWWs and AWHs perform statutory duties under the said enactments. The Anganwadi centres have, thus, become an extended arm of the Government in view of the enactment of the 2013 Act and the Rules framed by the Government of Gujarat. The Anganwadi centres have been established to give effect to the obligations of the State defined under Article 47 of the Constitution. It can be safely said that the posts of AWWs and AWHs are statutory posts.

**19.** As far as the State of Gujarat is concerned, the appointments of AWWs and AWHs are governed by the said Rules. In view of the 2013 Act, AWWs and AWHs are no longer a part of any temporary scheme of ICDS. It cannot be said that the employment of AWWs and AWHs has temporary status. In view of the changes brought about by the 2013 Act and the aforesaid Rules framed by the Government of Gujarat, the law laid down by this Court in the case of **Ameerbi** will not detain this Court any further from deciding the issue. For the reasons stated above, the decision in the case of **Ameerbi** will not have any bearing on the issue involved in these appeals.

### **PLIGHT OF AWWs AND AWHs**

**20.** AWWs and AWHs have been assigned all-pervasive duties, which include identification of the beneficiaries, cooking nutritious food, serving healthy food to the beneficiaries, conducting pre-school for the children of the age group of 3 to 6 years, and making frequent home visits for various reasons. Implementation of very important and innovative provisions relating to children, pregnant

women as well as lactating mothers under the 2013 Act has been entrusted to them. It is thus impossible to accept the contention that the job assigned to AWWs and AWHs is a part-time job. The Government Resolution dated 25<sup>th</sup> November 2019, which prescribes duties of AWWs and AWHs, does not lay down that their job is a part-time job. Considering the nature of duties specified thereunder, it is full-time employment. In the State of Gujarat, AWWs are being paid monthly remuneration of only Rs.7,800/- and AWHs are being paid monthly remuneration of only Rs.3,950/-. AWWs working in mini-Anganwadi centres are being paid a sum of Rs.4,400/- per month. The important tasks of providing food security to children in the age group of 6 months to 6 years, pregnant women as well as lactating mothers have been assigned to them. In addition, there is a duty to render pre-school education. For all this, they are being paid very meagre remuneration and paltry benefits under an insurance scheme of the Central Government. It is high time that the Central Government and State Governments take serious note of the plight of AWWs and AWHs who are expected to render such important services to the society.

**APPLICABILITY OF THE PROVISIONS OF THE 1972 ACT TO AWWs AND AWHs**

**21.** Now, I turn to the provisions of the 1972 Act. Sub-sections (3) and (3A) of the 1972 Act deal with the applicability of its provisions.

Sub-sections (3) and (3A) of Section 1 reads thus:

“(3) It shall apply to -

(a) every factory, mine, oilfield, plantation, port and railway company;

**(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;**

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

[(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.]”

*(emphasis added)*

**22.** Reliance has been placed by the appellants on clause (b) of Section 1(3) and in the alternative, on clause (c). Clause (b) of Section 1(3) applies to every shop or establishment within the meaning of any law for the time being in force in relation to the shops and establishments in a State in which ten or more persons are employed or were employed on any day of the preceding twelve months.

**23.** Though, during the course of submissions, reliance was first placed on the Gujarat Act as applicable to the State of Gujarat, by the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019, the Gujarat Act has been repealed.

**24.** Now, the question is whether clause (b) of Section 1(3) of the 1972 Act will apply. This Court in the case of the **Labour Court, Jullunder** (supra) has given a wide interpretation to clause (b). In paragraph 3 of the said decision, this Court held thus:

**“3.** In this appeal, the learned Additional Solicitor General contends on behalf of the appellant that the Payment of Gratuity Act, 1972 cannot be invoked by the respondents because the Project

does not fall within the scope of Section 1(3) of that Act. Section 1(3) provides that the Act will apply to:

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.”

According to the parties, it is clause (b) alone which needs to be considered for deciding whether the Act applies to the Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, Section 2(i) (g) of which defines an “industrial establishment” to mean any “establishment in which any work relating to the construction development or maintenance of buildings, roads, bridges or canals, relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on”. **It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a Central enactment and Section 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3)(b) speaks of “any law**

for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But it is contended, the law referred to under Section 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments"



**unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State.** Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it.”

*(emphasis supplied)*

Hence, ‘establishments’ contemplated by clause (b) can be establishments within the meaning of any law for the time being in force in a State in relation to establishments. Therefore, I have examined the laws in relation to establishments which are in force in the State of Gujarat.

**25.** I may refer to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short “the Contract Labour

Act”). Establishments have been defined in clause (e) of Section 2 which reads thus :

“(e) "establishment" means-

- (i) any office or department of the Government or a local authority, or -
- (ii) any place where any industries, trade, business, manufacture or occupation is carried on.”

The Contract Labour Act is applicable to establishments as provided in sub-section (4)(a) of Section 1. In view of sub-section (2) of Section 1, the Contract Labour Act is applicable to the State of Gujarat. Therefore, it is legislation in relation to establishments in the State of Gujarat. As stated above, under the said Rules, now the selection and appointments of AWWs and AWHs are being made by the Government of Gujarat. An officer of the said Government is empowered to issue an order of termination of employment of AWWs and AWHs. As stated earlier, Anganwadi centres have become an extended arm of the Government. Now, it operates as an establishment or a wing of the Government. The remuneration to AWWs and AWHs is paid by the State Government. However, the State Government gets contributions from the Central Government. Moreover, it can always be said that occupation is carried out in the

establishments of Anganwadi centres. Hence, Anganwadi Centre is an establishment within the meaning of clause (e) of Section 2 of the Contract Labour Act.

**26.** The Code of Wages, 2019 is an enactment that received the assent of the President on 8<sup>th</sup> August 2019. However, only a few provisions therein have been brought into force so far. Clause (m) of Section 2 thereof defines establishment which means any place where any industry, trade, business, manufacture, or occupation is carried out and it includes the Government establishments. There is a similar definition of establishment under clause 29 of Section 2 of the Code on Social Security, 2020 which received the assent of the President on 28<sup>th</sup> September 2020. These provisions show the legislative intent to include the various Government establishments in the category of establishments in the welfare statutes.

**27.** It is not the case of the State Government that every Anganwadi centre is a separate entity. Anganwadi centres and Mini Anganwadi centres are a part of the Anganwadi establishment of the State Government. The Anganwadi centres have been

employing ten or more AWWs and AWHs in the State. Therefore, I have no manner of doubt that Anganwadi centres are establishments contemplated by clause (b) of sub-section (3) of Section 1 of the 1972 Act. The learned Additional Solicitor General relied upon a decision of this Court in **Bangalore Turf Club** (supra). It was a case arising out of the Employees' State Insurance Act, 1948. The said Act does not define "establishment". The decision has no relevance in this case.

**28.** Clauses (e), (f), and (s) of Section 2 of the 1972 Act which define 'employee', 'employer' and 'wages' are relevant. The same read thus:

**“(e) “employee”** means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

**(f) “employer”** means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop: -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, or managing director or by any other name, such person;

**(s) “wages”** means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

**29.** The definition of ‘wages’ is very wide. It means all emoluments which are earned by an employee on duty. Thus, the honorarium paid to AWWs and AWHs will also be covered by the definition of

wages. As AWWs and AWHs are employed by the State Government for wages in the establishments to which the 1972 Act applies, the AWWs and AWHs are employees within the meaning of the 1972 Act. In view of the said Rules of the Gujarat Government, the Anganwadi centres are not under the control of the Central Government. Therefore, the State Government will be an appropriate Government within the meaning of clause (a) of Section 2 of the 1972 Act. Accordingly, a person or authority appointed by the appropriate Government for the supervision and control of AWWs and AWHs will be the employer within the meaning of clause (f) of Section 2.

**30.** I may add here that the Government of India by a notification dated 3<sup>rd</sup> April 1997 has notified educational institutions as establishments under clause (c) of sub-section (3) of Section 1 of the 1972 Act. In the Anganwadi centres, the activity of running a pre-school 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 centres in accordance with Section 11 of the RTE Act.

**31.** For the reasons recorded above, I have no manner of doubt that the 1972 Act will apply to Anganwadi centres and in turn to AWWs and AWHs. In the impugned Judgment, the Division Bench was swayed by the view taken by this Court in the case of **Ameerbi** which was followed by the Delhi High Court in the case of **Akhil Bhartiya Anganwadi Kamgar Union (Regd.)** (supra). These decisions, for the reasons recorded earlier, have no bearing on the issue involved in these appeals. The learned Single Judge was right in holding that the 1972 Act was applicable to AWWs and AWHs. The Controlling Authority has granted simple interest at the rate of 10% on the overdue gratuity amounts. All eligible AWWs and AWHs shall be entitled to the benefit of interest.

**32.** Hence, I allow the appeals and set aside the impugned Judgment dated 8<sup>th</sup> August 2017 of the Division Bench of Gujarat High Court and restore the Judgment of the learned Single Judge dated 6<sup>th</sup> June 2016 in Special Civil Application no. 1219 of 2016

and other connected cases by holding that the provisions of the 1972 Act apply to AWWs and AWHs working in Anganwadi centres. Within a period of three months from today, necessary steps shall be taken by the concerned authorities in the State of Gujarat under the 1972 Act to extend benefits of the said Act to the eligible AWWs and AWHs. We direct that all eligible AWWs and AWHs shall be entitled to simple interest @ 10% per annum from the date specified under sub-section 3A of Section 7 of the 1972 Act.

.....**J.**  
**(ABHAY S. OKA)**

**New Delhi;**  
**April 25, 2022.**