

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.624 of 2023

- 1. Smt. Bina Rani Paul,**
W/o: Lt. Pratap Paul, R/o: Vill:
Rabindranagar, Kanchanpur, Pin: 799270,
aged about : 62 years.
- 2. Smt. Bhanu Banik,**
D/o: Lt. Balaram Banik, R/o: Satchand,
South Tripua, Tripura, Pin: 799143, aged
about : 61 years.
- 3. Smt. Mamata Nath,**
W/o: Sitangshu Nath, R/o: Vill: Srirampur,
Kanchanpur, North Tripura, aged about :
63 years.
- 4. Smt. Pranati Sarkar,**
W/O: Lt. Amal Kumar Deb, R/o: Vill :
Baruakandi, Dharmanagar, North Tripura,
Pin: 799251, aged about : 62 years.
- 5. Smt. Tapan Bala Deb,**
R/O: Netajinagar, Kanchanpur, ,Dist: North
Tripura, Pin:799270, aged about :...
years.
- 6. Smt. Chanchala Sharma,**
W/o: Jitendra Sharma,
R/o: Uttar Pabia Charra, P.O: Kumarghat,
PIN: 799264, Aged about: 61 years.
- 7. Smt. Jamuna Ghosh,**
W/o: Sudhir Ch. Ghosh, P.O: Briddha
Nagar, Ranirbazar, Tripura, PIN: 799035,
Aged: about 62 years
- 8. Smt. Suniti Debnath,**
W/o: Lt. Krishna Debnath, R/o: Ward No: 3
Near Durganagar ICDS Center, Vill:
Krishnanagar, P.O: Ranirbazar, Mouja:
Majlishpur, Tripura, Pin: 799035, aged
about: 61 years.
- 9. Smt. Alo Rani Das,**
W/o: Lt. Sunil Ch. Das, R/o: Vill: Bartan,
Mohanpur, P.S: Ranirbazar, P.O:
Majlishpur, Tripura, Aged about; 63 years
- 10. Smt. Gita Das,**
W/o: Lt. Nikunja Bihari Das, R/o:
Vill:Baldakhal, West Champamura,

Boudhjungnagar, Pin: 799008, Aged about- 61 years

- 11. Smt. Dipali Debnath,**
W/o: Tarani Kanta Debnath, R/o:Laxmipur, Kobrahamar, Tripura, PIN: 799035, Aged about: 61years.
- 12. Smt. Kajalbala Nama,**
W/o: Lt. Makhan Sarkar, R/o: Vill: Pashchim Nagar, Kebrampara, Pashchim Noagaon, P.S: Ranirbazar, P.O: Purbanagar, Tripura, PIN: 799035, Aged about- 62 years.
- 13. Smt. Kamala Debnath,**
W/o: Ranjit Debnath, R/o: Vill: Majlishpur, Mohanpur, P.S: Ranirbazar, Tripura, Aged about: 61 years
- 14. Smt. Gita Rabi Das,**
W/o:Sridam Rabi Das, R/o: Vill: Mekhlipara, Ranirbazar, Tripura, Pin: 799035, aged about: 60 years
- 15. Smt. Gita Rani Bhowmik,**
W/o: Monoranjan Choudhury, R/o: Vill: Purba Radhanagar, Ranirbazar, P.O: Purbanagar, Tripura, Pin: 799035, aged about: 60 years.
- 16. Smt. Shefali Debnath,**
W/O: Arun Debnath, Vill: Pashchim Noagaon, P.O: Purba Noagaon, Ranirbazar, Tripura, Pin : 799035, aged about: 60 years.
- 17. Smt. Dipu Chakraborty,**
W/o: Benulal Chakraborty, R/o: Vill: Majlishpur, West part of hospital, P.S:Jirania, Pin: 799035, aged about: 66 years.
- 18. Smt. Niva Chakraborty,**
W/o: Harendra Kumar Bhowmik, R/o: Nalgaria, P.O & P.S: Ranirbazar, Tripura, Pin: 799035, aged about: 60 years.
- 19. Smt. Parul Das,**
W/o: Lt. Ajit Kr. Das, R/o: Vill: Bridhyanagar, Ranirbazar, Jirania, Pin: 799035, aged about: 61 years.

- 20. Smt. Smriti Majumder,**
W/o:Subodh Ch. Majumder, R/o: Vill:
SukantaPalli, Sabroom, Manubazar, South
Tripura, Pin: 799143.

..... **Petitioner(s)**

- V e r s u s -

- 1. The State of Tripura**
To be represented by the Secretary, Social
Welfare and Social Education, Govt of
Tripura, New Secretariat Building, New
Capital Complex, Kunjaban, P.S: New
Capital Complex, Agartala, West Tripura,
PIN: 799010.
- 2. The Secretary,**
Department of Social Welfare and Social
Education, Govt of Tripura, New Secretariat
Building, New Capital Complex, Kunjaban,
P.S: New Capital Complex, Agartala, West
Tripura, PIN: 799010.
- 3. The Secretary,**
Department of Finance, Govt of Tripura,
New Secretariat Building, New Capital
Complex, Kunjaban, P.S: New Capital
Complex, Agartala, West Tripura, PIN:
799010.
- 4. The Director**
Social Welfare and Social Education
Malancha, Ujan Abhoynagar, Agartala,
West Tripura
- 5. Child Development Project Officer**
Teliamura ICDS Project, Khowai, Tripura
- 6. Child Development Project Officer,**
Kanchanpur ICDS Project, Kanchanpur,
North Tripura
- 7. Child Development Project Officer,**
Satchand ICDS Project, South Tripura
- 8. Child Development Project Officer,**
Kadamtala ICDS Project, North Tripura
- 9. Child Development Project Officer,**
Kumarghat ICDS Project, Unokoti, Tripura
- 10. Child Development Project Officer,**
Jirania ICDS Project, West Tripura

11. Child Development Project Officer,
Ranirbazar ICDS Project, West Tripura

12. The Union of India

To be represented by the Secretary,
Ministry of Women and Child Development,
Govt of India, Shastriya Bhawan, New
Delhi.

..... Respondent(s)

For the Petitioner (s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. K. Nath, Adv. Ms. A. Debbarma, Adv.				
For the Respondent (s)	:	Mr. Kohinoor N. Bhattacharjee, GA Mr. B. Majumder, Dy. SGI Ms. K. Reang, Adv.				
Date of hearing	:	06.03.2024				
Date of delivery of Judgment & order	:	09.05.2024				
Whether fit for reporting	:	<table border="1"> <thead> <tr> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td>√</td> <td></td> </tr> </tbody> </table>	YES	NO	√	
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The petitioners Nos.1 to 5,7,9 to 12,14,15,18,19 & 20 were Anganwadi Workers [for short, AWWs] and rest petitioners were Anganwadi Helpers [for short, AWHs] engaged under Intensive Child Development Services Scheme (for short- ICDS scheme) at different Anganwadi centres on different dates. Their engagement was discontinued on their retirement on different dates during the period from 2021 to 2023 after they attained the age of 60 years. Engagement of some of the petitioners were continued by way of re-engagement even after they had attained the age of 60 years and later on same was discontinued.

[2] All the petitioners thereafter in the month of July, 2023 sent their respective representations [Annexures- 38 to 57 to the writ petition] to the Director of Social Welfare & Social Education, Government of Tripura (respondent No.4) to provide them gratuity and other post retiral benefits but the respondent No.4 vide letter dated 11.08.2023 [Annexure-58 to the writ petition] regretted the matter of gratuity, with the following reasons:

"..... At present, the State Government has introduced monthly Pension/one time Financial Benefits to the AWWs & AWHs after attaining 60(Sixty) years of age and who put in continuous minimum 10 (ten) years of service as AWWs/AWHs, subject to execution of options for availing monthly pension or one time financial benefits.

i. Monthly Pension-Rs.750/ per month for AWWs and Rs.500/- per month for AWHs.

ii. One time Financial Benefits - Rs.50,000/- to AWWs & Rs.30,000/- to AWHs.

Now, therefore, it is evident from the above that on the issue of your claim, the Department has to consider the demand as per the existing policy only i.e. provide monthly Pension/one time Financial Benefits to the petitioner, subject to execution of options for availing monthly pension or one time financial benefits.

Therefore, the claim for gratuity is regretted."

[3] Earlier, the State Government vide notification dated 01.08.2015 [Annexure-59 to the writ petition] introduced above mentioned scheme for pension/one time Financial Benefits to the AWWs and AWHs on their retirement on attaining 60 years of age.

[4] Now, after rejection of above said representations of the petitioners, the present writ petition has been filed by them claiming the following reliefs:

(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or

direction/ directions of like nature shall not be issued whereby directing the Respondents to provide the benefit of Gratuity and other post retirement benefits on attaining the age of superannuation i.e., 60 years.

(ii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/ directions of like nature shall not be issued whereby quashing and cancelling the Memorandum, dated, 11.08.2023, issued by the Director, Social Welfare and Social Education by which the claim of the Petitioners were rejected.

(iii) Make the rules absolute.

(iv) Call for records.

(v) Pass any further Order/Orders as this Hon'ble High Court considered fit and proper.

[5] Mr. P. Roy Barman, learned senior counsel bases the claim of gratuity for AWWs and AWHs under Payment of Gratuity Act, 1972 (for short- Act of 1972) on a decision of Hon'ble Apex Court in the case of **Maniben Maganbhai Bhariya vs. District Development Officer Dahod and others, 2022 SCC OnLine SC 507** and argues that already it has been decided by the Apex Court that the AWWs and AWHs are entitled to gratuity on their retirement in addition to other post retirement benefits and relying on the above said decision in **Maniben's** case, Rajasthan High Court also in a case of **Smt. Shanta Devi vs. State and Ors**, [order dated 09.11.2022 passed in S.B. Civil Writ Petition No.3283/2017] held that the AWWs were entitled to get the gratuity under the Act of 1972 on their retirement. According to Mr. Roy Barman, Ld. Sr. Counsel, Anganwadi establishment comes within the definition of 'establishment' in terms of section 1(3)(b) of the Act of 1972.

[6] Mr. Kohinoor N. Bhattacharya, learned GA appearing for the state-respondents, in vehemence, opposes such contentions and

referring to Paras-45,46 and 47 of **Maniben's** case, submits that the State of Gujarat already came up with a composite scheme on the basis of one resolution dated 25.11.2019 laying down exhaustive provisions regarding selection process, eligibility criteria, minimum academic qualification, disciplinary action etc. in respect of AWWs and AWHs and based on the same, such decision was rendered in case of **Maniben (supra)**. Learned GA further contends that the State of Tripura was not a party in that case, and said judgment was not a judgment passed *in rem* and was also not circulated to the State of Tripura for compliance and therefore, in no way, ratio of said **Maniben's** case can be applied in a case relating to Tripura.

[7] Referring to Section 1(3)(b) of the Act of 1972, learned GA contends that the words '*shop or establishment*' as mentioned therein covers either any 'shop', or any 'establishments' where the commercial activities like a shop is carried out. Alternatively, he also argues that even if the word 'establishment' is considered separately having no connection with any kind of commercial activities, still Anganwadi centre will not come within the purview of establishment like Gujarat where separate rules/schemes in this regard are already in force and moreover only 2[two] employees [i.e. less than 10] are engaged in every Anganwadi Centre or Anganwadi Sub-Centre in Tripura. Finally, learned GA arguing that if there is a scheme framed by the State, the Court can ask for implementation of the same but when there is no such definite scheme for AWWs and AWHs, the court cannot rewrite any scheme, relies on a decision of the Apex Court in

the ***State of Maharashtra & Anr. vs. Bhagwan & Ors.*** [Civil Appeal Nos.7682-7684 of 2021] [2022 LiveLaw (SC) 28], wherein it was observed that the Court should refrain from interfering with the policy decision that might have a cascading effect and have financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.

[8] Mr. B. Majumder, learned Deputy SGI appearing for the Union of India contends that the operative part of ***Maniben's*** case is applicable in the State of Gujarat as the said case was decided based on a scheme of that State. Learned Deputy SGI also refers Para-67 of the judgment of ***Maniben's*** case in this regard.

[9] On consideration of submissions and counter submissions of both the parties, the basic question falls for consideration now is whether the provision of Act, 1972 is applicable to the AWWs and AWHs as employed or engaged in the State of Tripura in view of the judgment of ***Maniben's*** case. The provision of Section 1(3)(b) of the Act of 1972 assumes greater relevance in this regard which is required to be looked into first.

1. Short title, extent, application and commencement-

(1).....

(2).....

(3) It shall apply to-

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

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

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

Therefore, to come within the definition under sub-Section 3(b) above, the establishment should be an establishment within the meaning of any law as in force in a State in relation to any shop and establishment.

[10] Now, it appears from the judgment of **Maniben's** case that some observations were made by the Apex Court with reference to the State of Gujarat and the relevant paragraphs are paragraph nos. 45,46,47,67,68,69,70 and 82 of the judgment which are extracted below:

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.

.....

67. Now, coming to the State of Gujarat, the Government Resolution dated 25th November 2019 (Annexure A1 of IA no. 161608 of 2021) lays down exhaustive provisions regarding selection criteria, duties, disciplinary action, rules, etc. in respect of AWWs and AWHs. In fact, by the said Resolution, the State Government has framed the Anganwadi Worker/Helper (Selection Criteria, Honorary Service, Review and Discipline) Rules (for short "the said Rules"). Duties of AWWs and AWHs have been laid down in Appendix1 to the Government Resolution. Very important functions and responsibilities have been assigned to AWWs in Appendix1. We are reproducing some of the onerous duties and functions assigned to AWWs :

(a) The AWWs shall carry out the survey within their area of duty and shall update the record regularly by taking note of the occurrence of new events;

(b) Apart from providing health and nutrition services to the children within their jurisdiction, AWWs are under a duty to monitor the growth development of all children. They are also under an obligation to identify severely malnourished children and children in need of medical attendance;

(c) AWWs have a duty of monitoring the growth of the children in the age group of 0 to 3 years, including monitoring their weight. They are responsible for maintaining a growth chart for measuring the child's individual growth. They must identify children who are significantly underweight and take special care of such children;

(d) To make four follow-up visits every fortnight to the children rehabilitated at Children Malnutrition Treatment Centres/Nutrition Rehabilitation Centres and ensure that the said children get supplementary food at Anganwadi centres;

(e) AWWs are also required to cater to vaccination services with the help of Aasha workers. They are also duty bound to undertake activities relating to health, nutrition, and hygiene education;

(f) They are responsible for following safety and hygiene norms in respect of food materials in Anganwadi centres;

(g) AWWs must make home visits at least three times a week and meet children below the age of 3 years, pregnant women, and lactating mothers;

(h) With a view to ensuring public participation in the activities of Anganwadis, they are required to celebrate various special days on all four Tuesdays;

(i) It is the duty of the AWWs to identify handicapped children or children with slow growth and provide referral services to them by referring them for health screening;

(j) AWWs are required to conduct pre-primary education activities for the children of the age group of 3 to 6 years following pre-school timetable and using pre school kit;

(k) Appendix-1 provides for AWWs attending meetings of various committees;

(l) The AWWs are required to look after the implementation and coordination of various other services under various Government schemes;

(m) Their duties are to carry out Aadhar registration of the children attached to Anganwadis; and

(n) They are required to maintain several reports, registers, records relating to beneficiaries, deaths of children, registration of births and deaths, and submit monthly or annual reports.

68. The duties and functions of AWHs are also very onerous. Some of the important duties are as under:

- To report half an hour before the working hours of Anganwadi centres and clean Anganwadi centres every day. To maintain a neat and clean environment within the Anganwadi centres;
- To cook and serve healthy food to the beneficiaries;
- To bring children to Anganwadi and to drop them at their houses;
- To clean the utensils used for cooking and serving;
- To maintain personal hygiene of children;

- To help AWWs in public relations and public participation works; and
- To perform all duties relating to ICDS as may be assigned by the Child Development Program Officer and the State Office of ICDS.

69. One of the important functions of Anganwadi centres is to conduct preprimary education activities for the children of the age group of 3 to 6 years by following the preschool timetable and by using the preschool kit. That is the specific provision in the Government Resolution dated 25th November 2019. It is also provided therein that the Anganwadi children admitted to primary schools shall be issued a certificate of preprimary education signed by the Child Development Programme Officer. On this aspect, Section 11 of the Rights of Children to Free and Compulsory Education Act, 2009 (for short, 'the RTE Act') is relevant. Section 11 reads thus:

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

70. The appropriate Government, in this case, is the Government of Gujarat. For giving effect to Section 11 of the RTE Act, a provision has been made by the State Government to conduct pre-primary schools for children above the age of three years in the Anganwadi centres. Moreover, as specifically laid down in the aforesaid Government Resolution, it is the duty of AWWs to provide a pleasant educational environment at Anganwadi centres. It is also the duty of AWWs to assess the growth of children and make entries in the booklet titled "My Growth Story". Thus, Anganwadi centres are also running pre-primary schools for children in the age group of 3 to 6 years. The educational activity of running pre-school is an integral part of Anganwadi centres. AWWs and AWHs who are managing the Anganwadi centres have a duty to look after pre primary schools as well. We may also note here that on 8th March 2018, the Government of India has launched the National Nutrition Mission by the name "The Prime Minister's Overarching Scheme for Holistic Nourishment". The responsibility of implementing a part of the scheme is of the Anganwadi centres. Under the National Education Policy, 2020, there is a proposal to make available Early Childhood Care and Education (ECCE) to children having socio economic disadvantaged backgrounds. It is provided that ECCE will be extended through Anganwadi centres.

.....

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

[11] However, there are also some other very relevant and important paragraphs of discussions regarding applicability of the provisions of the Act of 1972 in case of AWWs and AWHs e.g. paragraph nos.76,77,79, 80, 83,84,85,86 and 87 of the said judgment which are not based on the specific scenario of the State of Gujarat only. The above said discussions and observations of the Hon'ble Supreme Court are taken out hereunder:

“APPLICABILITY OF THE PROVISIONS OF THE 1972 Act TO AWW AND AWHs

76. *Now, I turn to the provisions of the 1972 Act. Sub-section (3) and (3A) of the 1972 Act deal with the applicability of its provisions. Sub-sections (3) and (3A) of Section 1 reads thus:*

“(3) *It shall apply to-*

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

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State,

in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

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

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

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

79. Now, the question is whether clause (b) of Section 1(3) of the 1972 Act will apply. This Court in the case of the Labour Court, Jullunder (*supra*): (1980) 1 SCC 4 has given a wide interpretation to clause (b). In paragraph 3 of the said decision, this Court held thus:

“3. In this appeal, the learned Additional Solicitor General contends on behalf of the appellant that the Payment of Gratuity Act, 1972 cannot be invoked by the respondents because the Project does not fall within the scope of Section 1(3) of that Act. Section 1(3) provides that the Act will apply to:

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

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

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

According to the parties, it is clause (b) alone which needs to be considered for deciding whether the Act applies to the

Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, Section 2(ii) (g) of which defines an "industrial establishment" to mean any "establishment in which any work relating to the construction development or maintenance of buildings, roads, bridges or canals, relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on". It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a Central enactment and Section 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But it is contended, the law referred to under Section 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to

the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it."

(emphasis supplied)

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

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

84. It is not the case of the State Government that every Anganwadi centre is a separate entity. Anganwadi centres and Mini Anganwadi centres are a part of the Anganwadi establishment of the State Government. The Anganwadi centres have been employing ten or more AWWs and AWHs in the State. Therefore, I have no manner of doubt that Anganwadi centres are establishments contemplated by clause (b) of subsection (3) of Section 1 of the 1972 Act. The learned Additional Solicitor General relied upon a decision of this Court in Bangalore Turf Club (supra): (2014) 9 SCC 657. It was a case arising out of the Employees' State Insurance Act, 1948. The said Act does not define "establishment". The decision has no relevance in this case.

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

"(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port,

railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

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

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

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

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

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

86. The definition of 'wages' is very wide. It means all emoluments which are earned by an employee on duty. Thus, the honorarium paid to AWWs and AWHs will also be covered by the definition of wages. As AWWs and AWHs are employed by the State Government for wages in the establishments to which the 1972 Act applies, the AWWs and AWHs are employees within the meaning of the 1972 Act. In view of the said Rules of the Gujarat Government, the Anganwadi centres are not under the control of the Central Government. Therefore, the State Government will be an appropriate Government within the meaning of clause (a) of Section 2 of the 1972 Act. Accordingly, a person or authority appointed by the appropriate Government for the supervision and control of

AWWs and AWHs will be the employer within the meaning of clause (f) of Section 2.

87. I may add here that the Government of India by a notification dated 3rd April 1997 has notified educational institutions as establishments under clause (c) of subsection (3) of Section 1 of the 1972 Act. In the Anganwadi centres, the activity of running a pre school for the children in the age group of 3 to 6 years is being conducted. It is purely an educational activity. The job of teaching is done by AWWs and AWHs. The State Government is running pre schools in Anganwadi centres in accordance with Section 11 of the RTE Act.

[12] Based on the above said discussions, finally Hon'ble Supreme Court held the followings:

88. For the reasons recorded above, I have no manner of doubt that the 1972 Act will apply to Anganwadi centres and in turn to AWWs and AWHs. In the impugned Judgment, the Division Bench was swayed by the view taken by this Court in the case of Ameerbi which was followed by the Delhi High Court in the case of Akhil Bhartiya Anganwadi Kamgar Union (Regd.) (supra) : 2011 SCC OnLine Del 2459. These decisions, for the reasons recorded earlier, have no bearing on the issue involved in these appeals. The learned Single Judge was right in holding that the 1972 Act was applicable to AWWs and AWHs. The Controlling Authority has granted simple interest at the rate of 10% on the overdue gratuity amounts. All eligible AWWs and AWHs shall be entitled to the benefit of interest.

[13] In the above said judgment, Hon'ble Supreme Court has given wider interpretation of the words 'establishment', 'employer', 'employee' and 'wages' as envisaged in 1972 Act in an extensive manner and finally came to the conclusion that the Act of 1972 will be applicable to AWWs and AWHs. Reference has also been made in **Maniben's** case by the Apex Court to the decision of another case of **State of Punjab vs. Labour Court, Jullunder and ors., (1980) 1 SCC 4**, wherein the word 'law' as appearing

in the words 'every shop or establishment within the meaning of any law' under section 1(3)(b) of 1972 Act was given a comprehensive meaning and it includes any law in relation to shops as well as separately a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Hon'ble Supreme Court while examining the definition of 'establishment' within the meaning of law, referred the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Code on Wages, 2019 in **Maniben's** case to include government offices and establishments within such definition. Both the above said Acts have their application equally in Tripura and Gujarat.

[14] It is not disputed that Anganwadi Centres are the creation of Integrated Child Development Services [ICDS] Scheme, a Centrally Sponsored Scheme launched in the year 1975 keeping in view the need to holistically address the issues of health, nutrition and education needs of children as revealed from the Eighth Report of Committee on Empowerment of Women, Parliament of India , Lok Sabha on 'Working Conditions of Anganwadi Workers'. Each Anganwadi Centre is managed by one Anganwadi Worker and one Helper at the grass root level to implement the integrated ICDS Scheme. Some of the primary roles and responsibilities of Anganwadi Workers and Helpers as reflected in the said report are as follows:

1. *To weigh each child every month, record the weight graphically on the growth card, use referral card for referring cases of mothers/children to the sub-centres/PHC etc., and*

maintain child cards for children below 6 years and produce these cards before visiting medical and para-medical personnel.

2. To carry out a quick survey of all the families, especially mothers and children in those families in their respective area of work once in a year.

3. To organise non-formal pre-school activities in the anganwadi of children in the age group 3-6 years of age and to help in designing and making of toys and play equipment of indigenous origin for use in anganwadi.

4. To organise supplementary nutrition feeding for children (0-6 years) and expectant and nursing mothers by planning the menu based on locally available food and local recipes.

5. To provide health and nutrition education and counseling on breastfeeding/ Infant & young feeding practices to mothers. Anganwadi Workers, being close to the local community, can motivate married women to adopt family planning/birth control measures

6. AWWs shall share the information relating to births that took place during the month with the Panchayat Secretary/Gram Sabha Sewak/ANM whoever has been notified as Registrar/Sub Registrar of Births & Deaths in her village.

7. To make home visits for educating parents to enable mothers to plan an effective role in the child's growth and development with special emphasis on new born child.

8. To maintain files and records as prescribed.

9. To assist the PHC staff in the implementation of health component of the programme viz. immunisation, health check-up, ante natal and post natal check etc.

10. To maintain liaison with other institutions (Mahila Mandals) and involve lady school workers and girls of the primary/middle schools in the village which have relevance to her functions.

11. To guide Accredited Social Health Activists (ASHA) engaged under National Rural Health Mission in the delivery of health care services and maintenance of records under the ICDS Scheme.

12. AWW would also assist in implementation of Nutrition Programme for Adolescent Girls (NPAG) as per the guidelines of the Scheme and maintain such record as prescribed under the NPAG.

13. To identify the disability among children during her home visits and refer the case immediately to the nearest PHC or District Disability Rehabilitation Centre.

14. To support in organizing Pulse Polio Immunization (PPI) drives.

Anganwadi Helpers

(i) To cook and serve the food to children and marchers

(ii) To clean the Anganwadi premises daily and fetching water.

(iii) Cleanliness of small children.

(iv) To bring small children, collecting them from the village to Anganwadi.

[15] Pre-school education is one of the most important activity in Anganwadi centres and therefore, section 11 of *the Right of Children to Free and Compulsory Education Act, 2009* has its relevancy in this regard, as has been discussed in **Maniben's** case. The Right of Children to Free and Compulsory Education Rules (Tripura), 2011 has been framed by the State of Tripura but no separate provision has been made therein for arrangement of such pre-school education by any institution or wing of the Government other than the said Anganwadi centres. Rather Rule 11(4)(c) of the Rules of 2011 indicates that such pre-school education is imparted in Anganwadi centres in Tripura. At Para 87 of **Maniben's** case, Hon'ble Supreme Court has categorically observed that by a notification dated 03.4.1997, the Government of India included educational institutions as 'establishments' under clause (C) of subsection (3) of Section 1 of 1972 Act and in Anganwadi Centres purely educational activities of pre-school stage are done through AAWs and AWHs in terms of Section 11 of RTE Act. Therefore, in view of above said observations

of Hon'ble Supreme Court, now the Anganwadi centres also equally fall within the category of 'establishment' in terms of Section 1(3)(C) of 1972 Act.

[16] Similarly, National Food Security Act, 2013 is also a Central Act legislated to provide for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of food at affordable prices to the people to live a life with dignity and for the matter connected therewith and incidental thereto. The said Act also has its application in Tripura like other states w.e.f. 05.07.2013. In **Maniben's** case, it has been observed that Anganwadi Centres have been statutorily recognised under above said Act and such centres now perform a pivotal role in discharging statutory obligations of the state to provide nutritional support to pregnant women, lactating mothers and children in the age group of 6 months to 6 years.

[17] As per the provisions of above said Act of 2013, the Anganwadi Centres now assumes statutory recognition with addition of further duties and responsibilities in due implementation of the Act, more particularly the duties as set out under Sections 4,5, and 6 of the Act. Therefore, it is an establishment or wing of the State Government through which not only the ICDS scheme is implemented, but the duties of providing pre-school education under section 11 of the Right of Children to Free and Compulsory Education Act, 2009 and the statutory obligations of providing nutritional support to pregnant women, lactating mothers, children of age group of 6 months to 6 years and of prevention of child malnutrition are

also discharged under the provisions of National Food Security Act, 2013. Therefore, in view of above and also in the light of decision of Hon'ble Supreme Court in **Maniben's** case, the Anganwadi Centres in Tripura also comes within the purview of 'establishment' in terms of Sections 1(3)(b) & (C) of the Act of 1972.

[18] Learned GA though argued that each Anganwadi Centre is run by only 2[two] persons and not by 10 or more persons as required under Sections 1(3)(b) & (C) of 1972 Act, but such contention is not convincing, as all such Anganwadi Centres' function under the umbrella of Social Welfare and Social Education Department of Govt. of Tripura having its different centres located in different places of the state. From the Memorandum bearing No. F.3(16)-DSWE/ESTT/91(V-19) dated 15.04.1992 (Annexure 14 of the writ petition), it is seen that the Directorate of Social Welfare and Social Education engaged many AWHs for several Anganwadi Centres by a single order. It is also evident from the Notification bearing No.F.46(175)-ICDS/SWE/2014/9341(100) dated 01.08.2015 of Govt. of Tripura (Annexure 59 of the writ petition) that a common order for all the Anganwadi workers and helpers has been issued by the State Government for providing monthly pension/one time financial benefit on their retirement/death treating them as a single class or group. In **Maniben's** case also, it has been observed by the Hon'ble Supreme Court that Anganwadi centres and Mini Anganwadi centres are part of the Anganwadi establishment of the state. Therefore, submission of Ld. G.A. that each Anganwadi Centre is a separate and distinct

establishment is not acceptable. In view of above discussions and also in view of Article 141 of the Constitution, the contention of learned GA that the State of Tripura was not a party in **Maniben's** case, does not deserve any further consideration.

[19] In **State of Maharashtra** (supra) as relied on by learned GA, there was one society registered under the Societies Registration Act, 1860 namely Water and Land Management Institute (WALMI) which would be administered by its Governing Council and said Council framed WALMI Establishment Rules, 1980 providing service conditions including the allowances to be paid to its employees. On some occasions, the Director General of WALMI sent proposal to the State Government for granting pensionary benefits and contributory provident fund to the employees of WALMI and every time said proposal was turned down by the State Government. Thereafter, some employees of WALMI filed a writ petition in the Bombay High Court claiming pensionary benefits at par with the State Government's employees and the Bombay High Court allowed the writ petition directing the respondents to extend the pensionary benefits to the employees of WALMI with further observations that the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself were sufficient to meet the financial liability of the pensionary benefits to the employees and therefore, there was no reasonable basis for the State Government to refuse the benefit of pension to the retired employees of WALMI. In that perspective, the Apex Court observed that the employees of the

autonomous bodies could not claim, as a matter of right, the same service benefits at par with the State Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there might be a representative of the Government and/or merely because such institution was funded by the State/Central Government, employees of such autonomous bodies could not as a matter of right, claim parity with the State/Central Government employees. It was also further observed by Apex Court that the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implication and that whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and Court should not interfere lightly. Decision in said case was rendered by Hon'ble Supreme Court completely in different perspective. Here in the case in hand, when the statute itself, by way of its logical interpretation, covers the cases of AWWs and AWHs, granting of any relief to them under the provision of Act of 1972 will not tantamount to interfere with any policy decision of the Government.

[20] In view of the above said discussions, it is held that the Payment of Gratuity Act, 1972 is applicable to the AWWs and AWHs working in the State of Tripura and the respondent Nos.1-11 are directed to make the payment of gratuity to the petitioners as per their eligibility in terms of provisions of Payment of Gratuity Act, 1972 along with interest @ 7% per annum computing for the period after

30 days from the respective date of their retirement till the payment is made.

Consequently, the impugned memorandum dated 11.08.2023 of Director, Social Welfare & Social Education Department, Government of Tripura (Annexure-58 of the writ petition) is hereby quashed to that extent.

With such observations and directions, this writ petition stands allowed and disposed of.

Pending application(s), if any, also stands disposed of.

JUDGE

**RUDRADEEP
BANERJEE**

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