

[2023 LiveLaw \(SC\) 387](#)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**DINESH MAHESHWARI; J., AHSANUDDIN AMANULLAH; J.**

APRIL 25, 2023

CIVIL APPEAL NOS.3084-3087 OF 2023 (Arising out of SLP(Civil) Nos.23437-23440 of 2022)

**STATE OF TRIPURA & ORS. *versus* RINA PURKAYASHTA & ANR. ETC.**

**Service Law - Retirement age of Anganwadi workers - the Supreme Court set aside a judgment of the Tripura High Court which directed the State Government to raise the retirement age of Anganwadi workers from 60 years to 65 years.**

**Service Law - Retirement age of Anganwadi workers – the Supreme Court found fault with the High Court for issuing a mandamus to the State Government to change its policy regarding the retirement age of workers. The High Court reasoned that since 90% of expenses of the Integrated Child Development Services Scheme - under which the Anganwadi workers are engaged- are borne by the Central Government, there will not be a fundamental increase in the burden of the State if their retirement age is increased. Held, that this line of reasoning adopted by the High Court is unacceptable.**

**Service Law - Retirement age of Anganwadi workers – Looking to the very nature of the work and the structure of services, when the state government is the primary authority to decide the service conditions, no mandamus can be issued to the state government to change its policy, regardless of the proportion of the share of the central government in the expenditure burden.**

**Service Law - Retirement age of Anganwadi workers – Supporting the High Court judgment, the amicus curiae contended that the Court can always issue relevant directions to ensure that fundamental rights and protections available to the citizens are not violated. The amicus also pointed out retirement age of Anganwadi Workers was 65 years in many states and stressed that parity in employment is a reasonable expectation. Held, that as regards the scheme in question, it is clear that even while certain propositions/expectations had been laid by the central government, the existing statutory norms do not provide for uniform age limit for retirement of AWs/AHs; and it is for the state government to decide as regards the service conditions, including the age of discharge. (Para 10)**

**Service Law - Retirement age of Anganwadi workers – by enhancing the age of retirement, the requirement of substitute is delayed, remains bereft of logic, and that in any case, that does not provide a legal ground to force the state government to alter its policy only because such expectations are stated by the central government or because some other states have provided for such an age of discharge. (Para 11)**

**Service Law - Retirement age of Anganwadi workers – the decision cited by the learned counsel dealing with different eventualities and different principles do not provide any basis for issuance of a mandamus to the state government to change its policy, particularly when the policy is otherwise not shown to be suffering from any illegality or irrationality; rather the state is categorical in its submission that by way of this policy, the age of discharge of AWs/AHs is placed at par with those of the other employees of the state government and Public Sectors Undertakings in the state. (Para 11)**

WITH CIVIL APPEAL NOS.3088-3093 OF 2023 (Arising out of SLP(Civil) Nos.23785-23790 of 2022)

*Mr. Ritin Rai, Sr. Adv. (AC) Mr. Siddhartha Sinha, AOR For Petitioner(s) Mr. Ranjit Kumar, Sr. Adv. Mr. Shuvodeep Roy, AOR Mr. Sai Shashank, Adv. Mr. Deepayan Dutta, Adv. Mr. Amit Gautam, Adv. For Respondent(s) Mr. Vikramjit Banerjee, A.S.G. Mr. Gurmeet Singh Makker, AOR Mr. Nachiketa Joshi, Adv. Mr. Prashant Rawat, Adv. Mr. Ayush Anand, Adv. Ms. Deepabali Dutta, Adv. Dr. Arun Kumar Yadav, Adv.*

## **ORDER**

### **C.A. @ SLP(C)Nos.23437-23440 of 2022**

Leave granted.

2. These appeals by the State of Tripura are directed against the common judgment and order dated 29.06.2021 passed by the Division Bench of the High Court of Tripura in four connected intra-court appeals led by WA No. 173 of 2021 whereby, Division Bench has affirmed the judgment and order dated 10.03.2021 passed by the learned Single Judge of the High Court in a batch of respective writ petitions led by WP(C) No. 886 of 2019.

3. By the impugned judgment and order dated 10.03.2021, the learned Single Judge held that the Anganwadi Workers / Anganwadi Helpers ('AWs'/'AHs') engaged by the appellant-State under the Integrated Child Development Services Scheme ('ICDS') were entitled to be continued in their engagement until attaining the age of 65 years against the existing policy of the appellant-State of discharging them upon attaining the age of 60 years. The Division Bench of the High Court endorsed the views of the Single Judge and in that context, also observed that 90% of the expenditure was being covered by the Central Government funding and therefore, whether a person retired at the age of 60 years or the age of 65 years, there was hardly any fundamental change in the expenditure burden of the State Government. The Division Bench also observed that upon an employee retiring at the age of 60 years, there would be an earlier need for replacement whereas, if the same person is continued until the age of 65 years, the requirement of engaging a new person would be delayed by that period.

4. The appellant-State would submit that the age of discharge of AWs/AHs in the State was 58 years in the beginning of ICDS scheme and was increased to 60 years in the year 2012 to bring uniformity with the State Government and Public Sector Undertakings employees. It is also submitted that in fact, the post of AW serves as feeder post for promotion as Supervisor ICDS, which is a regular Group-C post in the State and has superannuation age of 60 years.

5. The High Court has, however, relied on communication dated 22.10.2012 from the Ministry of Women and Child Development wherein, while providing broad framework of implementation of ICDS, it was expected as under:

*"Relieving AWWs/AWHs on completion of 65 years of age. The existing guidelines do not provide uniform age limit for their retirement. Rather, this has been left to the State Government to decide. Thus, as on date no age has been prescribed for dispensing with the services of AWW/AWH. Prescribing maximum age limit of 65 years for an AWW/AWH has been supported by most of the State Governments at various forums. In view of the above, a uniform policy decision would be undertaken to discontinue the services of AWW/AWH at the age of 65 years and EPC would ensure its implementation in all the State/UTs."*

6. It is submitted by the State that the above quoted portion was not of any decision by the Central Government and only a statement was made indicating future course of ICDS implementation, making age of discharge as 65 years supported by most of the State Governments. It is contended that such a proposition cannot override the policy of the State Government and no mandamus could have been issued to the appellant-State to revise the age of discharge of AWs/AHs.

7. Taking note of the circumstances of the case, this Court had issued notice but there being no representation from the private respondents after service and looking to the communication received by one of the respondents stating financial constraints, this Court requested the learned senior counsel Mr. Ritin Rai, to be assisted by Mr. Siddhartha Sinha, to assist this Court. Mr. Ritin Rai assisted by Mr. Siddhartha Sinha attempted his best to support the order impugned while stating that as per the data available of the number of workers, even if the retirement age is extended to 65 years, the total financial implication on the appellant-State would be only about Rs. 23.7 Crore. It is submitted that High Court has rightly appreciated the position that when the State was in the receipt of 90% of financial contribution from the Central Government, they ought to abide by conditionalities/guidelines prescribed by the Central Government. It is submitted that the States cannot stake a claim on the financial benefits attached to the scheme without bearing the common corresponding responsibilities. A decision of this Court in the case of *Jagdish Prasad Sharma v. State of Bihar*: (2013) 8 SCC 633 is cited with particular reference to the following passages:

*“70. The authority of the Commission to frame regulations with regard to the service conditions of teachers in the Centrally-funded educational institutions is equally well-established. As has been very rightly done in the instant case, the acceptance of the Scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any Central legislation.*

*71. However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, the acceptance of the Scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the Scheme. The problem lies in the desire of the State and its authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the Scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the Scheme with its financial implications from 1-4-2010.”*

8. It has also been contended that the Court can always issue relevant directions to ensure that fundamental rights and protections available to the citizens are not violated. The decision of this Court in *Brij Mohan Lal v. Union of India*: (2012) 6 SCC 502 has been relied upon. Learned senior counsel has also referred to a decision of this Court in *Rajneesh Kumar Pandey v. Union of India*: 2021 SCC Online SC 1005 wherein directions were issued to all the States/Union Territories as also to the Central Government to implement a uniform policy for Special Schools. Learned counsel has further referred to the decision of *South Malabar Gramin Bank v. Coordination Committee and Ors.*: (2001) 4 SCC 101 to submit that parity in employment is a reasonable expectation and when similarly situated Anganwadi Workers are enjoying retiral age of 65 years in a number of States in the country, reasonable expectations of the similarly situated Anganwadi Workers in the appellantState cannot be denied. Learned counsel would submit that a purposive and liberal construction of guidelines issued by the Central Government is required so as to ensure the benefit reaching to the weaker sections of the society.

9. Having given anxious consideration to the matter and having examined the record, we find it difficult to accept the contentions forcefully advanced by the *amicus*.

10. As regards the scheme in question, it is clear that even while certain propositions/expectations had been laid by the Central Government, the existing statutory norms do not provide for uniform age limit for retirement of AWs/AHs; and it is for the State Government to decide as regards the service conditions, including the age of discharge. Looking to the very nature of the work and the structure of services, when the State Government is the primary authority to decide the said service conditions of these honorary workers, no mandamus could have been issued so as to thrust a particular age of discharge. The proportion of the share of the Central Government and the finances is hardly decisive of the matter.

11. The stretch of consideration by the Division Bench that by enhancing the age of retirement, the requirement of substitute is delayed remains bereft of logic and in any case, that does not provide a legal ground to force the State Government to alter its policy only because such expectations are stated by the Central Government or because some other States have provided for such an age of discharge. The decision cited by the learned counsel dealing with different eventualities and different principles do not provide any basis for issuance of a mandamus to the State Government to change its policy, particularly when the policy is otherwise not shown to be suffering from any illegality or irrationality; rather the State is categorical in its submission that by way of this policy, the age of discharge of AWs/AHs is placed at par with those of the other employees of the State Government and Public Sectors Undertakings in the State.

12. For what has been discussed hereinabove, we are clearly of the view that the impugned orders cannot be sustained.

13. Accordingly, these appeals are allowed. The impugned order dated 29.06.2021 and 10.03.2021 are set aside and the writ petitions filed by the respective respondents stand dismissed. However, in the interest of justice, we make it clear that any payment/ benefit hitherto received by the respondents shall not be withdrawn and respondents shall not be asked to retribute.

14. While closing on the matters, we extend thanks and compliments to the learned senior counsel, Mr. Ritin Rai, and his associate Mr. Siddhartha Sinha for rendering invaluable assistance to the Court.

14.1. Mr. Ritin Rai, learned senior counsel, in all fairness, has declined to receive any honorarium/ remuneration for the services rendered. His submissions are taken on record. However, we are clearly of the view that his associate Mr. Siddhartha Sinha deserves to be remunerated appropriately. For that purpose, we would direct the appellant-State to make payment of a sum of Rs.2,00,000/-(Rupees two lakh) to Mr. Siddhartha Sinha for his services in this case within four weeks from today.

15. All pending applications also stand disposed of.

C.A. @ SLP(C) Nos.23785-23790 of 2022

Leave granted.

2. For the detailed reasons as stated in relation to the appeals arising from SLP(C) Nos.23437-23440 of 2022, these appeals are also allowed in the same terms.

3. All pending applications also stand disposed of.