



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8164 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 2049 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 2104 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 3525 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 8165 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 8166 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 8167 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 15773 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 15831 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 15832 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 16104 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 16105 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 16148 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 16149 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 16150 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |



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| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |
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ADARSH GUJARAT ANGANWADI UNION & ORS.
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR SHALIN MEHTA, SR. ADVOCATE with ADITI S RAOL(8128) for the Petitioner(s) No. 1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,113,114,115,116,117,118,19,12,120,121,122,123,124,125,126,127,128,129,13,130,131,132,133,134,135,136,137,138,139,14,140,141,142,143,144,145,146,147,148,149,15,150,151,152,153,154,155,156,157,158,159,16,160,161,162,163,164,165,166,167,168,169,17,170,171,172,173,174,175,176,177,178,179,18,180,181,182,183,184,185,186,187,188,189,19,190,191,192,193,194,195,196,197,198,199,2,20,200,201,202,203,204,205,206,207,208,209,21,210,211,212,213,214,215,216,217,218,219,22,220,221,222,223,224,225,226,227,228,229,23,230,231,232,233,234,235,236,237,238,239,24,240,241,242,243,244,245,246,247,248,249,25,250,251,252,253,254,255,256,257,258,259,26,260,261,262,263,264,265,266,267,268,269,27,270,271,272,273,274,275,276,277,278,279,28,280,281,282,283,284,285,286,287,288,289,29,290,291,292,293,294,295,296,297,298,299,3,30,300,301,302,303,304,305,306,307,308,309,31,310,311,312,313,314,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,87,88,89,9,90,91,92,93,94,95,96,97,98,99

MR SAHIL TRIVEDI, AGP with MS NIRALI SARDA, AGP for the Respondent(s) No. 1
MR ASHISH B DESAI(5163) for the Respondent(s) No. 3
MS VYOMA K JHAVERI(6386) for the Respondent(s) No. 4
RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 02/08/2024
COMMON ORAL JUDGMENT

1. Heard learned Senior Advocate Mr. Shalin Mehta with learned Advocate Ms. Aditi Raol and learned Advocate Ms. Shikha Panchal for the petitioners, learned AGP Mr. Sahil Trivedi for the respondent-State and learned Advocate Ms. Vyoma K. Jhaveri for the respondent No.4-Central Government.



2. Since common questions have been raised in all the petitions, the petitions are taken up for hearing jointly.

1. The Introduction :

3. For the purpose of reference, facts of Special Civil Application No.8164 of 2015 are being considered by this Court.

3.1. The petitioners have prayed for the following prayers :

"29.A. Your Lordships be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, declaring the engagement by the respondent authorities of the petitioners no. 2 to 314 as Project Workers/ Voluntary Workers under the Integrated Child Development Services Scheme on honorarium is opposed to the mandate of Directive Principles contained in Articles 38, 39, 40, 41, 42 and 47 of the Constitution of India as also violative of Articles 14, 16, 21 and 23 of the Constitution of India;

B. Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondent authorities to regularize the services of the petitioners no. 2 to 314 on regular pay scale/ pay band;

C. Your Lordships be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, declaring the failure on the part of the respondent authorities in ensuring that the petitioners no. 2 to 314 are paid minimum wages prevalent in the State as violative of their fundamental rights guaranteed under Articles 21 and 23 of the Constitution of India;



D. Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction commanding or directing the respondent authorities to pay the petitioners no. 2 to 314 their monthly minimum rate of wages prevalent in the State;

E. Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondent authorities to ensure that the petitioners no. 2 to 314 are paid minimum wages prevalent in the State;

F. Pending admission and final hearing of the present petition, Your Lordships may be pleased to restrain the respondent authorities from terminating the services of petitioners no. 2 to 314 or take any coercive action against them;

G. Your Lordships be pleased to pass any other appropriate order, as deemed fit in the interest of justice."

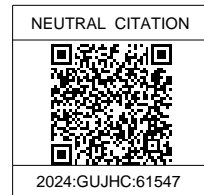
3.2 It is the case of the petitioners that they are working as Anganwadi Workers or Anganwadi Helpers in Anganwadi (for short "AWWs/AWHs") Centers throughout the State, which are managed under the Integrated Child Development Services Scheme (for short "ICDS Scheme"). That the petitioners were appointed as AWWs under the ICDS Scheme from the period between 1983 to 2013 after following regular recruitment process. That the petitioners inspite of having worked for more than 10 years and having worked for more than 06 hours per day, yet, they are given a paltry sum as honorarium without getting any benefit whatsoever as employees of the State. That the petitioners as



AWWs providing very important services which have direct co-relation with the future human capital of the State, inasmuch as, the work of the petitioners inter alia being to ensure that pregnant ladies, lactating mothers and children below 06 years are provided appropriate medical facilities by coordinating with visiting medical and paramedical personal as also to ensure nutritious food, health and nutrition education to mothers, appropriate implementation of the immunization programme, health check up by assisting PHC staff, to make home visits for educating parents especially the mothers to plan child growth effectively, to organize non-formal pre-school activities in the Anganwadi Center for children between the age group 3 to 5 years, to elicit community support and participation in running the programmes etc., yet, the petitioners are treated in an absolutely step-motherly manner since they are not given the benefit of regularization i.e. to be treated at par with regularly appointed Government employees and on the other hand, they are only paid meager sum as honorarium. Thus, the petitioners have approached this Court seeking for the prayer of declaring that the petitioners are entitled to regularization of services on regular pay band/ pay scale etc.

2. The Submissions :

4. Learned Senior Advocate Mr. Shalin Mehta for the petitioners



would submit that the petitioners No. 2 to 314 of Special Civil Application No. 8164 of 2015 and all other petitioners of connected petitions, who are being represented by the Union-petitioner No.1, have approached this Court to ensure that the petitioners are given their rightful due. Learned Senior Advocate would submit that the ICDS Scheme which came into existence in the year 1975 is a scheme floated by the Human Resource Development Department of the Central Government. The primary objects of the scheme are, providing for nutritious food to children from the stage of infancy to the age of 6 and ensuring good health of pregnant and lactating mothers etc. It is submitted that the scheme envisages creation of Anganwadi Centers which are run by AWWs and AWHs. It is submitted that though the petitioners play an important role in ensuring that pregnant women, lactating mothers and children below 06 years are properly taken care of as regards their physical and mental development and though the petitioners have been appointed as AWWs between the 1983 to 2013, after following regular recruitment process i.e. after an advertisement etc., yet, the petitioners are being paid a meagre amount as honorarium and whereas many persons like the petitioners have retired even without getting any retiral benefit. It is submitted that since the petitioners are treated as working under the scheme and not as Government servants,



they have been denied all such benefits as would normally be available to a Government employee.

4.1 It is further submitted by the learned Senior Advocate that insofar as the appointments are concerned, public advertisement is issued in local newspapers inviting applications for the post of AWWs where the minimum qualification required for appointment as AWW, is SSC pass. The candidates are called for interview after being shortlisted and successful candidates are given appointment. It is submitted that the appointment is always against vacancies and whereas according to learned Senior Advocate, the present is not a case of backdoor entry or appointment dehors any recruitment process. It is submitted that the ICDS Scheme envisages that the AWW should be a female aged between 18 - 44 from the local village/area and acceptable to the local community and whereas the job responsibilities of the AWWs and AWHs are prescribed in the scheme itself. It is submitted that the AWWs and AWHs are required to attend their duties starting from 9: 00 am. to 3 : 45 pm. and any dereliction of duty or breach of performance is visited with appropriate disciplinary action including removal.

4.2 It is submitted by the learned Senior Counsel that most of the



petitioners have worked for more than 10 years and are paid paltry sum as honorarium which came to be revised from time to time and whereas at present AWHs in the State of Gujarat receives Rs. 5500/- as honorarium and AWWs receives Rs. 10,000/- as honorarium. It is submitted that the payment of a meagre sum to the present petitioners as an honorarium is violative of Articles 14 and 16 of the Constitution of India which guarantee equality before law and equal opportunity in matters of public employment. It is submitted that action on the part of the State Authorities is also violative of Article 39(a) which Article imposes positive obligation on the State.

4.3 It is submitted that the petitioners as job seekers would not have any discretion not to accept any employment in this hard times and the lack of opportunities to persons like the petitioners is being misused by the State Authorities. It is further submitted by learned Senior Advocate that the petitioners playing a very important role in the development of future generation, the State may be directed by this Court to regularize the services of the present petitioners and pay salary to the petitioners in appropriate pay scale.

5. These petitions are vehemently opposed by the learned AGP Mr. Sahil Trivedi on behalf of the respondent-State. Learned AGP Mr.



Trivedi would submit that the petitioners are employees under the ICDS Scheme. It is submitted that while the petitioners were originally recruited as per Government Resolution dated 13.11.2009 of the State, the State has now come out with a comprehensive policy vide Government Resolution dated 25.11.20219 as regards the recruitment, the duties and responsibilities etc. of AWWs/AWHs. It is submitted that the scheme itself envisages that AWWs and AWHs are honorary workers who are from the local community who render their services on part time basis in the area of child care and development. It is submitted that as far as the scheme is concerned, the Government of India funds 90% of the administrative and operative costs while 10% of the cost is borne by the individual States/Union Territories. It is submitted that States also give monetary incentive out of their own resources for additional functions assigned under the scheme. It is submitted that while the AWWs are neither Government employees nor Statutory employees, yet, apart from the honorarium, certain benefits are given to the AWWs namely, Casual Leave of 12 days per year, Maternity Leave for 180 days, Summer Vacation from 1st May to 30th June every year, during which period the AWWs/AWHs would be given 15 days Vacation each and similarly, 08 days Vacation for Diwali is also given. It is submitted that AWWs/AWHs are also entitled for gratuity.



5.1 It is submitted by the learned AGP that while the AWWs/AWHs are neither State employees nor Statutory employees, yet, care has been taken to ensure that the AWWs/AWHs have appropriate future avenues. It is submitted that in the Government Resolution dated 13.11.2009, it was envisaged that upon there being a vacancy in the post of AWW at an Anganwadi Center, then the AWH of the said Anganwadi Center having minimum 05 years experience and possessing requisite qualification would be given priority in appointment as AWW. It is further submitted that insofar as AWWs are concerned, upon fulfillment of certain criteria, they are eligible to be appointed by way of nomination as Supervisors i.e. Mukhya Sevikas as per the Mukhya Sevika, Class III (Panchayat Services) Recruitment Rules, 2013. It is further submitted that while some other benefits are also given to the AWWs/AWHs namely, the AWWs/AWHs are covered under the State Insurance Scheme and whereas the State Government has also introduced the Mata Yashoda Gauravnidhi Yojna, which covers almost all AWWs/AWHs.

5.2 It is submitted by the learned AGP that as far as the State is concerned, it is only an implementing body, whereas the principal scheme is being run by the Union of India and as noted above, 90% of the costs are being borne by the Central Government whereas the State



contribution amounts only to 10%. It is further submitted that any change in the scheme by orders of this Court would have nationwide repercussions. Thus submitting, learned AGP Mr. Trivedi would request this Court not to entertain the present writ petitions. In support of his submissions, learned AGP Mr. Trivedi would rely upon decision of the Hon'ble Supreme Court in case of **State of Karnataka and Others Vs. Ameerbi and Others**, reported in **(2007) 11 SCC 681**.

6. These petitions are further opposed by learned Advocate Ms. Vyoma Jhaveri on behalf of the respondent No.4- Central Government. It is submitted by learned Advocate Ms. Jhaveri that the Anganwadi service is a centrally sponsored scheme under the ICDS Scheme as referred to hereinabove. It is submitted that the scheme aims at holistic development of children below 06 years of age, pregnant women and lactating mothers. It is submitted that the main aims of the scheme is providing for services namely, (i) Supplementary Nutrition, (ii) Pre-school non-formal education (iii) Nutrition and Health Education (iv) Immunization (v) Health check-up, and (vi) Referral Services. It is submitted that these services are provided through AWWs/AWHs at Anganwadi Centers and whereas it is further submitted that in India, as of now, there are around 14 Lacs Anganwadi Centers. It is submitted that while the policy and



planning of the scheme is by the Central Government, implementation of the same is by the State Government and whereas the scheme envisages that AWWs and AWHs are voluntary workers from local community. Learned Advocate Ms. Jhaveri relying upon decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** would submit that the issue raised in the present petitions stands covered by the said decision of the Hon'ble Supreme Court and whereas no interference may be made by this Court in the present petitions.

7. In rejoinder, learned Senior Advocate Mr. Mehta would submit that the decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** would not be applicable since the issue raised before the Hon'ble Supreme Court and the issue raised by the present petitioners are not identical. It is submitted that as such, the plight of AWWs has been addressed by the Hon'ble Supreme Court in a later decision in case of **Maniben Maganbhai Bhariya Vs. District Development Officer, Dahod and Others**, reported in **AIR 2022 SC 2119**. It is submitted that as such, the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** would be more relevant to the facts situation of the present case and not the decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)**. It is further submitted by the learned



Senior Advocate that while the respondents in their submissions as well as reply affidavits referred to the ICDS Scheme as one of the most unique programme for early childhood development in the world, yet, the AWWs/AWHs who are implementing the scheme are not recognized as being entitled for appropriate financial benefits including not even being paid minimum wages. It is submitted that considering the nature of duties and responsibilities and having regard to the number of hours being put in by the AWWs/AWHs, it is clear that there exists a employer and employee relationship between the State Government and the AWWs/AWHs and that the AWWs/AWHs are not honorary workers by any stretch of imagination. It is submitted that the fact of the AWWs being entitled to be appointed by nomination as Mukhya Sevikas, clearly point out to the fact that the AWWs are not mere honorary workers. Thus submitting, learned Senior Advocate Mr. Mehta would request this Court to grant the prayers as prayed for by the petitioners.

8. At this stage, before considering the issue any further, it would be relevant to note that an additional affidavit had been filed on behalf of the State, whereby a Government Resolution dated 25.11.2019 had been placed on record. The said Government Resolution inter alia lays down the rules regarding selection standards, honorary service, review as well



as discipline of AWWs/AWHs. Reference to the said Government Resolution which has a great bearing and relevance to the issue in question will be made extensively hereinafter, therefore the details of the said Resolution are not being referred at this stage.

3. The Issues formulated for consideration :

9. Having heard learned Counsel for the respective parties and having perused the documents on record, it would appear that by way of this group of petitions, the petitioners who are AWWs/AWHs have sought for direction that the respondents be directed to regularize the services of the present petitioners. On the other hand, it is the contention of the respondents that the issue in question is covered by decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** and hence, this Court may not entertain the present petitions. As against such a contention, it is contended on behalf of the petitioners that while the decision in case of **Ameerbi** , was with regard to AWWs and AWHs, but not on the issue in question and whereas it is further contended that as such, the submissions of the petitioners find support in decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)**. Thus, the issues for consideration of this Court would be as under :



(i) whether the decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** covers the present issue,

(ii) whether the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** supports the case of the present petitioners, and

(iii) whether the petitioners are entitled for seeking regularization in service.

3A. Issue No.1 - on applicability of decision of the Hon'ble Supreme Court in case of State of Karnataka and Others Vs. Ameerbi and Others

3A(1). What constitutes a binding precedent :

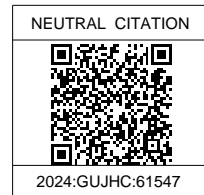
10. Insofar as the first issue with regard to applicability of decision of **Ameerbi (supra)**, before recording my findings on the said decision, it would be apposite to discuss the aspect of what would constitute a binding precedent. It is by now a well settled principle that a decision is an authority for what it actually decides and not for every observation found in the decision or what logically follows from the observations. The *ratio decidendi* of a decision is what would constitute the binding



principle, more particularly having regard to the issue in question on which the decision is arrived at.

11. In coming to the above observations, this Court has placed reliance upon observations of the Hon'ble Supreme Court in case of **Union of India Vs. Dhanwanti Devi**, reported in **(1996) 6 SCC 44**. Paragraph No.9 thereof being relevant a relevant paragraph is quoted hereinbelow for benefit.

"9. Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole



law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject- matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Art. 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

11.1 It would appear from the above law laid down by the Hon'ble Supreme Court that it is only the principle which is laid down in a judgment i.e. binding law under Article 141 of the Constitution of India and to understand the binding law it is necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided. Importantly, the Hon'ble Supreme Court has laid down that a judgment is not to be read as if it is a statute. That a word or sentence in the judgment cannot be regarded as a principle of law propounded by the said judgment. The Hon'ble Supreme Court has



further observed that law cannot afford to be static and judges are required to employ their own independent intelligence while considering whether a judgment constitutes a binding precedent or not.

3A(2). Ameerbi (supra) distinguished :

11.2 Now considering the decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** from the above perspective, it would appear that what was under consideration before the Hon'ble Supreme Court was a decision of the Karnataka State Administrative Tribunal through its Larger Bench which had held that Anganwadi Workers and Helpers hold civil posts. The Hon'ble Supreme Court was concerned with the above dispute and has held that the posts of Anganwadi Workers are not statutory posts and while there may be an existence of relationship of employee and employer, but they are not holders of civil posts. Importantly, at Paragraph No. 39, the Hon'ble Supreme Court has observed as thus, "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."

11.3 The above observation, in the considered opinion of this Court, clinches the issue, inasmuch as, the above observations clearly denote the



issue in question before the Hon'ble Supreme Court i.e. whether the AWWs/AWHs hold a civil post or not. It would also clearly appear from the said decision that while certain other issues were raised before the Hon'ble Supreme Court, but the Hon'ble Supreme Court had declined to enlarge the scope of the appeal. Paragraphs No. 15 and 16 of the **Ameerbi (supra)** also being relevant for the present purpose are quoted hereinbelow for benefit.

"15. 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.

16. 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."

11.4 Having regard to the above observations, it would be clear that the law laid down by the Hon'ble Supreme Court in case of **Ameerbi** was in the context of whether AWWs/AWHs hold a civil post or not and it was only that question which was decided and nothing else. On the other hand, by way of these petitions, the petitioners have inter alia prayed that



their engagement in service as project workers/voluntary workers would be violative of Articles 14 and 16 of the Constitution of India. Furthermore, the petitioners have prayed for grant of minimum wages and also prayed for regularization. Thus, the issues being completely different than what was considered by the Hon'ble Supreme Court in case of **Ameerbi (supra)**, the law laid down by the Hon'ble Apex Court in the said decision would not in any way be applicable to the facts of the instant case. Issue No.1 is answered accordingly.

3B. Issue No.2 - Applicability of decision of the Hon'ble Supreme Court in case of Maniben Maganbhai Bhariya Vs. District Development Officer, Dahod and Others :

12. Now, coming to the second issue as to whether the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** would cover the present issue, it would be relevant to state that the decision in case of **Maniben Maganbhai Bhariya (supra)** was on the issue of entitlement of AWWs/AWHs to the benefit of gratuity and whereas it would appear that the observations/law laid down by the Hon'ble Supreme Court in the said decision would have direct bearing on the present controversy. In case of **Maniben Maganbhai Bhariya**, a decision of Division Bench of this Court was under challenge, whereby



orders passed by the Controlling Authority and Appellate Authority under the Payment of Gratuity Act, 1972, which were not interfered with by learned Single Judge, were set aside. The Controlling Authority and the Appellate Authority had held that AWWs/AWHs were entitled to gratuity under the Payment of Gratuity Act, 1972. The Division Bench of the Hon'ble Supreme Court by concurring judgments had set aside the decision of Division Bench of this Court, resulting in AWWs and AWHs being held entitled for payment of gratuity under the Payment of Gratuity Act, 1972. The Hon'ble Supreme Court had also delved upon the aspect of decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)**, whereas the same has been dealt with at Paragraph No. 51 of the decision of the Hon'ble Mr. Justice Ajay Rastogi and Paragraph No. 66C of the decision of the Hon'ble Mr. Justice Abhay S. Oka. The said paragraphs are referred hereinbelow for benefit.

"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.

xxx xxx xxx

"66C. 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 25th November 2019 in extenso."

12.1 While some of the observations of the Hon'ble Supreme Court as above would be referred to and relied upon by this Court while deciding the next question and whereas the paragraphs have been quoted hereinabove to demolish the submission on behalf of the respondent-State that the law laid down in **Ameerbi (supra)** will have a direct bearing on the issue. To this Court, it would appear that while the decision of **Ameerbi (supra)** was on the aspect of whether AWWs/AWHs hold civil post or not, it would also appear that in the decision of **Maniben Maganbhai Bhariya**, the Hon'ble Supreme Court has distinguished the decision of **Ameerbi**, more particularly on the basis of subsequent developments which have happened post the decision of **Ameerbi**.



12.2 Coming back to the decision of **Maniben Maganbhai Bhariya**, it would appear that the Hon'ble Supreme Court in the said decision had taken note of the factual position when the Hon'ble Supreme Court had decided the case of **Ameerbi** was different from the position when the Hon'ble Supreme Court had decided the case of **Maniben Maganbhai Bhariya**. Apart from the aspect of intervening National Food Security Act, 2013, whereby Anganwadi Centers established under the ICDS Scheme have been given Statutory status, the Hon'ble Supreme Court has also noted the existence of the intervening Government Resolution of the State of Gujarat dated 25.11.2019, referred by this Court hereinabove.

12.3 The Hon'ble Supreme Court has noted that the Resolution dated 25.11.2019 lays down selection criteria, educational qualification, selection process etc. of AWWs/AWHs through detailed rules. The rules also lay down marking system and provide that AWWs/AWHs would continue in service till 58. The rules also envisages minimum and maximum age of candidates for participating in recruitment process and whereas provision for termination of service is also made. The Hon'ble Supreme Court has also observed that in view of the provisions of the National Food Security Act, 2013 and the RTE Act, the Anganwadi Centers perform statutory duties, consequently even the AWWs/AWHs



also perform statutory duties under the said enactment. The Hon'ble Supreme Court has further observed that the employment of the AWWs/AWHs cannot be termed as temporary and the word 'honorary' used in the Resolution is not determinative of the status of the AWWs/AWHs.

13. Having regard to the observations of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya**, to this Court, it would appear from the foregoing discussion that while the decision of the Hon'ble Supreme Court in case of **Ameerbi** was in context of whether AWWs/AWHs hold a civil post or not and whereas, even the said observations stand diluted in view of the observations of the Hon'ble Supreme Court in the later decision. It would also be apposite to mention here that, in addition to relying upon the National Food Security Act, 2013 and the RTE Act, the Hon'ble Supreme Court has extensively relied upon the Government Resolution dated 25.11.2019, upon which this Court would also rely.

14. The observations of the Hon'ble Supreme Court relying upon the GR dated 25.11.2019 appear to be in context of the observations of the Hon'ble Supreme Court at Paragraph No. 20 of the decision of **Ameerbi**, whereby it is held that Anganwadi Workers do not carry out any function of the State and that they do not hold any post under a statute. That their



posts are not created and recruitment rules ordinarily applicable to the employees of the State and are not applicable to the AWWs/AWHs and the State is not required to comply with the constitutional scheme of equality and that no process of selection for appointment of AWWs/AWHs existed in the constitutional scheme. It appears that after the State Government came out with Resolution dated 25.11.2019, the above observations may not be the prevailing position, which has been sought to be explained by the Hon'ble Supreme Court as above.

3C. Issue No.3 - On entitlement for regularization :

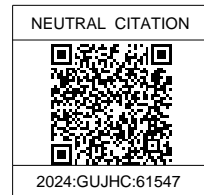
15. Insofar as the aspect of a declaration that the AWWs/AWHs be treated as regular employees, it would be required to be observed that regularization as sought for in the instant case is not to be construed as a prayer for regularization in its normal sense. The case of the petitioners is not that the petitioners are either temporary/ ad-hoc/ casual workers, who by the dint of having worked for substantially long period of time, are entitled for the benefit of regularization, rather it appears to be the case of the petitioners that except for being categorized as project workers/voluntary workers, the petitioners are in all other aspects functioning as any other regularly appointed permanent employee of the State or the Central Government.



3C(1). Overview of the ICDS Scheme :

16. At this stage, it would be relevant to have a brief overview of the ICDS Scheme under which the Anganwadi Centers are being managed and a brief overview about the functions and duties of Anganwadi Center. For such purpose, this Court shall be relying upon the averments made by the respondents i.e. the Central Government as well as the State Government in their respective counter affidavits. The Integrated Child Development Services Scheme was launched on 02.10.1975 and is probably, one of the world largest and most unique programmes designed to cater to the nutritional needs of pregnant women and lactating mothers as well as children below age of 6 years, catering to the pre-school non-formal education, immunization and other health related aspects of children below the age of 6 years. In the words of the State Government “ICDS is the foremost symbol of India’s commitment to her children – India’s response to the challenge of providing non-formal pre-school education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other.”

17. The ICDS is a centrally sponsored scheme operated by the State Governments wherein the programme planning is done by the Union of India and the State Governments are responsible for day-to-day



programme implementation. The Government of India provides 90% of funds for administrative and operative costs while the remaining 10% is borne by the States.

18. The scheme provides for 6 main services namely;

- (i) Supplementary Nutrition,
- (ii) Pre-school non-formal education,
- (iii) Nutrition and health education,
- (iv) Immunization,
- (v) Health check-up and
- (vi) Referral services.

These services are provided through Anganwadi Centers managed by AWWs/AWHs. It appears that while some of the services are to be provided through the AWWs/AWHs directly, few of the services are provided by other service providers namely auxiliary nurse/midwife etc., and whereas a Chart showing the services, the target group and the service providers as found in the affidavit-in-reply of the State is extracted hereinbelow for better appreciation.



| Services | Target Group | Service Provided by |
|----------------------------|--|--------------------------------------|
| Supplementary Nutrition | Children below 6 years, Pregnant & Lactating Mothers | Anganwadi Woker and Anganwadi Helper |
| Immunization | Children below 6 years, Pregnant & Lactating Mothers | Auxiliary Nurse Midwife (ANM)/ MO |
| Health Check-up | Children below 6 years, Pregnant & Lactating Mothers | ANM/MO/AWW |
| Referral Services | Children below 6 years, Pregnant & Lactating Mothers | AWW/ANM/MO |
| Pre-School Education | Children 3 - 6 years | AWW |
| Nutrition Health Education | Women (15-45 years) | AWW/ANM/MO |

19. The ICDS Scheme comprises of, in the ascending order; (i) Anganwadi Helper (AWH) (ii) Anganwadi Worker (AWW) (iii) Supervisor (Mukhya Sevika) (iv) Child Development Project Officer (CDPO) and (v) District Programme Officer (DPO).

3C(2). Analysis of Government Resolution dated 25.11.2019 :

20. At this stage, it would be apposite to observe that even before the State had come out with the Government Resolution dated 25.11.2019, appointment of AWWs/AWHs in the State of Gujarat was regulated by



Government Resolution dated 13.11.2009, which prescribes amongst others, a recruitment process which lay down the minimum educational qualification for AWWs/AWHs, the minimum and maximum age for applying for selection, the bar of non-local candidates not being permitted to participate, a retirement age, a provision for AWH to be appointed upon fulfillment of certain conditions to a vacant post of AWW, the process of selection and the constituents of the Selection Committee, the publishing of merit list and waiting list etc. It appears that duties and responsibilities of AWWs/AHs were also laid down in Circular dated 04.09.2013. It also appears that there are intervening Resolutions and Circulars laying down benefits of leave, vacation etc. available to AWWs/AWHs.

20.1 Again, it appears that the earlier Resolutions of the State Government have been consolidated vide Resolution dated 25.11.2019.

21. As far as Government Resolution dated 25.11.2019 is concerned, it would be relevant to observe that the said Resolution is a manifestation of commitment of the State of Gujarat to ensure that appointment to the post of AWW/AWH in the State of Gujarat complies with the constitutional requirement of equality and equal opportunity in matters of public employment as guaranteed under Articles 14 and 16 of the Constitution



of India. As could be discernible, the rules lay down the general conditions i.e. requirement of only woman candidates being entitled to apply as AWW/AWH who should be staying in the revenue village or the election ward where the Anganwadi center is situated, who should not be below 18 years and above 33 years, who should have minimum educational qualification of standard 12th pass or 10th pass and any diploma of 2 years recognized by the AICTE for AWW and standard 10th pass for AWH etc. The rules also contemplate that the candidate will be considered disqualified on the ground of the candidate having been convicted, declared insolvent, dismissed from any Government, Semi Government/ Honorary service and there should not be two members of the same family in the same Angandwadi Center or the candidate should not be holding elected post or honorary service in Local Self Government, Legislative Assembly, Parliament or Cooperative Society etc. The rules also envisages relaxation in general conditions. The rules further envisage priority to existing AWHs in selection process for AWWs. The rules also further envisage a complete procedure of selection, which includes an advertisement, uploading of documents through online mode, verification by the CDPO, monitored by the Programme Officer, specific marks under different heads for both AWW and AWH, publishing a merit list/ waiting list, verification of documents,



submission of medical fitness certificate and provision for appeal against declaration of merit as per the merit list, the constitution of appellate authority both at rural and municipal level, the honorarium and other benefits as available to AWW/AWH, the requirement of training during honorary service including requirement for undergoing refresher training, the disqualification against holding of an elected post, the entitlement of AWW/AWH to apply for higher education through correspondence course, the requirements of maintaining discipline and the punishment envisaged for breach of discipline, honorary service book and review of honorary service at the interval of every 10 years, the requirement of undergoing general medical examination upon completion of 40 years and 50 years of age and recording of the fitness in the service book, the completion of service upon attaining the age of 58 years, the option to terminate service at the end of 10 year's review, the entitlement to termination of service upon undergoing police custody for 48 hours, the prohibition against engaging in activities like strike or activities against the State or activities against the nutrition mission etc.

22. To appreciate the scope and ambit of Government Resolution dated 25.11.2019, a birds eye view of some of the salient features of the said Government Resolution would be necessary. It would appear that the



Resolution prescribes (1) General Conditions (Age, Educational Qualification and Other Conditions) for Selection to Honorary Service as AWW/AWH, (2) Disqualification for selection to Honorary Service as AWW/AWH, (3) Relaxation in general conditions, educational qualification and other conditions for selection to honorary service of AWW/AWH (4) Priority to existing Aanganwadi Helpers in Aanganwadi Worker Selection Process (5) Procedure for Selection in honorary service as AWW/AWH, which also includes inter alia marking system for selection as AWW/AWH and Appellate Committee at Rural/Municipal areas (6) Honorarium, insurance, leave and other honorary service benefit to AWW/AWH (7) Training during honorary service as AWW/AWH (8) Holding of elected post by AWW/AWH in Local Self Government/ Legislative Assembly/ Lok Sabha or any Cooperative Body / Registered Society / Registered Trust etc., (9) Transfer of AWW/AWH, (10) Permission to AWW/AWH for Higher Education (11) Issues with regard to discipline and penal action for breach of discipline, (12) Maintaining Service Book and Service Review for honorary service (13) Termination of honorary service etc.

22.1 A perusal of the rules clearly reflect that due care is taken to ensure that the selection process is transparent and uniform. It is also apparent



that the rules are a complete set of service rules except for the provision of emoluments including retiral benefits. The rules also reflect the importance the State attaches to a transparent recruitment process and the commitment to ensure that the best of the eligible candidates are appointed. At the same time, there are minimum benchmarks stipulated for entry in service, continuance in service etc. It is also discernible that some clauses are even more onerous than as applicable to regular Government servants i.e. the condition of review of service after every 10 years with the power to terminate the service available after the review.

22.2 The Resolution also in addition to laying down the functions and duties of AWWs/AWHs, also lays down the minimum standard of discipline to be maintained by the AWWs/AWHs as well as the punishment prescribed for transgression. The rules also envisage an opportunity to AWH to be appointed on the post of AWW upon fulfillment of certain criteria and furthermore, the rules also envisage the AWW being entitled to be appointed on the regular post of Mukhya Sevika by way of lateral entry as per the Recruitment Rules of Mukhya Sevika.



3C(3). Duties and responsibilities of Anganwadi worker and Anganwadi Helper as per Government Resolution dated 25.11.2019 :

23. At this stage, for better appreciation of the ICDS Scheme in general and the duties and responsibilities of the AWW/AWH, more particularly to appreciate the micro level outreach which is expected of a AWW/AWH and to understand the extent of the work done by the AWW/AWH, the duties and functions of the AWW and AWH as laid down in GR dated 25.11.2019 at Annexure – 1, is extracted and reproduced hereinbelow :

"(Rules regarding Selection Standards, Honorary Service, Review and Discipline of Aanganwadi Worker/Helper)

Annexure - 1 (Rule - 2)

Functions and Duties of Aanganwadi Worker and Helper

1. Functions and Duties of Aanganwadi Worker

Anganwadi Workers shall provide services under Integrated Child Development Scheme (ICDS SERVICES) in their area of work and in other areas, when required. Further, they shall also do coordination with other services and schemes as per the instructions issued by the Central and State Governments from time to time. The functions and duties of an Aanganwadi worker will include the followings.

1.1) The Anganwadi Centre should be kept operational as per the scheduled time.



- 1.2) The Aanganwadi worker shall survey her work area as per instructions and update the record regularly after taking note of new matters.
- 1.3) To provide health and nutrition services to the children of her area of work, to monitor the growth and development of all children and to identify moderately malnourished, severely malnourished and children in need of medical services and provide them with referral services. Even after taking the referral service, it has to be ensured that they get the benefit of regular supplementary nutrition and other services at the Aanganwadi Centre.
- 1.4) Growth Monitoring : All children between 0 and 3 years shall be weighed every month and crucial activity of identifying malnourished children shall be done.
- 1.5) Mamta Card and growth chart shall be maintained to measure the individual pace of growth of each child.
- 1.6) Underweight children shall be given special care and children with medical complications among moderate-extremely underweight children shall be identified and referred to CMTC/NRC.
- 1.7) They shall carry out 4 follow-up visits of children rehabilitated at CMTC/NRC every 15 days and ensure regular supplementary feeding of the said children at the Aanganwadi Centre .
- 1.8) Vaccination, Pre-Natal & Post-Natal Checkup (ANC & PNC), Supplementary Micronutrients, De-Worming, Referral Services etc. services shall be provided with the help of ANM/ASHA worker. Also, monthly activities related to health, nutrition, hygiene, education shall have to be carried out.
- 1.9) Village level meeting of the Gram Sanjeevani Samiti (VHSNC) shall be attended.



- 1.10) Based on the average attendance of the Aanganwadi beneficiaries for the previous three (3) days, the daily ration shall have to be released to the Helper.
- 1.11) 3-6 years old children shall be given supplementary food in the morning and afternoon according to the pre-determined schedule.
- 1.12) Food safety and hygiene rules must be followed in the Aanganwadi Centre.
- 1.13) Home visit shall be done at least three days in a week. During home visits, children below 3 years, high-risk pregnant women and lactating mothers etc. shall especially be visited. Pregnant women shall be given the necessary guidance about exclusive breastfeeding at the first initiation of breastfeeding and lactating mothers shall be given necessary guidance about appropriate complementary foods after six months of child birth.
- 1.14) For effective implementation of Aanganwadi services, public relations shall be done and public participation shall be obtained through house visits, meetings, celebration of various programs etc.
- 1.15) Special days shall be celebrated for the purpose of ensuring people's participation. Under which,
 - a. Four Tuesdays (1) First Tuesday - Susposhan Samvad (2) Second Tuesday – Baal Tula (3) Third Tuesday - Annaprashan and Children's Day (4) Fourth Tuesday - Food distribution and Purna Diwas. Such special days shall be celebrated.
 - b. Mamata Diwas shall be celebrated at the Aanganwadi Centre on the scheduled date.



- 1.16) Guidance shall be provided during home visits on early development to monitor the early developmental milestones of each child.
- 1.17) Children with disabilities or children with developmental delay shall be identified and the services to refer them for health screening shall be provided immediately.
- 1.18) Pre-primary education activities for 3 to 6 years old children shall be done using the pre-school kit according to the pre-school time-table. By providing a pleasant educational environment to the children in the Aanganwadi Centres, their development shall be evaluated in the “Mari Vikasyatra” booklet.
- 1.19) Aanganwadi children who are admitted to primary school shall be given a certificate of pre-primary education issued by the Child Development Project Officer.
- 1.20) Coordination with other concerned departments like Health, Panchayat, Education, Water Supply shall be done to improve malnutrition and health condition in her Aanganwadi area.
- 1.21) The meeting of Aanganwadi Promotion Committee shall be convened regularly.
- 1.22) Equipment provided by the Government and obtained through public participation shall be maintained and properly regulated.
- 1.23) Services provided by ICDS platform such as, SAG-PURNA, PMVVY, WIFs, RBSK, CRECH, Dudh Sanjeevani Yojana, Poshansudha etc., shall be implemented/coordinated.
- 1.24) Aadhaar registration of children of Aanganwadi Centre shall be done and Aadhaar card numbers of



other beneficiaries shall be registered in respective registers and online portals.

- 1.25) All reports, registers, documents related to services shall be maintained and preserved for a fixed period. Details of food items, details of beneficiaries, maternal death, child death, child birth, birth - death record etc. operations shall be done every month. Monthly/Annual report shall be filled as prescribed.
- 1.26) After being selected as an Aanganwadi worker, the prescribed training shall be completed mandatorily.
- 1.27) All the schemes related works assigned by the Mukhya Sevika, Child Development Project Officer, Program Officer, Regional Deputy Director and the State Office of Integrated Child Development Scheme shall be done.
- 1.28) These functions and duties will be modified as and when required by the Government.

2. Functions and Duties of Aanganwadi Helper :

The functions and duties of the Aanganwadi Helper will include the followings:

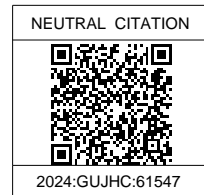
- 2.1) They shall come half an hour earlier than the time of the Aanganwadi Centre and clean the Aanganwadi Centre.
- 2.2) They shall perform the work of bringing the children from home to the Aanganwadi Centre and taking them back home.
- 2.3) Under the guidance of the Aanganwadi worker, they shall perform the work of preparing and serving healthy supplementary food for the beneficiaries.
- 2.4) They shall perform the work of keeping a clean and tidy environment in the Aanganwadi Centre, such as personal hygiene of children, maintenance and



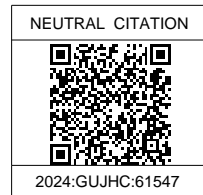
cleanliness of foodstuffs, cleanliness of cooking and serving utensils, cleanliness of the inside and outside of the Aanganwadi and cleanliness of other equipment and materials.

- 2.5) They shall assist Aanganwadi workers in the work of public relations and public participation.
- 2.6) They shall play the role of messengers with respect to the Aanganwadi services.
- 2.7) After being selected as Aanganwadi Helper, they shall mandatorily complete prescribed trainings.
- 2.8) They shall perform all the activities related to the scheme assigned by the Mukhya Sevika, Child Development Project Officer, Program Officer, Regional Deputy Director and State Office of Integrated Child Development Scheme.
- 2.9) These functions and duties will be modified as and when required by the government."

23.1 A perusal of the said duties and responsibilities, more particularly of the AWW would reflect that an AWW has a varied list of responsibilities which inter alia include supervision, survey, identification, referral, which would include doing the work related to the ICDS Scheme and also other schemes and services as directed. The AWW is required to keep the Anganwadi centers operational as per the specified time. The AWW is required to survey her work area and maintain records regularly, monitor and provide health and nutrition services to children in her area and to monitor their growth and

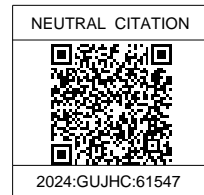


development, more particularly to identify moderately and severely malnourished children and to provide referral service to them and to ensure that the children get regular supplementary nutrition. For the purpose of identification, weighing of children between 0 to 3 years would be done every month, maintaining Mamta Card and Growth Chart to measure individual growth pace, identify moderately/extremely underweight children with or without medical complications and to provide appropriate referral services and to carry out 4 follow up visits every 15 days and ensure regular supplementary feeding of such children at Anganwadi Center. The AWW is also required to coordinate pre and post natal check up and providing appropriate supplementary micronutrients, co-coordinating vaccination and de-worming etc. with appropriate agencies, attend monthly meeting of Gram Sanjeevani Samiti, release of daily rations every third day, ensuring providing of supplementary food, both morning and afternoon to children between 3 to 6, home visits at least 3 days in a week for children below 3 years, high risk pregnant women and lactating mothers, providing guidance on breastfeeding and appropriate complimentary food for children before and after 6 months of child birth, ensuring implementation of Anganwadi services through public relation measures like house visit, coordinating meetings and celebration of various programmes, celebrating 4 Tuesdays



every month for ensuring people participation, celebrating Mamta Divas, identification of children with developmental delay and provide appropriate referral services, to ensure pre-primary education activities for children between 3 to 6 years including by using a pre-school kit, maintaining a booklet, evaluating the overall progress of child, ensuring coordination with related Agencies and Departments like Health, Panchayat, Education and Water Supply, convening meetings of Anganwadi Promotion Committee regularly, maintaining equipment provided by Government or obtained through public participation, implementing other services provided under the ICDS platform, coordination with other agencies for Adhar registration of the children at the Anganwadi center, maintenance of registers, documents, supply details of beneficiaries, birth/death etc, filing monthly/ annual report as prescribed, participate and undergo prescribed training etc.

23.2 While it could be seen that an Anganwadi center is required to be open from 9 : 00 am. to 3 : 45 pm, depending on the number of beneficiaries and the extent of area, complying with duties and responsibilities would require every Anganwadi worker to put in more than the six and a half hours of duty required from them. It would also appear that the responsibility of an AWW not only includes maintenance



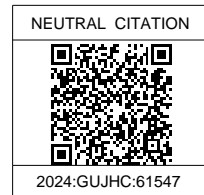
of Anganwadi but also includes traversing the length and breadth of the area for which the Anganwadi is established. The AWW along with being required to do physically challenging tasks, is also required to be equally adept at clerical duties like maintenance of registers, coordination with other referral agencies, forwarding of appropriate monthly and annual report etc. Over and above these responsibilities, an AWW is also required to work as a teacher for ensuring pre-school activities at the Anganwadi Center. Further, the AWW is expected to be an excellent coordinator coordinating with other departments as well as other agencies. The AWW is also expected to be a supervisor and manager managing and supervising the functioning of the Anganwadi, more particularly for conducting the activities at the Anganwadi Center and to ensure appropriate release of ration every 3 days. The AWW is also expected to be a Public Relation Officer for ensuring that the activities conducted by the Anganwadi Center are known to the people in her area and also to ensure that the benefits are availed of. The AWW is also required to be an event coordinator, more particularly for co-ordinating the celebratory activities at the Anganwadi center. The AWW is also expected to be a semi trained medical professional for identifying malnourished, underweight and underdeveloped children. The AWW is also expected to be a guide to pregnant and lactating mothers. The AWW



is also expected to be nutritionist for ensuring that nutrition needs of children between the age group 0 to 3, 3 to 6, pregnant women and lactating mothers are taken care of etc.

23.3 As far as the functions and duties of an AWH is concerned, it would appear that the AWH is required to be an effective assistant to the AWW. The duties of AWH appear to be more concentrated towards physical/mental works, i.e. coming to the Anganwadi half an hour before the opening time and to clean the Anganwadi centre. The AWH is required to bring children from home to the Anganwadi centre and to drop them back home. The AWH is also required to prepare and serve healthy supplementary food, ensure personal hygiene of the children and to maintain general and overall cleanliness at the Anganwadi centre. The AWH is required to assist the AWW in public relation and participation work, to spread awareness about progress in the Anganwadi centre and to generally carry out all the works as assigned by the officers of the Child Development Program.

23.4 Thus, from an overall perspective, it would appear that the AWWs are required to carry out completely varied and dissimilar functions and duties in furtherance of the scheme, whereas the duties and functions of



AWHs are more structured but to a limited extent. It would also appear that the job profile of an AWW may not be comparable with functions and duties of almost any subordinate State service.

3C(4). Anganwadi Workers and Anganwadi Helpers employed on Statutory Post :

24. Before delving into the principal issue i.e. on the aspect of regularization, it would be apposite to appreciate the legal status of the AWWs and AWHs. While the Hon'ble Supreme Court in case of **Ameerbi (supra)** had held that the posts of AWW and AWH are not civil posts but at the same time, the decision in case of **Ameerbi (supra)** stands watered down to a great extent by the later decision of the Hon'ble Supreme Court in case of **Maniben Maganbhia Bhariya (supra)**. It also appears that the State i.e. both the Central and the State Government have contended that posts of AWW and AWH are Honorary posts, the incumbents providing voluntary service. Though the said aspect i.e. Honorary and Voluntary service would be addressed later, the above observation reflecting the States view.

24.1 In this regard, at the outset, it would also be relevant to refer to observations of the Hon'ble Supreme Court in case of **Dipika Jagatram**



Sahani Vs. Union of India and Others, reported in **(2021) 2 SCC 740**.

24.2 In the case of **Dipika Jagatram Sahani (supra)**, the Hon'ble Supreme Court has delved upon the issue of the Anganwadi Centers having been given statutory recognition under the National Food Security Act, 2013 and also the Centre and the States being statutorily obliged to provide for nutritional support to pregnant women, lactating mothers and children. The observations of the Hon'ble Supreme Court at Paragraphs No. 3, 4, 5, 6 and 20 being relevant for the present purpose are reproduced hereinbelow for benefit.

"3. The Constitution of India with the object of securing to all its citizens social and economic justice contains various Articles which empower making of special law in favour of women and children. [Article 47](#) of the Constitution which forms the part of directive principles of State Policy provides that 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. The Government of India with the above objective launched a welfare scheme, namely, Integrated Child Development Services Scheme in the year 1975. The Scheme was designed as an early childhood development programme aimed to address health, nutrition and development needs of young children who are future of India and pregnant and nursing mothers. The Scheme was designed to promote holistic development of children under 6 years of age. This Court in a public interest litigation in Writ Petition No.196 of 2001, [PUCL v. Union of India](#), had issued various directions for protection of right to food of the poor and the underprivileged sections including children and women. This Court has been proactively directing the Central



Government and the State Governments to effectively implement the Integrated Child Development Services Scheme. Various directions were issued by this Court from time to time.

4. The Parliament enacted the [National Food Security Act, 2013](#) (hereinafter referred to as the “the 2013 Act”) to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith. The Statement of Objects and Reasons of the Act apart from containing various other objects, proposed to provide the following also in paragraph 4(c), (d) and (e):

“4. In view of the preceding paragraphs, it is proposed to enact a new legislation, namely, the National Food Security Bill, 2011, to-

(c) entitle every pregnant woman and lactating mother to meal, free of charge, during pregnancy and six months after child birth, through the local Anganwadi, so as to meet the nutritional standards specified in Schedule II; and to provide to such women maternity benefit of rupees one thousand per month for a period of six months in accordance with a scheme, including cost sharing, payable in such instalments as may be prescribed by the Central Government.

(d) entitle every child up to the age of fourteen years-

(i) age appropriate meal, free of charge, through the local Anganwadi so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six months to six years; and (ii) 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, up to class VIII, so as to meet the nutritional standards



specified in Schedule II in the case of children in the age group of six to fourteen years;

(e) require the State Government to identify and provide meals through the local Anganwadi, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II; and implement schemes covering entitlements of women and children in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government."

5. The 2013 Act by Section 4 creates a statutory right of every pregnant woman and lactating mother free meals during pregnancy and six months after the child birth. Section 5 provides for nutritional support to children, 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. Similarly, Section 6 provides for and management of child malnutrition. Sections 4,5 and 6 are as follows:

“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 subsection (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.”

6. The Anganwadi Centres which were running in the country since 1975 under the Integrated Child Development



Services Scheme, now have been given statutory recognition under the 2013 Act. Section 2(1) defines Anganwadi in the following words:

“2(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 and Section 6.”

XXX XXX XXX

20. As observed above, it is now statutory obligation of the Centre and the States to provide for nutritional support to the pregnant women and lactating mothers, nutritional support to children and to take steps to identify and provide meals for children who suffer from malnutrition. The Government has a constitutional obligation to preserve human life. Good health of its citizens is its primary duty. International covenants also aim at highest attainable standards of physical and mental health. This is in interest of social justice. Inadequate supply of nutritious food to the citizens, more particularly to the children and the women shall affect their health. Therefore, the same shall be in violation of their fundamental right to health/right to live with dignity guaranteed under Article 21 of the Constitution of India."

25. Now, coming to the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)**, as noted hereinabove, the Hon'ble Supreme Court was considering an issue as regards entitlement of AWWs for gratuity under the Payment of Gratuity Act, 1972. The Hon'ble Supreme Court was considering a challenge to a decision of



Division Bench of this Court, in the words of the Hon'ble Supreme Court "...primarily relying on the judgment of this Court in Ameerbi (supra)" whereby the Division Bench of this Court reversed the finding of the learned Single Judge of this Court, confirming decision of the prescribed authority, confirmed by the appellate authority directing the respondent-State Authorities to pay gratuity to retired AWWs. While considering the ICDS Scheme from the perspective of the National Food Security Act, 2013 and the Right to Education Act, 2009, the Hon'ble Supreme Court has held that the posts of the AWW and AWH are statutory posts. The observations of the Hon'ble Supreme Court in **Maniben Maganbhai Bhariya (supra)** at Paragraphs No. 59 to 65 and Paragraphs No. 66C, 67 to 69, being relevant and directly on the issue, are relied upon by this Court and reproduced hereinbelow for benefit.

"59. I have given careful consideration to the submissions. The Government of India launched ICDS on 2nd 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.

60. The 2013 Act came into force on 5th 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."

61. 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.



62. 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."

63. 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 subsection (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)

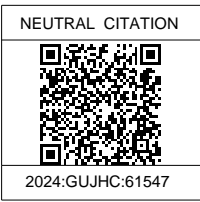


64. The provisions mentioned above lay down the entitlements of pregnant women, lactating mothers, and children in the age group of 6 months to 6 years. In addition, the children who suffer from malnutrition are entitled to the benefit of free meals through Anganwadi centres. These entitlements confer 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)

65. 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.

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66C. 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 25th November 2019 in extenso.

67. 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.

68. 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."

69. 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."

26. It would be discernible from the above quoted paras that the Hon'ble Supreme Court refers to Anganwadi Centres being statutorily recognized under the National Food Security Act, 2013 and further refers to vital and significant role played by the Anganwadi in implementation of provisions of Sections 4 to 6 of the National Food Security Act. The Hon'ble Court further observes that since Anganwadi Centres have been entrusted with the onerous responsibility of implementing some of the most important and innovative provisions of the 2013 Act, it could 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. The Hon'ble Court also observes that AWWs and AWHs constitute the backbone of Anganwadi centres and therefore, the onerous responsibility of extending benefits under the National Food Security Act, 2013 to the beneficiaries is on them. The Hon'ble Court further observes that one of the important functions of Anganwadi centres is to conduct pre-primary education activities for children of the age group of 3 to 6 years by following pre-school timetable and using pre-school kit, incidentally referring to a specific provision in the Government Resolution 25.11.2019 with regard to the same. It is further observed that the Anganwadis in that sense are performing the statutory duty imposed upon them by the Government under Section 11 of the the RTE Act, which requires the appropriate Government to make necessary arrangement for providing free pre-school education to children above the age of 3 years till they complete the age of 6 years. The Hon'ble Court further observes that in view of provisions of the 2013 Act and Section 11 of the RTE Act, Anganwadi centres perform statutory duties and consequently even AWWs and AWHs perform statutory duties under the said enactments. It is further observed that Anganwadi centres have become an extended arm of the Government in view of the enactment of



the 2013 Act and in view of the Rules framed by the Government of Gujarat under GR dated 25.11.2019. It is further observed that Anganwadi centres have been established to give effect to the obligations of the State as defined under Article 47 of the Constitution. Having observed as thus, the Hon'ble Court states that the posts of AWWs and AWHs are statutory posts. The Hon'ble Court thereafter notes the plight of AWWs and AWHs by observing that considering the all pervasive duties required to be carried out, it is impossible to accept the contention that the job assigned to the AWWs and AWHs is a part time job. It is further observed that Government Resolution dated 25.11.2019 also does not lay down that the job of AWWs/AWHs is a part time job. It is further observed that having regard to the nature of duties and responsibilities envisaged is of a full time employment. The Hon'ble Court further observes that the AWWs are paid measly remuneration and it is high time that the State Government and the Central Government take note of the plight of the AWWs and AWHs who are expected to render such important services to the society.

27. Continuing with the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)**, the Hon'ble Supreme Court has also discussed, observed and commented upon the enormous and



exemplary work done through the ICDS scheme as well as onerous duties and responsibilities of the AWWs and AWHs generally and from the context of the Government Resolution dated 25.11.2019 as well as the plight of the AWWs and AWHs and the requirement to provide better service condition to the AWWs and AWHs. Paragraph Nos. 34 to 52 of the said decision being relevant, are quoted hereinbelow for benefit.

"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 preschool 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 15th 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 25th 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 25th 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.

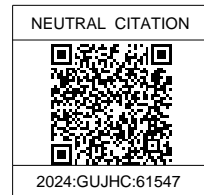
51. The judgment of Ameerbi (supra) relied upon by the Division Bench of the High Court and placed by the respondents before this Court is of no assistance and has no application so far as the question raised before us in the instant appeals.

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."

27.1 A perusal of the observations of the Hon'ble Supreme Court in the above quoted paragraphs as well as in paragraphs 19 to 33, which are not reproduced herein for the sake of maintaining brevity, would inter alia reveal that AWWs and AWHs are held to be the backbone of the ICDS Scheme which is the world's largest programme for early childhood care and development, which covers over 158 million children as per 2011 census. The Hon'ble Court notes that the AWWs and AWHs are not only at war against malnutrition but have played a pivotal and significant role during the Covid-19 pandemic and in normal circumstances they are required to trek for kilometres daily to discharge their regular duties and whereas in the pandemic, additional duty to deliver ration at the doorsteps of ICDS beneficiaries and to educate rural people about dos and dont's of coronavirus and preparing a list of outsiders visiting the

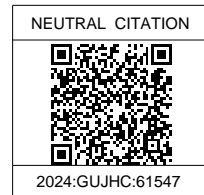


villages was tasked to the AWWs and AWHs. It is observed that the ICDS Scheme is not just a welfare scheme but a means of protecting the rights of children under six including their rights to nutrition, health and joyful learning as well as the rights of pregnant and lactating mothers. It is also observed that, the survival, well-being and rights of children are social issues of interest to the community and not just to the mothers of the families concerned. It is further observed that, in light of the contributions of childcare to social progress, the ICDS deserves far greater attention in public policy since the ICDS acts as an institutional mechanism for realization of child and women rights.

27.2 The Hon'ble Supreme Court has thereafter considered the rights of children from the perspective of the Constitution of India and has observed that the Founding Parents had enacted several provisions concerning welfare and development of children, especially in Parts III and IV of the Constitution. It is observed that Article 15(3) provides for affirmative action for women and children and jurisprudence developed by passage of time under Article 21 of the Constitution underlines the primary importance of early childhood developments and whereas right to food, nutrition and health have been judicially crafted as being part and parcel of the right to life to which even children are entitled to, and it is in



this approach that had led to right to free education up to age of 14 years being read into Article 21 by the Hon'le Supreme Court in case of Unni Krishnan J.P. and others Vs. State of Andhra Pradesh and others, reported in (1993) 4 SCC 111. The Hon'ble Court has also observed that right to life has to be read in light of Directive Principles of State Policies, viz. Articles 41, 45 and 46, recognize the value of having a positive right ensuring to the child a right to full development. The Hon'ble Court has also observed that Articles 39 (e) and (f) of the Constitution provides for health care and protection of its citizens, including children, more particularly Article 39(e) requiring the State to ensure that children are given appropriate opportunity and facility to develop in a healthy manner. Furthermore, the Hon'ble Court refers to Article 45 which provides that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. The explicit Constitutional objective came to be further supported by the Right of Children to Free and Compulsory Education Act, 2009 (RTE). The Hon'ble Court also states about the importance of the health of the mother being closely related with the health of the child and it is in this context that the Hon'ble Supreme Court had in case of PUCL held the Central and State Government responsible for providing ICDS services including supplementary nutrition, nutrition and health, education, etc. not only to



a child under the age of six but also to pregnant women and lactating mothers. The Hon'ble Court also observes that special need of pregnant and lactating mother and its relation to child's health 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 the Act. The Hon'ble Court further observes that a conjoint reading of provisions of Sections 3, 4, 5, 6 and 7 of the National Food Security Act, 2013 would unerringly point to the fact that effective implementation of the provisions of the said Act largely depends on the Anganwadis, run by AWWs/AWHs. The Hon'ble Court thereafter while noting the variety of work being done by AWWs/AWHs, observes that on account of the workers and helpers not being holders of civil posts they are deprived of regular salary and other benefits that are available to employees of the State and they are only given a paltry honorarium. The Hon'ble Court further notes that while the honorarium is the quantum of money offered/conferred to someone being a professional or a well honoured person for providing certain services, therefore the same is a voluntary process. However, according to the Hon'ble Court, the honorarium paid to Anganwadi workers/helpers is in fact the wages that



are being paid for the services rendered at the end of each month which is earned in discharge of duty. The Hon'ble Court further observes that a time has come to find out modalities in providing better service conditions to the AWWs and AWHs commensurate to the nature of job held by them.

28. A conjoint reading of the observations of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** and **Dipika Jagatram Sahani (supra)** would lead to a clear declaration emerging from the said decisions that the Central and the State Governments are under a statutory obligation to provide for nutritional support to pregnant women, lactating mothers and to children upto the age of 14 years, more particularly for the purpose of the present case between age group of 6 months to 6 years. The said obligation flowing from Sections 4 to 6 of the National Food Security Act, 2013. The State is statutorily obliged to provide for free education to children between 3 years to 6 years as per Section 11 of the RTE Act. The National Food Security Act, 2013 statutorily recognizes Anganwadi centres. The State is fulfilling its statutory obligations under both the National Food Security Act, 2013 and the RTE Act, through the Anganwadi centres which are manned by AWWs and AWHs. Thus, as observed by the Hon'ble Supreme Court in



case of **Maniben Maganbhai Bhariya (supra)**, AWWs and AWHs are employed on statutory posts.

3C(5). Whether AWWs and AWHs are entitled for claiming regularization :

28.1 At this stage, it requires to be observed that the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** has held that much water has flown after the decision in the case of **Ameerbi (supra)** which was rendered in the year 2007, the RTE Act, 2009 and the National Food Security Act, 2013 were both not existing on the Statute Book at that time. Further, it also requires to be observed that though the Government Resolution dated 25.11.2019 is referred to in extenso in **Maniben Maganbhai Bhariya (supra)**, but as noted hereinabove, in the State of Gujarat there existed prior to Government Resolution dated 25.11.2019, other Government Resolutions, whereby procedure was laid down for recruitment of AWWs and AWHs, more particularly through advertisement etc. Having come to a conclusion, more particularly based upon the decisions of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** and in case of **Dipika Jagatram Sahani (supra)**, that the State is fulfilling its statutory obligation under the



National Food Security Act, 2013 and the RTE Act, 2009 through the AWWs/AHs, and having come to a conclusion relying upon the observations of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya** that posts of the AWWs and AWHs are statutory posts, the question that would arise is, could the State be permitted to employ AWWs and AWHs without affording them benefits as available to a regular employee appointed under the State service or the service of the Central Government. In other words, could the benefit of regularization be denied to AWWs and AWHs.

29. Insofar as the issue of whether the AWWs and AWHs could be denied the benefit of regularization, it has been the argument on behalf of the petitioners that the action of the respondents in not providing the benefits as available to a Government employee to the AWWs and AWHs is discriminatory. On the other hand, it has been the submission on behalf of the State that the AWWs and AWHs are providing voluntary services and are paid honorarium for the same. It is further the submission on behalf of the State that having accepted to join the service being fully aware about the service conditions, it would not be open for the petitioners to now seek for regularization.



30. Considering the rival contentions, for declaring the petitioners as being entitled or disentitled for claiming the benefit of regularization, the first aspect which would require adjudication is whether action of the State in not considering the AWWs and AWHs as Government servants is discriminatory or not. The other aspect which would require consideration is whether the petitioners would be entitled to seek for benefit of regularization, since they have joined the services voluntarily, being aware about the service conditions which inter alia did not confer upon the petitioners the status of a regular employee and would it now be open for the petitioners to question the same. This Court will now examine the above aspects in detail.

31. On discrimination, it needs to be observed that Articles 14 and 16(1) of the Constitution of India encapsulate the fundamental guarantee of equality and equal opportunity in matters relating to employment to an office under the State.

31.1 In this regard, it firstly needs to be observed that before the decision of **Maniben Maganbhai Bhariya (supra)** as well as the decision in case of **Dipika Jagatram Sahani (supra)**, it may have been open for the State to contend that the AWWs and AWHs are not employees of the State, yet, after the unequivocal declaration flowing



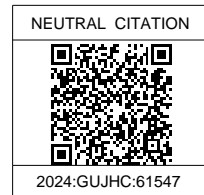
from the above referred judgments that the posts of AWW and AWH are statutory posts, the said argument would no more available to the State. The Hon'ble Supreme Court having declared that the State is fulfilling its statutory obligation under the National Food Security Act, 2013 and the Right to Education Act, 2009 through the AWWs and AWHs who are in charge of the Anganwadis, the State could not be heard to contend that AWWs and AWHs are appointed through a scheme and hence, cannot be treated as employees of the State. Reliance is placed on Paragraphs No. 66C, 67, 68 and 69 of the decision of **Maniben Maganbhai Bhariya (supra)**, whereby the Hon'ble Supreme Court had inter alia distinguished the decision of **Ameerbi (supra)**, by observing that much water flown after the decision of **Ameerbi (supra)** rendered in 2007, more particularly since when the said decision was rendered, neither the 2009 Act nor the 2013 Act, were promulgated. The Hon'ble Supreme Court had further observed that Anganwadi Centres have become extended arms of the Government in view of the 2013 Act and Rules framed by the Government of Gujarat vide Government Resolution dated 25.11.2019. The Hon'ble Supreme Court as further gone on to hold that Anganwadi Centres are established to give effect to obligation of the State as defined under Article 47 of the Constitution of India and whereas the Hon'ble Supreme Court has, insofar as the State of Gujarat is concerned, observed



that appointments of AWWs and AWHs are governed by the rules vide Government Resolution dated 25.11.2019 and furthermore, in view of the National Food Security Act, 2013, AWWs and AWHs are no longer part of the temporary scheme of the ICDS.

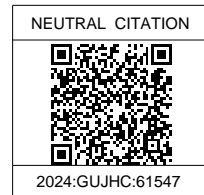
31.2 In the considered opinion of this Court, after the above declaration, by the Hon'ble Supreme Court, at least insofar as the State of Gujarat is concerned, neither the Central Government nor the State Government can be heard to contend that AWWs and AWHs are employees of the ICDS scheme and hence, they would not be able to claim equivalence with the employees appointed by the State.

31.3 In this regard, it would also be relevant to observe that the primary contention emerges on behalf of the respondent-State is that the AWWs and AWHs are not holders of civil posts. For such purpose, let us understand what a civil post is. The Central (Classification, Control and Appeal) Rules, 1965, defines central civil post as including a civilian service or civilian post, as the case may be, of the corresponding class in the defence services. The Gujarat Civil Services Classification and Recruitment (General) Rules, does not define the term 'civil post' and whereas the term 'post' has been defined to mean a post under the State Government included in the State services or subordinate services.



31.4 A conjoint reading of both these definitions would lead to a conclusion being arrived at that civil post means a civilian post included in the State services or the subordinate services. To this Court, it would appear that AWWs and AWHs except for not being specifically included as being part of the State services, as noted by the Hon'ble Supreme Court and as explained by this Court hereinabove, AWWs and AWHs are fulfilling the obligations of the State under the statutes i.e. RTE Act, 2009 and NFS Act, 2013. The post of AWW and AWH is also declared as statutory post by the Hon'ble Supreme Court. Thus, to this Court, it would appear that the action on the part of the State in not considering the petitioners as part of the State Civil Services, itself is discriminatory and arbitrary and whereas on the other hand, it could be observed that the same is in clear violation of Articles 14 and 16(1) of the Constitution of India.

32. Now, let us understand the scope and ambit of the concept of equality propounded under Articles 14 and 16(1) from the context of considering whether the act on the part of the State of not conferring benefits to the AWWs and AWHs as available to the Government employee, is discriminatory or not. It would be profitable to observe here that the stand of the State being that the appointment of AWWs and



AWHs through the ICDS scheme is a policy decision of the State and this Court may not interfere in such a policy decision.

32.1 In this regard, this Court would seek to rely upon decision of the Hon'ble Supreme Court in case of **Satya Dev Bhaguar Vs. State of Rajasthan**, reported in **(2022) 5 SCC 314**, wherein the Hon'ble Supreme Court has inter alia observed with regard to the scope of interference by the Court in policy matters at Paragraphs No. 16, 17 and 18, and the same being relevant for the present purpose, are reproduced hereinbelow for benefit.

"16. It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved.

17. This Court in the case of *Krishnan Kakkanth vs. Government of Kerala and others*, (1997) 9 SCC 495 has observed thus:

"36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the



purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy".

18. A three-Judge bench of this Court in *Sher Singh and Others vs. Union of India and Others*, (1995) 6 SCC 515 has observed thus:

"As a matter of fact the courts would be slow in interfering with matters of government policy except where it is shown that the decision is unfair, mala fide or contrary to any statutory directions."

32.2 From the above quoted paragraphs, it could be discerned that the Hon'ble Supreme Court has observed that while the Courts would be circumspect while interfering in policy matters, unless the policy is found to be questionable on ground of being discriminatory and arbitrary. It is observed by the Hon'ble Supreme Court that even if a policy is challenged on ground of being discriminatory or arbitrary, the Court would not interfere if the State is in a position to point out there is intelligible differentia in application of policy and that intelligible differentia has a nexus with the object sought to be achieved. Again, an



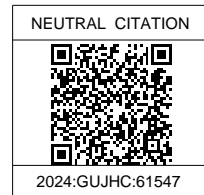
earlier decision of the Hon'ble Supreme Court in case of **Krishnan Kakkanth vs. Government of Kerala and Others** is referred, whereby the Hon'ble Supreme Court has laid down that unless a policy is demonstrably capricious or arbitrary or suffers from vice of discrimination etc., the same would not be interfered with. The Hon'ble Supreme Court has also relied upon a decision of Three Judge Bench of the Hon'ble Supreme Court in case of **Sher Singh and Others vs. Union of India and Others**, wherein the Hon'ble Supreme Court had laid down the very principle as referred to hereinabove.

32.3 From the above observations, it could safely be held that while a policy could be interfered on the ground of being discriminatory, yet, a challenge on such ground would not be sustained if the State is able to point out that the discrimination was based on intelligible differentia which had nexus with the object sought to be achieved.

33. Insofar as the aspect of discrimination is concerned, it would appear to this Court that discrimination of AWWs and AWHs vis-a-vis Government employees, is writ large on the face of the functions, duties and responsibilities of the AWWs and AWHs as compared to the emoluments paid to the AWWs and AWHs. This Court in the earlier paragraphs has independently as well as relying upon decision of the



Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** has traversed in detail the arduous duties and responsibilities of AWW and AWH. This Court has also noticed that while the official timings of AWW is from 9 : 00 am to 3 : 45 pm, yet, having regard to the scope of duties, it would be generally possible for AWW to finish duties within the time prescribed. This Court has also noticed the fact as observed by the Hon'ble Supreme Court in **Maniben Maganbhai Bhariya (Para - 19)** that AWWs and AWHs were in the forefront of fight against Covid-19 pandemic by ensuring supplies to the doorsteps of the beneficiaries of the ICDS and other scheme. This Court has also noticed the variety of job responsibilities which an AWW has to fulfill. The fact of the AWWs fulfilling the obligation of the State under the RTE Act and NFS Act has been reiterated. Comparing the above broad duties and functions of the AWWs and AWHs and comparing them with the honorarium being paid to them i.e at Rs. 10,000/- to AWW and Rs. 5500/- to AWH monthly along with only benefit of gratuity that too being available post the decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)**, it would clearly appear to this Court that in the matter of employment, the State is discriminating the AWWs and AWHs as compared to employees working in civil post.



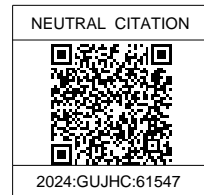
34. Again, at this stage, it would be relevant to observe that this Court has observed that there is a clear case of discrimination and such discrimination, based on finding that the petitioners are not being treated as equal to Government servants employed by the State, yet, a very reasonable question would arise as to how could there be a finding of discrimination based upon an unequal treatment when there was no reference post, that is to state that there was no specific post as compared to which the AWWs and AWHs were treated unequally and thus discriminated.

34.1 In this regard, this Court would seek to rely upon decision of Constitution Bench of the Hon'ble Supreme Court in case of **E.P.Royappa Vs. State of Tamil Nadu**, reported in (1974) 4 SCC 3, paragraph No. 85 being relevant for the present purpose is quoted hereinbelow for benefit.

"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground it is really in substance and effect merely an aspect of the second ground based on violation of Arts. 14 and 16. Art. 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring

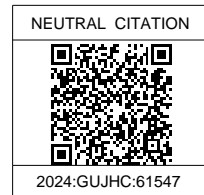


equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art 14 is the genus while Art. 16 is a species. Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle- It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14 and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reasons for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."



34.2 The Hon'ble Supreme Court has in the above quoted paragraph inter alia explained the concept of equality as found in Articles 14 and 16(1) of the Constitution of India and has observed that basic principle as found in both the Articles is the concept of equality and inhibition against discrimination. The Hon'ble Supreme Court has further explained that concept of equality is a dynamic concept and cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. The Hon'ble Supreme Court has also explained that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. The Articles, according to the Hon'ble Supreme Court, require that State action must be based on valid relevant principles applicable to all similarly situated.

35. Having regard to the observations of the Hon'ble Supreme Court that concept of equality being a dynamic concept cannot be confined to a straight jacket formula, to this Court, it would appear that merely on account of there being no comparable equivalent post in the State or Central service, would not render the AWWs and AWHs unable to challenge the State's arbitrary action in paying meagre amount per month by categorizing their services as voluntary/honorary services. To this



Court, it would appear that the aspect of discrimination would have to be considered from the larger perspective of functions, duties and responsibilities of the AWWs and AWHs and the State not providing salary and other benefits to the AWWs and AWHs as being paid to a person occupying a civil post with the Government, on the ground that the AWWs and AWHs are employees of a scheme, which argument is also now no more available to the State.

3C(6). On equal pay for equal work :

36. The issue of discrimination is required to be viewed from a different perspective i.e. from the perspective of the doctrine of equal pay for equal work. It needs to be appreciated in this regard that posts of AWW and AWH, all throughout the State, are paid similar wages, therefore, there cannot be any issue of claiming that one set of AWWs and AWHs are receiving better salary and emoluments than the petitioners or a different class of AWWs and AWHs, as the case may be.

36.1 In this regards, it needs to be reiterated that the post of AWW is a unique post in that sense since as observed hereinabove, an AWW wears many hats in the course of her employment. The AWW is required to work as a paramedic, a counsellor, a coordinator, a public relation



manager, an event manager, a clerk, a pre-school teacher and more. The AWW is also required to ensure that the Anganwadi Centre is kept open from 9 : 00 am to 3 : 45 pm.

36.2 Furthermore, depending on the number of beneficiaries and the extent of area covered by the Anganwadi, complying with the duties and responsibilities would lead to the AWWs putting in more than six and a half hours of duty as envisaged since the responsibilities of the AWW are not limited to the Anganwadi itself, rather the AWW is required to traverse the length and breadth of the area covered under the Anganwadi concerned.

37. As regards an AWH, she is required to clean the Anganwadi, bring the children from their homes to the Anganwadi Centre and take them back home, report half an hour earlier than the opening time of Anganwadi, prepare and serve health supplementary food under guidance of AWW, ensure personal hygiene of children, cleanness of utensils, cleanness inside and outside the Anganwadi, assist the AWW in the work of public relation and public participation, play a role of messengers with regard to Anganwadi services etc.

38. Over and above the regular list of duties, both the AWWs and



AWHs are required to work as per the direction of the Mukhya Sevika or the Project Coordinator, as the case may be. It also needs mention here that the AWWs and AWHs were also in the forefront of fight against Covid-19 pandemic and in normal circumstances they are required to trek for kilometres daily to discharge their regular duties and whereas in the pandemic, additional duty to deliver ration at the doorsteps of ICDS beneficiaries and to educate rural people about dos and dont's of coronavirus and prepare a list of outsiders visiting the villages.

39. Thus, as observed by this Court as hereinabove, the responsibilities and duties entrusted to AWWs and AWHs are onerous, yet, they are paid a meager amount per month under the guise of honorarium and whereas the AWWs and AWHs are not entitled to any other attendant benefits which a regular employee holding a civil post in the State is entitled to.

40. The question would be whether an AWW or AWH not be entitled to claim discrimination under Articles 14 and 16 of the Constitution of India only on account of there being no comparable posts. To this Court, it would appear that a doctrine of 'equal work for equal pay' is not an abstract doctrine since it is by now a well settled proposition that unequals cannot be treated equally in the matter of public employment. While saying so, this Court would not lose sight of the fact that having



regard to the onerous responsibilities upon the AWW and AWH, there appears to be a clear case of discrimination in the matter of public employment since a person who is engaged to carry out multifarious activities, is being paid a very meager amount of emolument on the ground that she is appointed in a scheme.

41. To this Court, it would appear that there is one more facet from which this issue could be appreciated. The same being from the facet or perspective of the State action of not considering the AWWs and AWHs as employees of the State being arbitrary. To this Court, it would appear that while the Central and the State Government take great pride in propagating the “ICDS is the foremost symbol of India’s commitment to her children – India’s response to the challenge of providing non-formal pre-school education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other.” Stating as thus before this Court and taking such similar contention even before the Hon’ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)**, yet, the State having relegated the AWWs and AWHs even below the category of a temporary Class-IV, who, according to the extant policy of the State Government as per Government Resolution dated 19.10.2019, is entitled to get minimum of



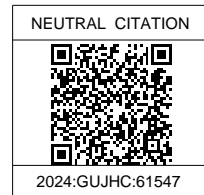
pay scale as available to such Class-IV employee i.e. Rs. 15,000/-.

41.1 It requires to be noted here that as per the above Government Resolution, a Class-IV employee, who is working for only 04 hours per day, subject to certain conditions, is entitled to the above amount, whereas an AWW and AWH who is appointed through regular recruitment process is being paid honorarium at the rate of 10,000/- and 5500/- per month only. In addition to be arbitrary, to this Court, it would appear that merely taking into consideration a temporary daily rated employee working for 04 hours only in Class-IV post being entitled to at least 50% higher emoluments than a AWW and approximately three times the emoluments to an AWH, is clearly discriminatory.

3C(7) On Honorarium and Voluntary Services :

42. The contest of the State on the aspect of discrimination based on the contention that the AWWs and AWHs are rendering voluntary services and they are entitled to honorarium would also be required to be addressed.

42.1 In this regard, at the outset, this Court observes that AWWs and AWHs could not be considered as rendering voluntary services. The term 'voluntary service' envisages services rendered by a person or agency



without any compulsion or obligation on once own free accord. Thus, a voluntary service would not envisage any compulsion on the person rendering the service to do or not to do a particular service. Considering the Government Resolution dated 25.11.2019, which lays down a comprehensive selection process and also considering the nature of duties and responsibilities of AWWs and AWHs, which have been listed out in the said Resolution as referred to hereinabove and further considering the mandatory nature of such duties and responsibilities and whereas since it appears that the said Government Resolution also envisages compulsory training as well as taking of punitive measures in case of any breach, this Court is inclined to hold that the services rendered by the AWWs and AWHs could not be termed as voluntary services.

43. At this stage, it would be apposite to refer to observations of the Hon'ble Supreme Court in case of **State of Punjab Vs. Jagjit Singh**, reported in **(2017) 1 SCC 148**. Paragraphs No. 55 and 56 of the said decision being relevant for the present purpose are reproduced hereinbelow for benefit.

"55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly



not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;



(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

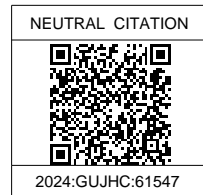
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee - whether engaged on regular or temporary basis."

43.1 The Hon'ble Supreme Court has inter alia observed that a person, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect, dignity, self worth and integrity and the act of accepting a lesser wage is also for the purpose of maintaining himself and his family, since he knows that not accepting lesser wage would be counterproductive for him and his family. The Hon'ble Supreme Court has also observed that the act of paying less wages, as compared to similarly situated persons, constitutes an act of exploitative enslavement, emerging out of a domineering position. While the observations of the Hon'ble Supreme



Court are in the context of paying lesser wage than as paying to a person holding the same or similar post, performing same duties and responsibilities, to this Court, it would appear that the observations of the Hon'ble Supreme Court could be completely relied upon in the present fact situation. To elaborate, in the considered and humble opinion of this Court, in this age where sustainable employment is very hard to find, the Government by using its domineering position has framed a scheme whereby persons are engaged to do variety and multiple tasks, which has great bearing on the future generation of the State and by now, the Hon'ble Supreme Court having laid down that the AWWs and AWHs are in fact fulfilling the statutory obligation of the State under the RTE Act, 2009 and NFS Act, 2013, yet, the State is neither treating such persons as a part of its own establishment nor paying them wages commensurate to the work done by them. As a matter of fact, the State is providing honorarium to the AWWs and AWHs, at a rate much lesser than even the minimum wages as prescribed under the Minimum Wages Act. It would thus be observed that persons look for a means of employment in Anganwadi as AWWs and AWHs would be doing so to sustain themselves and their family and but for unequal bargaining position and the need to sustain oneself and their family, as the case may be, no self respecting human being would be willing to work on emolument lesser



than the minimum wages that too when the ultimate employer is the State.

44. At this stage, it again requires to be mentioned that a connected contention which has been taken by the State is that the AWWs and AWHs are paid honorarium and not wages.

44.1 In this regard, it requires to be observed that in case of **Maniben Maganbhai Bhariya (supra)** the Hon'ble Supreme Court has inter alia while analyzing the 2019 Resolution of the Government of Gujarat has inter alia held that "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. "

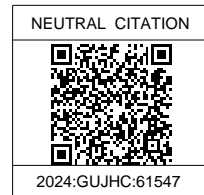
44.2 The word "honorary" is defined in the Black's Law Dictionary as 'conferred in recognition of merit or service, but without attendant rights, powers, or duties; nominal. The word "honorary" is defined the Merriam Webster Dictionary as "having or conferring distinction", conferred or elected in recognition of achievement or service without the usual prerequisites or obligations, unpaid, voluntary".

44.3 The word 'honorary' denotes in the present context conferment of



a position without usual requirements, duties, privileges, emoluments etc. that is conferred for honour only, without the person concerned being required to fulfill any particular criteria for such appointment and the appointment would be without fulfillment of the duties, privileges, requirements, responsibilities and emoluments which the post would otherwise carry.

44.4 Considered from the prospective of the discussion in the forgoing paragraph where this Court held that the selection process for appointment to the post of AWWs and AWHs is in consonance with the mandate of Articles 14 and 16 of the Constitution of India and further since it has been observed that the selection process envisages a selection based upon preset guidelines, where all eligible candidates get an equal opportunity to compete and based upon their educational qualification get appropriate placement in the merit list, it would clearly appear that in the present contest, the term 'honorary' is nothing but a misnomer. The very fact that the selection process is resorted to for appointment to the posts in question, the selection being based on inter-se merits, after selection, the candidate being required to undergo a medical examination before joining duty, the candidate being required to undergo training, the candidate being under an obligation to work as per the preset guidelines



and where even additional work could be given to the employee, where the minimum age and maximum age of appointment are regulated, and the maximum age till which the employee could serve is also pre-decided, where the employee is under the administrative control of superiors and where even disciplinary proceedings could be initiated against the employee, all clearly reflect the fact that the employment is nothing but a regular employment and the term 'honorary' is used to ensure that benefits of regular service are not given to the employee concerned.

45. Thus, from the above discussion, to this Court, it would clearly appear that the both the Central Government and the State Government are discriminating the AWWs and AWHs in the matter of treating them unequally than the persons employed on the civil post of the State and are also discriminating the AWWs and AWHs in the matter of payment of emoluments. The State not being able to show any intelligible differentia which has a nexus with the object sought to be achieved therefore, the argument on behalf of the State that the AWWs and AWHs are providing voluntary services has not been countenanced by this Court. As corollary, this Court has no hesitation in observing that the AWWs and AWHs are clearly being discriminated, which discrimination is violative of the fundamental right of equality and equality in matters of public



employment guaranteed under Articles 14 and 16(1) of the Constitution of India and hence, the AWWs and AWHs are entitled to seek the benefit of being regularized in services at a post equivalent to their job profile in the Government.

3C(8) Powers of the High Court under Article 226 of the Constitution of India qua direction to regularize services :

46. Having held as above that the AWWs and AWHs would be entitled to the benefit of regularization, let us now examine whether the said prayer could be granted. For considering the above aspect, it would be relevant to first appreciate under what circumstances could a prayer for regularization be granted by this Court exercising jurisdiction under Article 226 of the Constitution of India. For such purpose, reliance is placed by this Court on the observations of the Hon'ble Supreme Court in case of **State of Rajasthan Vs. Daya Lal**, reported in **(2011) 2 SCC 429**. Paragraph No.8 of the said decision being relevant for the present purpose is quoted hereinbelow for benefit.

"8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:



(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.



(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

(See : Secretary, State of Karnataka vs. Uma Devi - 2006 (4) SCC 1, M. Raja vs. CEERI Educational Society, Pilani - 2006 (12) SCC 636, S.C. Chandra vs. State of Jharkhand - 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand - 2007 (15) SCC 680, and Official Liquidator vs. Dayanand - 2008 (10 SCC 1)."

46.1 The Hon'ble Supreme Court in the above quoted Paragraph No. 8(i) has laid down, more particularly while reiterating the law laid down in earlier decisions including decision of the Hon'ble Apex Court in case of the **Secretary, State of Karnataka vs. Uma Devi, (2006 (4) SCC 1)** that regularization cannot be directed in exercise of powers under Article 226 of the Constitution of India by the High Courts, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive



process, against sanctioned vacant posts. The Hon'ble Supreme Court has emphasized that direction for regularization of service cannot be issued in violation of the constitutional scheme of equality under the law and in matters of public employment as laid down in Articles 14 and 16 of the Constitution. The Hon'ble Supreme Court has further emphasized that while regularization could be granted if there is non-compliance of one of the elements in the process of selection, which would not go to the root of the process i.e. an irregular appointment could be regularized, yet, it is further emphasized that back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

46.2 Now comparing the present fact situation from the perspective of the law laid down by the Hon'ble Supreme Court, it would clearly appear that AWWs and AWHs in the State of Gujarat have been appointed after a regular recruitment in accordance with the relevant rules in an open competitive process. While the Government Resolution dated 25.11.2019 sets out the rules for the selection process for AWWs and AWHs in the State of Gujarat, it would be apposite to note as referred to hereinabove that the Government Resolution dated 25.11.2019 was not the first Resolution of its kind in the State of Gujarat. The Government Resolution



dated 25.11.2019 was preceded by Government Resolution dated 13.11.2009 of the Woman and Child Development Department, whereby the procedure had been laid down for selection to the post of AWWs/AWHs. Whilst the Government Resolution dated 25.11.2019 lays down the rules elaborately, the Government Resolution dated 13.11.2009 prescribed almost the same procedure, inasmuch as, the said Resolution laid down the minimum educational qualification required for appointment as AWW/AWH. The Resolution also laid down the minimum and the maximum age limit for applying. The Resolution also laid down that only local candidates residing in the vicinity of the Anganwadi Centre could be selected and in case a local candidate is not available, then the District Education Officer could select an eligible candidate most nearest to the Anganwadi Centre. The retirement age of the AWW/AWH was fixed at 58 years. Procedure had been envisaged for appointing the AWH as AWW subject to the AWH having put in 5 years of service and having acquired educational qualification as required for being appointed as an AWW. The Resolution further envisaged advertisement to be issued in local newspapers and copies of the advertisement was required to be circulated in the Gram Panchayat Office, Office of the local Milk Producers Union, Fair Price Shops, Primary Schools and Co-operative Societies, for wide publicity.



Procedure was fixed for consideration of applications and a Selection Committee was envisaged at the Taluka level consisting of the District Programme Officer, the Taluka Development Officer and the Child Development Project Officer, who would be the Member Secretary. A merit list was to be prepared as per the educational qualifications of the candidates within a period of 30 days from the date of advertisement and a waiting list was also envisaged. It was also envisaged that if the selection process is not completed within a period of 90 days, then the selection process was to be considered as scraped and appropriate explanation was to be provided by the District Programme Officer. Only married women were considered eligible to apply.

46.3 On the other hand, rules published vide Government Resolution dated 25.11.2019 inter alia envisaged that only a woman candidate would be entitled to apply for selection as AWW/AWH. That the candidate must be a local resident i.e. resident of a revenue village in rural area and resident of the election ward in the urban area. Age of candidate above 18 years and not more than 33 years is also envisaged. That AWW should be 12th pass or 10th pass with any diploma course of two years recognized by the AICTE and the AWH should be standard 10th pass. The last date for applying is treated as the cut off date and candidates are required to



fulfill the standard of age, educational qualification and/or other qualifications as on the last date of application. A certificate of correctness certified by the Mamlardar/Deputy Collector/Additional Collector/Collector or Notary on stamp paper of Rs.100 is to be provided. The Resolution further envisages disqualifications for selection inasmuch as, a candidate should not have a criminal history, no criminal complaint should be lodged against the candidate and the candidate should not have been convicted, the candidate should not have been declared insolvent or dismissed from any previous Government/Semi Government/Honorary Service as part of disciplinary proceedings, the candidate should not have any other family member working in the same Anganwadi, the candidate should not be an elected member of any Local Self Government/ Vidhansabha/ Loksabha or any Cooperative Organization/Registered Society/ Registered Trust. Provision is made for relaxation, subject to fulfillment of certain conditions. Provision is also made to give priority to AWHs subject to having the educational qualifications and age not exceeding 43 years and having rendered 10 years satisfactory service. 25% posts of AWWs are reserved to be filled in by AWHs. The candidates are also required to complete pre-service training programmes.



46.4 The Resolution also envisages a selection process where an advertisement is required to be published. Candidates are required to apply online within the time prescribed. Furthermore, marking system for selection as AWW/AWH is also envisaged, more particularly whereby based upon qualification certain marks are prescribed. The marking system is predominantly based on the educational qualification and whereas candidates belonging to the reserved category as well as widow candidates are to be given additional marks. After the merit list and waiting list is prepared, document verification is envisaged, whereafter final select list and waiting list would be prepared. Candidates are required to submit medical fitness certificate. An Appellate Committee, for both the Rural and Municipal areas consisting of three members i.e. the District Development Officer, the Deputy District Development Officer and the Programme Officer (District Panchayat) as Member Secretary for Rural areas and the Municipal Commissioner, the Deputy Municipal Commissioner and the Programme Officer (Corporation) as Member Secretary in Urban areas is also envisaged.

47. The procedure for selection as envisaged in Government Resolutions dated 13.11.2009 and 25.11.2019 have been referred to in extenso to establish that appointments have been made by following an



open competitive process through a regular recruitment process in accordance with the relevant Rules/Government Instructions. The procedure has been quoted in extenso to further specify that the equality clause contain in Articles 14 and 16 of the Constitution of India is not violated, rather the equality clause is propagated through a transparent process where the requirements for selection are known well in advance and a transparent selection process is envisaged with a set procedure and a set mechanism to be operated by a specified committee and where appeal is also envisaged to the appellate committee whose constituents are also specified.

48. In the considered opinion of this Court, from the description of the selection process as above, there could not be any cavil of doubt that in the State of Gujarat, appointment to the post of AWWs and AWHs is based on a regular recruitment in accordance with relevant rules in an open competitive process, where the equality clause contain in Articles 14 and 16 of the Constitution are in fact scrupulously followed.

3C(9) Appointment of AWW as Mukhya Sevika - Implications :

49. Again, at this stage, another important aspect, which requires contextual appreciation in the fact of an AWW being entitled for



considered for appointment as a Mukhya Sevika, Class-III in the Superior Panchayat Services upon completion of 10 years experience as AWW with the ICDS. The State of Gujarat has formulated the Mukhya Sevika, Class-III, in the Superior Panchayat Service, Recruitment Rules, 2013, which inter alia envisages appointment to the post of Mukhya Sevika through direct selection or from amongst AWWs, in the ratio of 1 : 1. The rules also require certain criteria to be fulfilled by the AWWs and whereas for better appreciation, Rule 4 (a) to (f) of the Rules is quoted hereinbelow.

"Rule 4 (a) to (f)

"To be eligible for appointment by direct selection from amongst the persons working as Anganwadi Worker to the post mentioned in rule 2, a candidate shall -

- (a) be a Anganwadi Worker;
- (b) not be more than 45 years of age;
- (c) have passed the Secondary School Certificate Examination from Secondary and / or Higher Secondary Education Board.
- (d) have atleast ten years experience as Anganwadi worker under the integrated Child Development Services Programme;



(e) possess the basic knowledge of computer application as prescribed in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967; and

(f) possess adequate knowledge of Gujarati and Hindi or both."

49.1 From a bare perusal of the rule, it would be apparent that the AWWs are not required to undergo any selection process for being appointed. Subject to the AWW fulfilling the requirement of Rule 4, the AWW would be eligible for being appointed as Mukhya Sevika. It also requires to be reiterated that the appointment is on a permanent post and post appointment, persons selected through direct recruitment and from amongst AWWs are placed at par. The relevance of quoting the above process is to highlight a crucial aspect i.e. the State i.e. the State of Gujarat deems the selection process for the post of AWW as being a proper regular recruitment and but for such a consideration, the AWWs for being appointed as Mukhya Sevika would have been required to undergo a proper selection process. Thus, the fairness of the selection process by which the AWWs are appointed is impliedly vouched by the State of Gujarat itself by adopting the procedure as per the rules referred to hereinabove.



50. Now, coming to the issue of sanctioned vacant posts, while there would not be any dispute that the posts in question were vacant, the issue would be whether the posts were sanctioned. In this context, it requires to be observed that when the word 'sanctioned' is used in context of or qualifying the word 'posts', the normal and most reasonable inference is that the posts which have been sanctioned by the appropriate Government either in any department of the Government or any Board or Corporation or any Body which is under the administrative control of the appropriate Government, like Corporations, Municipalities, Boards etc. While it is the contention on behalf of the respondents that the posts of AWW and AWH in the Anganwadi are posts under the ICDS Scheme which is a scheme, after the declaration of law by the Hon'ble Supreme Court, the said contention would no longer be available. As observed by the Hon'ble Supreme Court, Anganwadis are now statutorily recognized and furthermore the posts of AWWs and AWHs, are statutory posts.

51. As noted hereinabove, the ICDS Scheme envisages Anganwadis to be established at village/ward levels for implementation of the objectives of the ICDS Scheme. The Anganwadis, which are established to fulfill the objectives of the ICDS Scheme, having been recognized statutorily, as a sequitur it could also be unerringly observed that the



posts of AWWs and AWHs in each Anganwadi are the posts sanctioned for implementation of the scheme and whereas the said posts in view of the law laid down by the Hon'ble Supreme Court, could be termed as sanctioned statutory posts. Again, to elaborate since the State is fulfilling its obligations under the National Food Security Act, 2013 and RTE Act, 2009, through AWWs and AWHs and the posts in question being recognized as statutory posts, there could not be any quarrel on the finding that the posts are sanctioned posts. Even otherwise except for stating that the posts of AWWs/AWHs are posts under the scheme, there is no submission on behalf of the Central Government or the State Government that any AWW or AWH is appointed beyond requirement on a non-sanctioned post. Again, it would have to be borne in mind that the posts are being filled in as per the procedure hitherto laid down under a Government Resolution and later on, through a Government Resolution formulating rules. The recruitment being to Anganwadis on posts which are sanctioned by the State Government and not independently created or established at district level, therefore the posts are also required to be held as being sanctioned posts.

52. Having regard to the above discussion, there could not be any matter of doubt that the test prescribed in the decision of the Hon'ble



Supreme Court in case of **Daya Lal (supra)** i.e. High Courts exercising power under Articles 226 of the Constitution can issue direction for regularization, absorption or permanent continuance only with regard to the employees having been appointed pursuant to a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts, stands completely fulfilled.

53. Now coming to the issue of the equality clause under Articles 14 and 16 of the Constitution being required to be followed while issuing a direction for regularization, it is observed that the AWWs and AWHs in the State of Gujarat have been appointed pursuant to a regular recruitment process laid down either by a Government Resolution or by later rules promulgated through a Government Resolution. The process of recruitment being extraordinarily transparent i.e. in addition to advertisement being issued in local newspapers, as per the Government Resolution dated 13.11.2009, the former Resolution, copies of advertisement were required to be circulated at Office of Gram Panchayat, Office of the local Milk Producers Union, Fair Price Shops, Primary Schools and Co-operative Societies. The intent behind it being glaringly clear that all eligible candidates should be made aware about the proposed selection process so that they could apply. It also appears that as



per the former Government Resolution, a Committee consisting of the District Programme Officer, the Taluka Development Officer and the Child Development Project Officer would conduct the recruitment process, thus establishing a body consisting of senior officers would hold the selection process in accordance with the scheme of selection.

53.1 It requires to be observed here that the later Resolution inter alia envisages that the selection process shall be conducted by the Child Development Project Officer monitored by the Programme Officer. The letter Resolution also removes any possible angle of subjectivity by prescribing marks as per the educational qualification of the candidate namely, (i) if a candidate is 12th pass or 10th pass and having completed recognized diploma course of two years, then as per the percentage obtained, the candidate could be awarded maximum 20 marks, (ii) if a candidate is graduate, then as per the percentage obtained, the candidate could be awarded maximum 30 marks, and (iii) if a candidate is post graduate, as per the percentage obtained, the candidate could be awarded maximum 30 marks. The marks are to be awarded on prorata basis. Furthermore, additional 10 marks are to be awarded to candidates of reserved categories namely, SC, ST, SEBC and Economically Backward Class and furthermore additional 10 marks are to be awarded to widow



candidates. The above criteria being applicable to AWWs or AWHs, the criteria has been changed for minimum 10th pass and there is no additional mark given if a candidate has completed post graduation.

53.2 Again, the later Resolution also envisages appropriate procedure in case two candidates are awarded same marks and a waiting list is also envisaged to be prepared after select list is prepared. Filling up of an application is envisaged through online mode and verification of documents which are uploaded online is also envisaged. The later Resolution also envisages an Appellate Committee consisting of the District Development Officer, the Deputy District Development Officer and the Programme Officer (District Panchayat) for Rural areas and the Municipal Commissioner, the Deputy Municipal Commissioner and the Programme Officer (Corporation) for Urban areas.

53.3 Both the Resolutions inter alia envisage minimum and maximum age limit for applying, the minimum educational qualifications required and mandated that only women candidates from local limits would be eligible. The later Resolution also inter alia laying down disqualifications for applying and also laying down relaxation in certain circumstances namely the relaxation, if no candidates having the minimum standards are



available even upon 03 attempts being made for selection of AWWs and AWHs. The relaxation envisaged is only qua relaxing the minimum educational qualification from standard 12th pass or 10th pass with recognized diploma course of two years to only standard 10th pass at the stage of 4th attempt. Likewise, in case of AWH relaxation envisaged is only from 10th pass to 8th pass. In both situations, all other conditions remain unaltered. Both the Resolutions also envisage granting priority to AWH for selection to the post of AWW upon fulfillment of certain criteria and whereas the later Resolution lays down that relaxation would be to the extent of 25% of posts advertised.

53.4 Thus, it could be observed that the selection process being based upon preset guidelines and the selection process leaving no room for subjectivity, all eligible candidates get an equal opportunity to compete based upon their qualifications and get appropriate placement in the merit list. It would thus appear that the mandate of Articles 14 and 16 of the Constitution is scrupulously followed throughout the selection process.

3C(10) Employer - Employee relationship :

54. Insofar as the entitlement of the petitioners for regularization i.e. to be treated as employees of the State Government is concerned, one of the



most important requirements is to find out whether there exists any employer and employee relationship between the Government and the AWWs and AWHs, as the case may be. As noticed and reiterated by this Court hereinabove, AWWs and AWHs are declared as fulfilling the statutory obligation of the State under the RTE Act, 2009 and NFS Act, 2013. Thus, it would appear that for the purpose of implementation of the provisions of the enactments, the AWWs and AWHs are directly working on behalf of and under the control of the Government. In the present case, more particularly after the introduction of Government Resolution dated 25.11.2019, the Government referred to in this paragraph would be the State Government. Again, continuing with the Government Resolution dated 25.11.2019, it would appear that the said GR inter alia incorporates rules which stipulate the selection criteria, educational qualification, selection process etc. of the AWWs and AWHs. As noticed by this Court as well as the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** at Paragraph 67 a detailed process for undertaking appointments of AWWs and AWHs has also been incorporated. The process of recruitment is undertaken by officers of the State and specified officers of the State would constitute an appellate body, in case of any grievance against selection process. The entire work of the AWWs is supervised by the Mukhya Sevakas who are Class –III employees of the



State which work is scrutinized by the Child Development Project Officers so on and so forth. No other intermediate agency is envisaged in controlling the functions, duties and responsibilities of the AWWs and AWHs. The emolument titled as honorarium is also paid by the Central and the State Government in the ratio of 90 : 10 directly to the AWWs and AWHs. It thus appears that the AWWs and AWHs are selected by the State as per a procedure laid down by the State. The service conditions, duties, functions and responsibilities are laid down by the State. The AWWs and AWHs are working under the direct control and supervision of officers of the State. Power to punish including upto termination being vested with the State. All the above factors read together would clearly lead to an unmistakable conclusion that there exists a master and servant relationship between the State and the AWWs and AWHs. State in the instant case would be the State of Gujarat.

3C(11) Discrimination - possible gender discrimination :

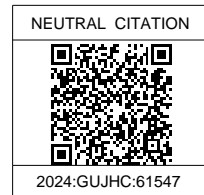
55. On more aspect which may be referred to while considering the present issue would be that, would not the present be a case of gender discrimination. It would appear to this Court that the scheme may be designed to take an advantage of the completely unequal bargaining power to an unemployed lady more so when she is from a rural



background. In this regard, this Court deems it appropriate to refer to Article 16(2) of the Constitution of India which guarantees that there shall not be any discrimination in matters of employment under the State on grounds amongst others on the basis of sex. To this Court, it would appear that the present may also be a case of discrimination on basis of sex or in other words gender, since the post of AWWs and AWHs are in a manner very unique posts which inter alia contemplate that only women would be appointed on the posts in question. Thus, the entire class of AWWs and AWHs throughout the State comprises only of women and by not treating the posts as part of the Government establishment, would not the respective Governments be susceptible to an allegation that because the incumbents on the posts are women, the State is discriminating against them by not absorbing in Government service and on the other hand, paying them meagre emoluments under specious term of honorarium.

4. The Conclusions :

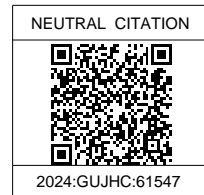
56. Having regard to the above discussion, to this Court, it would be undoubtedly clear that the AWWs and AWHs are entitled for benefit of regularization and the posts of AWWs and AWHs which are declared to



be statutory posts should be directed to be absorbed in the State Government service giving them equivalent status to comparable posts.

57. Having observed as above, the question would be what should be the exercise that should be undertaken for ensuring that AWWs and AWHs are placed at par with employees doing similar or near about similar work, who have been appointed after regular selection on permanent posts with either the Central or the State Government, as the case may be. In this regard, while it would appear to this Court that the work done by AWWs is similar to work done by Class-III employees i.e. clerical or semi supervisory posts, whereas the work done by AWHs is comparable with work done by employees on Class-IV posts. Again, these are prima facie observations of this Court.

58. In the considered opinion of this Court, the Central Government and the State Government through the Ministry of Women and Child Development Department of both the Governments along with any other relevant departments, as may be deemed appropriate, should be directed to undertake a holistic exercise to formulate a scheme whereby AWWs and AWHs are paid salary, emoluments and other benefits at par with regularly appointed permanent employees of the State Government or the



Central Government, as the case may be, on comparable posts. It would be open for the respective Governments to also undertake an exercise to identify the class which could be assigned to the posts in question etc.

59. Such a direction to the respective Governments, to this Court, would be appropriate, considering that a writ Court would normally not have the necessary expertise or experience on such issues and also considering that a substantial burden would be incurred by the State and the Central Government. Thus, to this Court, it would appear that ends of justice would be met if necessary directions are issued to the State Government and the Central Government to formulate a policy for conferring benefits upon the AWWs and AWHs as available to regularly selected permanent employees of the State Government/Central Government, within a specific time frame. To this Court, it would also appear that along with directions to frame a policy for treating the AWWs and AWHs as regular, permanent employees of the State, direction as regards placement of the posts in question as per the extant rules and further empowering the State to fix cut off date from which the benefits would be available, with appropriate caveats protecting the interest of the petitioners would be in the fitness of things. At the same time, this Court would not lose sight of the fact that petitioners before this Court are



AWWs and AWHs who have been appointed from periods ranging between three decades to one decade ago. This Court also would not lose sight of the fact that the remuneration paid under the aegis of honorarium is absolutely paltry, particularly in comparison to the work done by the AWW/AWH. Therefore, while directing the State and the Central Government to formulate a policy, at the same time, appropriate directions are also required to be issued to the respondents for temporary mitigation of the economic hardship faced by the AWWs/AWHs.

60. In this regard, it would be beneficial to refer to Circular dated 19.10.2019 issued by the State Government which has been referred to hereinabove, whereby certain categories of employees were granted salary in minimum of pay scale. Amongst others, the benefit of salary in minimum of pay scale amounting to Rs.14,800/- was paid to temporary employees who were putting in at least more than 04 hours work per day. This Court also relies upon the decision of the Hon'ble Supreme Court in case of **Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India and Others**, reported in **(1988) 1 SCC 122**, whereby the Hon'ble Supreme Court has inter alia held that temporary employee would be entitled to at least minimum wage paid to an employee in the

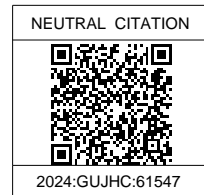


corresponding regular cadre. Keeping the said policy of the State Government and the observations of the Hon'ble Supreme Court as a benchmark, appropriate directions for payment of emoluments during the interregnum period till the State take a final decision as payable to the AWWs and AWHs are also required to be issued. Furthermore, considering that the petitioners are the ones who have approached this Court, therefore while the State may be declared as empowered to fix a cut off date of entitlement of benefits as regards the entire class of AWWs and AWHs in the State of Gujarat, yet, insofar as the petitioners are concerned, directions are required to be issued for restricting the cut off not being a date later than three years prior to the date of filing of the writ petitions.

5. The finding on the issues raised :

61. Having regard to the discussion, observations and conclusion arrived at, the questions formulated by this Court are answered as below :

(i) The decision of the Hon'ble Supreme Court in case of **Ameerbi (supra)** would not act as a bar against the petitioners for claiming the reliefs which they have sought for and as such, in view of the



circumstances which have changed after the decision of the **Ameerbi (supra)**, i.e. coming into force the Right to Education Act, 2009, National Food Security Act, 2013 as well as Government Resolution dated 25.11.2019.

(ii) The decision of the Hon'ble Supreme Court in case of **Maniben Maganbhai Bhariya (supra)** is clearly applicable to the facts of this case, more particularly insofar as the observations of the Hon'ble Supreme Court as regards the scope and ambit of the ICDS scheme and the present status of the AWWs and AWHs as working on statutory posts, as elaborately discussed hereinabove.

(iii) The AWWs and AWHs are entitled to be regularized i.e. to be treated as Government employees and the manner and method of inclusion/absorption would be formulated by the respective Governments as per the directions that would follow.

6. The Directions :

62. Considering the discussion, observations and conclusion and the answers to the questions formulated, the following directions are issued.



(i) The AWWs and AWHs are declared to be entitled to be treated at par with regularly selected permanent employees holding civil posts in the State or Central Government and whereas the Central Government and the State Government shall jointly formulate a policy for absorption of the posts AWWs and AWHs in Government service and to confer consequential benefit of regularization to the incumbents on the posts in question.

(ii) The Central Government and the State Government while formulating an appropriate policy shall ensure that the following aspects are appropriately addressed :

(a) The Classes (for the present purpose, as per the Gujarat Civil Services (Classification and Recruitment) (General) Rules, 1967) in which posts the post AWWs and AWHs would be absorbed.

(b) The pay scale/pay band/ pay grade which would be available to the post of AWWs/AWHs.

(c) The cut off date from which the incumbents on the post AWWs and AWHs would be entitled to arrears. It is clarified that



in case of the petitioners, the cut off date shall not be less than a period of three years preceding the date of filing of the petitions.

(d) Any other ancillary related issue which may be deemed appropriate.

(iii) Insofar as the petitioners such incumbents on the post of AWWs shall be paid salary in the minimum of pay scale as available to Class-III post and whereas the petitioners on the post of AWHs shall be paid salary in the minimum of pay scale as available to Class-IV post.

(iv) The Central Government and the State Government shall complete the exercise of formulating the policy as above, within a period of 06 months from the date of uploading of this judgment on the portal of the Gujarat High Court, till the time appropriate decisions are taken, the petitioners would be entitled to salary in the minimum of pay scale as declared above.

With the above observations and directions, these petitions are disposed of as allowed.

BDSONGARA

(NIKHIL S. KARIEL,J)