

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**WP(C) No. 2515/2023**

*Reserved on: 02.03.2024  
Pronounced on: 06.03.2024*

1. Naza Bano, Age 42 Years  
D/o M. Jumal Malik  
R/o Bunpora, Kupwara

2. Rafiq Bano, Age 50 Years  
D/o Ali Mohd Thakur  
R/o Zachaldara, Kupwara

.....Petitioner(s)

Through:

*Mr. Hilal Ahmad Wani, Advocate*

**Versus**

1. Union Territory of Jammu and Kashmir, Through Commissioner Secretary to Govt., Social Welfare Department, Civil Secretariat, Srinagar/Jammu
2. State Mission Director ICDS Project JUKL, Jammu
3. District Programme Officer ICDS Project, Kupwara
4. Joint Director, ICDS, J&K, Jammu.

.....Respondent(s)

Through:

*Mr. Abdul Rashid Malik, Sr. AAG*

**CORAM:**

**HON'BLE, MR JUSTICE ATUL SREEDHARAN, JUDGE  
HON'BLE MRS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

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

**Per Moksha, J**

**1.** By this petition, petitioners have challenged the order dated 25.08.2023, passed by the learned Central Administrative Tribunal, Srinagar, in TA No. 1799/2021, titled as *Naza, Bano and others versus UT of J&K and others*, by

virtue of which dispute referred in the transfer application along with entire record, has been returned to this Court for adjudication.

**Factual matrix**

2. The petitioners were initially engaged as Anganwadi workers and thereafter were promoted to the post of Supervisor on Incharge basis in the year 2017 and 2018. As per the order of promotion, they were not to be substantively appointed on the post of Supervisor till the decision be taken by this Court with respect to the seniority of Anganwadi workers.

3. The office of respondent No.1 had issued order No. 76–SW of 2019 dated 28.02.2019, in terms of which, it was directed that the seniority of Anganwadi workers be reckoned from the date of acquiring the qualification of graduation and not from their initial engagement. Since the petitioners were working as Anganwadi workers and had passed graduation through private mode, as such, they made representations before the competent authority for fixing up of their seniority from the date of their initial engagement. Petitioners challenged the order passed by respondent No. 1, before the Court by way of SWP No. 758/2019, and sought for following reliefs:-

- “(i) *By allowing the petition, by issuance of a writ of certiorari, the order impugned No. 76-SW of 2019 dated 28.02.2019, issued by respondent No. 1 and order Nos. SMD / Estt / ICDS/Misc/216/8916-39 dated 05.03.2019 and SMD/ICDS/Estt/Circular /2019/7349-7492 dated 06.03.2019 issued by respondent No. 4 be quashed and set aside.*
- (ii) *By allowing the petition, by issuance of a writ of mandamus, directing respondents to convene departmental promotion committee to make formal promotions to the post of Supervisor for District Kupwara in favour of petitioners on the basis of final seniority list prepared by the department in terms of communication No. DPO/ICDS/kup/Estt/19/4758-68 dated 12.02.2019.*
- (iii) *By allowing the petition, by issuance of a writ of mandamus, directing respondents to give the effect of formal promotion of petitioners on the post of Supervisor from the date they been promoted on Incharge basis (i.e., 21.11.2017 & 27.10.2017) being*

*eligible and senior most in the seniority list prepared by the respondent department.”*

4. In terms of order dated 28.08.2020, learned Single Bench held that the jurisdiction to hear SWP No. 758/2019, lies with the Central Administrative Tribunal, constituted under provisions of Central Administrative Tribunal Act, as such parties were directed to appear before Registrar, Central Administrative Tribunal. The said order dated 28.08.2020, being relevant is reproduced as under:-

*“1. The grievance projected in this petition relates to the subject(s) covered by Section 14 of the Central Administrative Tribunals Act, 1985 (CAT Act). The jurisdiction to hear this petition as a Court of first instance, therefore, lies with the Central Administrative Counsel (CAT) constituted under the provisions of the CAT Act.*

*2. Accordingly, in terms of Section 29 of the CAT Act, this case is transferred for further proceedings to the CAT, the Court of first instance, having its place of sitting at Srinagar notified vide Notification No. G.S.R 317 (E) dated 28.05.2020, issued by the Central Government under Section 5(7) of the CAT Act. However, since there is only one Bench of the CAT established so far which is presently holding its sitting at Jammu, the Registrar Judicial is directed to transmit the record of the petition to the CAT presently holding sitting at Jammu, retaining a soft copy thereof.*

*3. The parties are directed to appear before the Registrar, Central Administrative Tribunal (CAT), Jammu Bench on 06-04-2021 for further proceedings.”*

5. The petitioners herein, had also sought for consequential relief of promotion against substantively/permanent posts, however, some petitions were filed before this Court, wherein the relief was restricted only to the extent of quashment of the Government orders issued by respondent No. 1 with respect to the criteria for fixing up of the seniority of Anganwadi workers.

6. This Court in terms of order/Judgment dated 14.02.2023, passed in SWP No. 667/2018 titled as *Ms. Syeda Nazir Vs. State of J&K and Anr.*, had set aside the Government order dated 28.02.2019 and respondents were directed to

maintain the seniority of graduate Anganwadi workers from the date of their initial engagement.

7. Since the case of the petitioners remained pending before learned Central Administrative Tribunal, Srinagar, the petitioners filed an application bearing No. 496/2023 in TA No. 1799/2023, whereby they had categorically pleaded that the relief No. (i) has already been decided by the High Court, as such, petitioners had restricted their relief to No. (ii) (iii) only, and prayed as under:-

*“ In the premises, it is therefore, humbly prayed that this application may kindly be allowed and respondents may be directed to issue formal order of promotion in favour of applicant No. 2 to the position of Supervisor in terms of DPC held on 03.05.2023, same shall meet the ends of justice.”*

8. The application of the petitioners was considered and learned Central Administrative Tribunal held in its order dated 25.08.2023, that the dispute raised by the petitioners will not lie before Tribunal and the entire records have been returned to this Court for consideration. Operative portion of the order being relevant is reproduced as under:-

*“ 6. In the decision reported in **State of Karnataka v. Amirbi and others [(2007) 11 SCC 681]** the Hon’ble Apex Court has held that persons working as Anganwadi workers do not hold a civil post and such an application is not maintainable before Administrative Tribunal under Section 15 of the Administrative Tribunals Act. The Supreme Court has held that they do not carry any function of the State. The recruitment process is not governed by the Constitution or any Statute. They are not created by Central Government or State Government in exercise of powers under Articles 77 and 162 of the Constitution of India; Rules framed under Article 309 are not also attracted in the case of Anganwadi workers.*

*That means, such a dispute will not lie before this Tribunal. Therefore, we direct that the entire records shall be returned to the Hon’ble High Court for consideration.”*

**Arguments raised by learned counsels for the parties-**

9. Mr Hilal Ahmed wani, learned counsel for the petitioners has stated that since they had restricted the claim to the extent of directing the respondents to convene a DPC and promote them on the post of Supervisor from the date they

have been placed as Incharge Supervisor. Therefore, it was within the jurisdiction, powers and authority of the Central Administrative Tribunal under Section 14 of the Administrative Tribunals Act, 1985.

10. It is also stated that the petitioners are claiming the promotion to the post of Supervisor in terms of the Jammu and Kashmir Social Welfare (Subordinate Service, Recruitment Rules-2009) which provides the procedure and methodology for promoting different classes of Anganwadi workers. Post of Supervisor has to be filled up by adopting the statutory rules and are substantive in nature. As such learned Central Administrative Tribunal has erred in returning the entire record to this Court for adjudication. It is also stated that the learned Tribunal has jurisdiction vis-a-vis the rights accrued to the residence of UT of J&K, when it pertains to civil post, the post of Supervisor is a civil post as such the jurisdiction to adjudicate upon the claim put forth by the petitioners lies with the learned Tribunal. It is further stated that the learned tribunal has held that Tribunal lacks jurisdiction on the basis of the Judgement passed by Supreme Court reported in case titled as *State of Karnataka versus Amirbi and others reported in 2007(11) SCC 681*. The judgement referred in impugned order is distinguishable on account of the fact that in the Judgement referred, the controversy was with respect to the position of Anganwadi worker and the petitioners therein had not sought any promotion or regularisation against any civil post, whereas the petitioners herein had restricted their relief only with respect to the promotion to the post of Supervisor from the date they were placed as Incharge Supervisors.

11. Per contra, learned counsel for the respondents, Mr. A.R Malik, learned Senior Additional Advocate General has stated that respondents are in process

of implementing the Judgement passed by the Court in SWP No. 667/2018, titled as *Ms. Syeda Nazir vs State of Jammu and Kashmir and another*, wherein respondents have been directed to fix the seniority of Anganwadi workers on the basis of their initial engagement as Anganwadi workers in tune with Rules of 1991, read with Rule 24 of J&K CCA Rules. He has further stated that the promotions to the post of Supervisors would be made after following rules and due procedure of law.

12. We have heard learned counsel for the parties and perused the material on record.

13. The dispute before this Court is limited to the extent of jurisdiction of Central Administrative Tribunal with respect to promotion of Anganwadi worker to the post of Supervisor in terms of Jammu & Kashmir Social Welfare, Subordinate Service Recruitment Rules, 2009, under Administrative Tribunals Act, 1985.

14. The Administrative Tribunals Act, 1985, is an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and post in connection with the affairs of the union or any state or any local or other authority within the territory of India or under the control of the Government of India or of any (corporation or society owned or controlled by the Government in pursuance of Article 323–A of the Constitution) and for matters connected therewith or incidental thereto.

- “(k) “post” means a post within or outside India;
- (p) “service” means service within or outside India;
- (q) “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government

*of India, or, as the case may be, of any corporation [for society] owned or controlled by the Government, as respects-*

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever;*

**15.** The definition of words “service matters” includes all matters relating to the conditions of service of a person as respects, his remuneration, allowances, pension, and other retirement benefits; tenure, including confirmation, seniority, promotion, reversion, premature retirement, and superannuation, leave of any kind; disciplinary matters or any other matter whatsoever.

**16.** Section 14 specifically enumerates the services to which it is relatable that is, to any all-India service or any civil service of the Union or civil post under the Union or to a post connected with the defence or in the defence services, being, in either case, a post filled by a civilian. The word Union in terms of explanation appended under section 14 (1) (c) has reference also to a Union Territory. The words used are ‘civil service’ or ‘civil post’.

**Section 14 of Administrative Tribunals Act, 1985 reads as under:-**

**“ 14. Jurisdiction, powers and authority of the Central Administrative Tribunal. \_(1)** Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to -

*(a) recruitment, and matters concerning recruitment, to any All - India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;*

*(b) all service matters concerning -*

*(i) a member of any All - India Service; or*

*(ii) a person not being a member of an All - India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or*

*(iii) a civilian not being a member of an All - India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,*

*and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;*

*(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub - clause (ii) or sub - clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.*

*Explanation - For the removal of doubts, it is hereby declared that references to Union in this sub - section shall be construed as including references also to a Union territory.*

*(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub - section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government :*

*Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub - section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.*

*(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub - section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -*

*(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and*

*(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”*

**17.** This Court, in case titled as the ***Tasleema Jan V/S state of J&K and others***, SWP No. 1002/2018, while relying upon decision of Supreme Court in



*State of Karnataka versus Ameerbi reported in 2007(11) SCC 681*, held as under:-

“7. So, it is thus settled that appointments made under a scheme which is not of a permanent nature, and appointees, although might have continued for a long time, do not hold a civil post, and that Anganwadi workers do not hold a civil post, they do not come within the purview of Section 14 of the CAT Act, and that the Tribunal would not have the jurisdiction to entertain their petition. Resultantly, it is held that this Court would have the jurisdiction to entertain a petition, including this petition, as a Court of first instance in relation to recruitment and matters concerning recruitment to the position of Anganwadi worker(s) and this petition would not need to be transferred to the Tribunal.”

**18.** The term civil post has been interpreted by five Judge bench of the Supreme Court, headed by the then Chief Justice way back in the year 1967, in **State of Assam versus Kanak, Chandra Dutta, AIR, 1967 SC 884**, ( in paras 9 and 10) in the following words:-

“9. The question is whether a Mauzadar is a person holding a civil post under the State within [Art.311](#) of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in [Art. 310](#) from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal notes of [Art.311](#). In [Art.311](#), a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes- to Arts. 309, 310 and 311. The heading and the subheading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post. In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art.

**10. 310.** A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. [Article 310\(2\)](#) contemplates that a

*post may be abolished-and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.*

19. Article 309, lays down that subject to the provisions of the Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and post in connection with the affairs of the Union or of any State. The proviso to this Article confers power upon the President or the Governor, as the case may be, to make rules regulating the recruitment and the conditions of service of persons appointed to the services and post in connection with the affairs of the Union or the State. Article 311, affords several protections to the persons employed in the civil capacities under the Union or a State.

20. A member of service means a person appointed in a substantive capacity to the service as per the provisions of the rules in order to become a member of the Service, one must satisfy two conditions, namely, the appointment must be in substantive capacity and the appointment has to be to the post and service according to rules, and within the quota to a substantive vacancy. In context of Articles, 309, 310 and 311, a post denotes an Office. A post is a service or employment and a person holding a post is a person serving or employed under the State/ Union Territory. A civil post is an office on the civil side of the Administration. Cadre means the sanctioned strength of service, class, category or grade.

21. Applying the ratio laid down in the Judgement of the Apex Court titled as **State of Assam versus Kanak, Chandra Dutta, AIR, 1967 SC 884**, the

post of Supervisor in terms of the Jammu and Kashmir, Social Welfare, Subordinate Service Recruitment Rules, 2009, made in exercise of powers conferred by proviso to Section 124 of the then Constitution of Jammu and Kashmir (Article 309 of the Constitution of India), is a permanent post, carrying a definite time scale sanctioned by the competent authority. The rules provide the procedure and methodology for promoting different classes of Anganwadi workers as under:

Class	Category	Designation	Grade	Minimum Qualification for Direct Recruitment	Method of Recruitment
II	-	Supervisor	9300-34800+2400	Female Graduate- Preference shall be given to candidates having Home Science/Child Dev/Sociology as one of the subjects	i) 50% by direct recruitment ii) 25% by selection through Departmental Selection Committee from amongst graduate Anganwadi workers having rendered 5 years of service. iii) 25% by selection through Departmental Selection Committee from amongst Matriculate Anganwadi workers having rendered 10 years of service.

**22.** In terms of the Rules supra, the petitioners herein are seeking promotion against the post of Supervisor within their prescribed quota. The petitioners are no more aggrieved of their seniority as Anganwadi workers as the same has been settled by this Court in SWP No. 667/2018 titled as *Ms Syed Nazir V/s state of J&K and others* along with clubbed matters and has already been acted upon by the Government. The petitioners had filed an application, M.A No. 496/2023, wherein at paragraph No.5 it is categorically been stated by the petitioners that despite the fact that the departmental promotion committee has considered all the relevant material of the petitioners, no formal orders of promotion have been issued by the respondents. The petitioners had restricted

their relief in the TA before the Tribunal to relief no.(ii) and (iii), which are only to the extent of directing respondents to convene Departmental Promotion Committee to make formal promotions to the post of Supervisor for District Kupwara in favour of the petitioners on the basis of the final seniority list and to give the effect of formal promotion to the petitioners on the post of Supervisor from the date they have been promoted on Incharge basis, viz 21.11.2017 and 27.10.2017.

**23.** The learned Tribunal without appreciating the application filed by the petitioners whereby, they had restricted their relief only to the extent of seeking promotion to the post of Supervisor, has returned the TA of the petitioners to this Court by relying upon the judgement passed by Apex Court in *State of Karnataka versus Amirbi and others, 2007(11) SCC 681*, thereby holding that the petitioners who are working as Anganwadi workers do not hold a civil post and such an application is not maintainable before Administrative Tribunal under Administrative Tribunals Act, 1985.

**24.** In view of above, the impugned order dated 25.08.2023, passed by Central Administrative Tribunal, Srinagar Bench in TA No. 1799 of 2021, is set aside. Registry of this Court is directed to transmit the record of the petition to the Central Administrative Tribunal, Srinagar Bench. The parties are directed to appear before the Registrar, Central Administrative Tribunal (CAT), Srinagar on 18.03.2024 for further proceedings.

**25.** Disposed of.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

**(ATUL SREEDHARAN)**  
**JUDGE**

**Srinagar**

06.03.2024

*"Mohammad Yasin Dar"*

*Whether the Judgment is reportable: Yes/No.*

*Whether the Judgment is speaking: Yes/No.*