

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9589 of 2017****With****R/SPECIAL CIVIL APPLICATION NO. 10496 of 2017**

PRITIBEN CHHAGANLAL KANJARIAYA

Versus

STATE OF GUJARAT & 4 other(s)

Appearance:

MR PANKAJ R DESAI(3120) for the Petitioner(s) No. 1

MR. ROHAN N. SHAH, AGP IN SCA NO.9589 OF 2017 AND MS. SURBHI

BHATI, AGP IN SCA NO.10496/2017, Respondent(s) No. 1,2

MR HRIDAY BUCH(2372) for MR. NISHANT LALAKIYA, for the

Respondent(s) No. 4

MR HS MUNSHAW(495) for the Respondent(s) No. 3,5

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE**Date : 07/07/2022****ORAL ORDER**

[1] These petitions under Article 226 of the Constitution of India are filed for following prayers:-

“(a) Your Lordships may be pleased to issued writ in the nature of Mandamus, Writ of Certiorari, or any other writ or direction to the respondents amend the resolution dtd. 13/12/2005 (Annexure-g) and,

(b) Your Lordships may be pleased to direct respondent No.1 to amend the resolution dtd. 13/12/2005 (Annexure-G) and further writ word “Urban” also.

(c) Your Lordships may be pleased to direct Respondent No.4- Rajkot Municipal Corporation, through it's Commissioner, Rajkot to implement the direction of Programme Officer, ICDS letter dtd. 29/2/2016 (Annexure-J) and appoint petitioner as Supervisor.”

[2] Pending the petition, the prayer clause was added and prayer clause-(g) was added which would read as under:-

“(g) Your Lordships may be pleased to direct and order Respondents herein that, benefits and provision of the Notification dt.13/12/2015 (No.ICD-1020040-615-B) issued by,

Woman and Child Development Department, State of Gujarat. Gandhinagar, Dt. 13/12/2015 may be extended to all the Anganwadi workers in the State of Gujarat, including present petitioner.”

[3] The contentions of the petitioners is that though the petitioners were eligible for promotion from the post of Anganwadi Worker to Mukhya Sevika, the petitioners were not promoted and therefore, they were discriminated from the Anganwadi Workers only on the ground that the other Anganwadi Workers were promoted to the post of Mukhya Sevika as they were working under the District Panchayat, whereas the petitioners having worked as Anganwadi Workers under the Rajkot Municipal Corporation, were not given any promotion.

[4] Learned advocate for the petitioners submitted that the Act as well as the Resolution are arbitrary and discriminatory inasmuch as it differentiate the Anganwadi Workers working with the municipal corporation from the Anganwadi Workers working under the District Development Officer. It is submitted that the requirement of both the Anganwadi Workers, working under the corporation and the District Development Officer is the same and therefore, the policy for promotion should also be uniform and therefore, it is in clear violation of Article 14 of the Constitution of India. Learned advocate for the petitioners submitted that since beginning the petitioners have through the union in correspondence with the authorities for the purpose of promotion as per the resolutions of 2005 and 2007 which provided for the promotion of an Anganwadi Worker to the post of Mukhya Sevika. The correspondence continued for long, but the respondents did not act in accordance with the resolutions and ultimately when the petitioners though entitled to be promoted right from the year 2005/2007, no action was taken and when the action was taken, at that time, the case of the petitioners was not

considered as having become overage.

[4.1] Learned advocate places reliance upon a decision of this Court in the case of **Smt. Manjulaben M. Ranavat Anganwadi Worker v/s. District Development Office** in **Special Civil Application No.13852 of 2011 dated 03.08.2021** submitting that in identical fact situation the Angawadi Worker was directed to be given promotion to the post of Mukhya Sevika. Learned advocate submitted that the confusion had arisen on account of the fact that the corporation did not treat the petitioners to be employees under the corporation and therefore, under a mistaken impression that the promotion and procedure for promotion will be the responsibility of the District Development Officer and therefore, for long period, the case of the petitioner was not considered.

[4.2] Learned advocate for the petitioners lastly submitted that considering the date of their entitlement and having become eligible for the promotion to the post of Anganwadi Worker, at that stage, the petitioners were admittedly under the age of 45 or 48 years respectively and therefore, were entitled to the promotion.

[5] As against this, learned advocate Mr. Hriday Buch for learned advocate Mr.Nishant Lalakiya for respondent No.4-corporation and learned advocate and learned advocate Mr.H.S.Munshaw for District Development Officer jointly submitted that the procedure was undertaken by the respondent-municipal corporation was independent of the procedure undertaken by the District Development Officer and such procedure was undertaken in the year 2011 for the first time and therefore, when the procedure was undertaken, the age of the petitioners had surpassed the age of 48. According to them, the petitioners were aged 49 years and therefore, did not fall in the extended limit of age of 48 years and therefore, their names did not appear in the list of selected

candidates who were nominated for the purpose of promotion.

[6] Heard learned advocates for the parties and perused the documents placed on record. At the outset, though the petitioners have amended the petition by adding prayer clause-G, there is nothing on record in the form of pleadings or any other document or arguments to indicate that the benefit of the Notification dated 13.12.2015 has not been extended to all the Anganwadi Workers in the State of Gujarat. In absence of any factual matrix, the amended portion of the petition is not considered at this stage, leaving it open in future if the necessary material is placed on record to consider accordingly at the relevant stage.

[7] In so far as the case of the petitioners is concerned, the policy for promotion the post of Mukhya Sevika appears to be adopted by a Government Resolution dated 13.12.2005 which laid down the detailed policy and the qualification for such promotion. There is no dispute in the fact that amongst the requirement of other criterion, the upper age limit was fixed at the age of 45 years which if the procedure is to be undertaken for the first time was relaxed till the age of 48 years which was by subsequent resolution of 2007. From the pleadings placed on record, the date of birth is 17.07.1962 and 30.09.1962. Accordingly, considering the affidavit-in-reply filed by the respondents, it would be necessary to reproduce the averments made on affidavit on behalf of the Rajkot Municipal Corporation, which would read as under:-

“1. The Respondent no.4 most respectfully submits that the petitioner herein was appointed as Honorary Anganvadi Worker through order dated 11.11.82 and a copy thereof is annexed as ANNEXURE-A. The respnt. no.4 submits that as stated in affidavit in reply, the post of Mukhya Sevika, Class-III are to be filled up by way of direct recruitment and nomination from amongst Honorary Anganvadi Workers in the ratio of 1:1 as per the notification dated 19.3.04 issued by

Govt. of Gujarat through its Panchayat, Rural Housing and Rural Development Dept. and Recruitment Rules for the cadre of Mukhya Sevika, Class-III known as Mukhya Sevika [Class-III] Panchayat Service] Recruitment Rules, 2004 annexed as Annexure-A to the Affidavit in Reply. From a kind perusal thereof it would be crystal clear that the upper age limit fixed under the rules for a nomination to the cadre of Mukhya sevika, Class-III is 45 years. It is submitted that as declared by the petitioner she was of the age of 55 years at the time of filing of Special Civil Application No.10496/17. In other words she has crossed the age limit at least 14 years past and therefore, her claim for nomination to the post of Mukhya Sevika, Class-III is not entertainable. The respnt. no.4 submits that the selection process is also laid down by the Govt. of Gujarat through its Women and Child Development Dept. through a resolution dated 13.12.05 and the same is annexed as Annexure B to the Affidavit in Reply. It is stated that the selection process for nomination is to be undertaken in accordance with the procedure laid down through G.R. dated 13.12.05.

The respnt. no.4 submits that, however, the powers for selection process are with District Panchayat Service Selection Committee of the concerned District for nomination of its Anganvadi Workers to the cadre of Mukhya Sevika, Class-III. It is submitted that the G.R. dated 13.12.05 make it clear that so far as the Municipal Corporation are concerned, the services of Mukhya Sevika, Class-III are to be sought by the Municipal Corporation from District Development Officer of the concerned District on deputation. The respnt. no.4 craves leave to rely upon Clause-3 of the resolution. It is submitted that, however, when the issue cropped up about nomination of Anganvadi Worker to the post of Mukhya Sevika, Class-III there was a correspondence with respnt. no.5 and it was communicated by the Programme Officer, Integrated Child Development Scheme, Rajkot District Panchayat that it has powers qua nomination only for the District Panchayat. The respnt. no.4 craves leave to refer to the said letter dated 29.2.16 annexed as Annexure-C to the Affidavit in Reply. It is pertinent to note that in absence of any provisions for nomination of Honorary Anganvadi Worker to the cadre of Mukhya Sevika, Class-III so far as Municipal Corporation is concerned in G.R. dated 13.12.05 issued by Govt. of Gujarat through its Women and Child Development Dept. it was thought fit by Programme Officer, I.C.D.S., Urban, Rajkot Municipal Corporation to seek guidance of the Director, Women and Child Development Dept., Gandhinagar through a letter dated 12.5.20 and the same is again annexed as ANNEXURE-A, The respnt. no.4 submits that suitable guidance from the said authority is awaited. Under these circumstances

it is most respectfully stated that the petitioner has crossed upper age limit of 45 years at least 14 years ago is not eligible for nomination to the post of Mukhya, Class-III in view of the Recruitment Rules. The respnt. no.4 most respectfully submits that the petitioner herein was born on 17.7.62 and was selected and appointed as Anganvadi Worker on 11.11.82. It is submitted that the recruitment rules known as "Mukhya Sevika Class III [Panchayat Service] Recruitment Rules, 2004" were framed through a notification dated 19.3.04 and thereafter procedure for nomination to the cadre of Mukhya Sevika Class III was framed through a notification dated 13.12.05 and copies of notification dated 19.3.04 and G.R. dated 13.12.05 are annexed as ANNEXURE-B & C respectively. In other words the petitioner was of the age of more than 43 years at the time of issuance of notification dated 19.3.04 and G.R. dated 13.12.05.

The respnt. no.3 submits that the procedure for nomination to the cadre of Mukhya Sevika Class III was initiated on 31.3.11 for the first time and a list of 24 eligible Honorary Anganwadi Workers was prepared and forwarded through a letter dated 31.3.11 to the Director, Women and Child Development Dept., Gandhinagar and copies of letter as well as list are annexed as ANNEXURE D & E respectively. It is humbly submitted that the name of the petitioner was not on the list as W6S She was of the age of 49 years at that point of time. The respnt no.4 humbly submits that, however, the Programme Officer, Rajkot District Panchayat, Rajkot opined through a letter dated 24.5.11 addressed to the Child Development Project Officer, ICDS, Urban, Rajkot Municipal Corporation that the needful was to be done by Gujarat Panchayat Service Selection Board, Ahmedabad as it was not a competent authority and copy thereof is annexed as Annexure-F."

And accordingly, it appears that for the first time the procedure for nomination to the cadre of Mukhya Sevika, Class-III was initiated on 31.03.2011 and accordingly, the age of the petitioners respectively was more than 48 years and therefore, their names did not reflect in the list for promotion to the post of Mukhya Sevika.

[8] The reliance placed upon by learned advocate for the petitioners on the decision of this Court in case of **Smt. Manjulaben M. Ranavat Anganwadi Worker (Supra)**, it would be appropriate to observe that the dispute before the Court was

with regards to discrepancy in the date of birth in the Government record and after considering the Government record, the Court came to the conclusion therein the date of birth to be particular and therefore, the age of the petitioners therein was below the age limit prescribed and therefore, the order was passed. The facts in the present case would differ on the facts in the case cited.

[9] Learned advocate for the petitioner has cited following judgments to substantiate his case of discrimination and therefore violation of Article 14 of the Constitution of India.

- (I) **Patel Rajesh Motibhai v/s. State of Gujarat and others**, reported in **AIR 1980 Gujarat 30**
- (II) **Ramakanta Parija v/s. Dy. Chief Mining Engineer, Sub Area Manager Belpahar**, reported in **2016 (149) FLR 96**
- (III) **Prasanna Dinkar Sohale and etc. v/s. The Director-in-charge Laxminarayan Institute of Technology, Nagpur and others**, reported in **AIR 1982 Bombay 176**
- (IV) **Dr. Penil Sharadkumar Doshi and others v/s. State**, reported in **AIR 1990 Madhya Pradesh 171**
- (V) **State of Rajasthan and another v/s. Dr. Ashok Kumar Gupta and others**, reported in **AIR 1989 SC 177**

[9.1] The Court has taken into consideration the Government Resolution which is framing the policy of promotion from the post of Anganwadi Workers to Mukhya Sevika. The Court does not find any discriminatory clause in the policy however, considering the argument of learned advocate for the petitioners that the Anganwadi Workers, who were working under the District Development Officer were given priority and they stole the march over the petitioners for the promotion to the post of the Mukhya Sevika, in the opinion of the Court, would be attributable to the procedure which is undertaken by

two separate establishments, depending upon the exigency which existed there, but such cannot be the ground to decide that the resolution was itself discriminatory in any manner.

[10] The vehement argument of the learned advocate for the petitioners that the policy was framed by the Government Resolution of 2005/2007 and therefore, entitlement/eligibility of the petitioners from that very day cannot be accepted as the date on which the resolutions are framed, cannot be treated to be the date relevant for the purpose of deciding the entitlement of the petitioners. The relevant date to decide the entitlement would be the procedure that would be undertaken for the purpose of promotion which in the present case, is in the year 2011 for the first time and therefore, the age of the petitioners on the date on which the promotions are to be considered is relevant.

[11] It is now reported that the petitioners have already retired in the year 2020.

[12] In view of the above, no case is made out for interference and therefore, the petition deserves to be and the same is hereby **dismissed**.

SIDDHARTH

(A.Y. KOGJE, J)

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