

Before A. K. Sikri, Chief Justice & Rakesh Kumar Jain, J.J.

UNION OF INDIA—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondent

LPA No. 743 of 2010

March 21, 2013

A. Letters Patent Appeal - Service Law - Integrated Child Development Scheme (ICDS) - Clause 6 of Guidelines dated 01.08.1975 - Scheme started in 1975 on experimental basis by Central Government to facilitate integrated development in children and strengthen health infrastructure in project areas - Various projects

under ICDS assigned to State Governments - Focal point for delivery of services were Anganwaris - Status of personnel under the Scheme at issue - Entire expenditure except on nutrition component to be reimbursed by Central Government - 142 such projects in State of Punjab - Staff appointed by State Government treated as State Government Employees and even entitled to pension and other retiral/terminal benefits - 3 of 142 projects run by voluntary organization under Central Government Guidelines dated 08.07.1993/23. 11.1993 - Respondents employees of these projects seeking grant of benefits as available to State Government Employees - Writ Petition by employees allowed and held that Central Government to bear entire cost of planning and operations of Scheme and State Government only implementing agency and employees under Scheme working with NGOs to be treated at par with other employees under the Scheme - Appeal against - Held, such employees not holders of civil post but employed by Non Governmental Organization only with assurance that they would be entitled to same pay scales as applicable to State Government Employees and other contractual terms - Hence, financial liability will be of the NGO and not the State Government - Judgment of Single judge set aside and Writ Petition dismissed.

Held, that from the aforesaid, it is clear that two questions arise for consideration, namely:

(i) Whether the respondents are entitled to same benefits which are being derived by the employees of 139 projects run by the State Government/Punjab Social Advisory Board and an incidental question would be as to whether these respondents are the employees of the State Government?

(ii) In case the respondents are entitled to same benefits, whether these are to be borne by the Union of India or the State of Punjab or the NGO, namely, Child Welfare Council, Punjab?

(Para 14)

Further held, that before we proceed to answer these questions, it is necessary to point out that as per the initial ICDS Scheme launched

in 1975, the State Government was made the implementing agency. However, in the year 1992-93, a decision was taken by the Government of India to allocate 10% of ICDS Scheme Projects to the registered voluntary organisations with a view to involve these organisations as well. It is for this purpose that the instructions were issued including instructions dated 23.11.1993 and 18.8.1994. A reading of the main provisions of these instructions, already noted above, clearly reveal that these projects were to be run by the NGOs of their own with some financial support from the Government of India which could be taken by them after following the procedure contained in the aforesaid instructions. These instructions specifically provided that it would be NGOs which are required to employ the manpower for running these projects. As per these instructions, the employees were not to be treated as employees of State Government and, in no case, that of the Central Government. It is more so when the appointments of these employees are also made by the Child Welfare Council, Punjab (NGO). Moreover, para-9 of the appointment letters amply clarifies the position, as it states in the following terms:

"9. Your services will be under Voluntary Organization and you will have no claim for absorption/transfer under the State Govt."

(Para 15)

Further held, that It is clear from the above that these 29 employees are the employees of the Child Welfare Council, Punjab. They are not the employees of the State Government, Punjab. These workers are admittedly, not the holders of the civil posts as held by the Supreme Court in State of Karnataka and others v. Ameerbi and others, (2007) 11 Supreme Court Cases 681. However, at the same time, the Child Welfare Council, Punjab has itself assured that the employees would be entitled to same pay scales and other allowances as sanctioned by the Punjab Government to its employees. The Child Welfare Council, Punjab has even adopted the Punjab Government rules which are made applicable to these employees. It is trite that the employees would be entitled to the benefits as per the contractual terms contained in the appointment letters. Therefore, these employees are entitled to the pay scales and other allowances which the Punjab Government sanctioned for its employees from time to time.

(Para 18)

B. Words and phrases - 'Other allowances'- Whether includes CPF/Pension, gratuity, leave encashment and GIS, Medical Reimbursement and LTC - Held, no, these are 'other service conditions' admissible only to Government employees as per Government Rules and not to employees of NGOs - Means only fringe benefits like DA, HRA, Medical Allowance.

Held, that however, what is the meaning assigned to 'other allowances'? Would it mean that the respondents had claimed CPF/Pension, Gratuity, Leave Encashment and GIS and also the facilities of medical reimbursement and LTC. We are of the opinion that 'other allowances' would mean fringe benefits given along with the pay in a particular pay scale, like DA, HRA, Medical Allowance. But, on the other hand, insofar as CPF/Pension, Gratuity, Leave Encashment, GIS and LTC are concerned, these are other service conditions which may not come in the expression 'other allowances'. Such benefits are admissible only to Government employees as per the Government rules. The Child Welfare Council, Punjab does not have any CPF/Pension Scheme. They do not have LTC Scheme or Group Insurance Scheme either. Therefore, these benefits would not be admissible to these employees of the NGOs. Insofar as payment of gratuity is concerned, same would be subject to applicability of the Payment of Gratuity Act, 1972 to these employees for which these employees can make claim before the competent authority under the Payment of Gratuity Act. There may be some medical allowance that can be claimed as 'other allowance', but medical reimbursement is an altogether different benefit for which there has to be specific rule/rules and in the absence of such specific rule/rules, the respondent employees cannot claim the same. Same would be the decision regarding the leave encashment. These employees may be entitled to leave but when it comes to encashment of leave, there have to be specific rules.

(Para 19)

C. Constitution of India 1950-Art. 12, 32, 226 - Writ jurisdiction - Whether writ petition can be maintained against NGO under Article 226 of the Constitution of India -Held, no -Appropriate course of action would be to file civil suit.

Held, that even otherwise, as far as claim of the employees against their employer, namely, Child Welfare Council, Punjab is concerned, it is an NGO and writ petition against it under Article 226 cannot be maintained. More appropriate cause of action would be to file a civil suit, if at all.

(Para 21)

Anjali Kukkar, Central Govt. Standing Counsel for the appellant

H.S. Sidhu, Addl. A.G., Punjab for respondents No.1 and 2

O.P. Hoshiarpuri, Advocate for respondent No.3

Kapil Kakkar, Advocate for respondents No.4 to 32

H.S. Sidhu, Addl. A.G., Punjab for the appellant

Kapil Kakkar, Advocate for respondents No.1 to 29

OPH Puri, Advocate for respondent No.30

A.K. SIKRI, CHIEF JUSTICE:

(1) Integrated Child Development Services Scheme (ICDS Scheme) started by the Ministry of Women and Child Development, Government of India is very well known. As the name itself suggests, the purpose of launching the scheme was to facilitate integrated development in children. In nutshell, this Scheme was started way back in the year 1975 on an experimental basis. The Government of India sponsored various projects under the Scheme and assigned them to different State Governments. In the State of Punjab, 142 such projects have been sponsored.

(2) While launching the Scheme in the year 1975, general guidelines for implementation of the Scheme at the initial stage were also issued. Government of Punjab was informed about these guidelines vide Letter No.6-11/75-CD dated 1.8.1975. The guidelines, inter alia, stated that the State Government would select the project areas where the Scheme was to be implemented as well as functionaries to whom ICDS Scheme was to be assigned. These functionaries/personnel included Incharges of ICDS Scheme, one Child Development Project Officer for each project, 3 to 5 Supervisors of the rank of Mukhyasevikas, etc. The focal points for the delivery of the services under the Scheme were the Anganwaris. The

Scheme envisaged an integrated delivery in multiplicity of services which was handled by different departments at different levels. One of the important elements in the scheme is the strengthening of health infrastructure in the project areas. Co-ordination Committees were to be set up to have the co-ordination among the functionaries at different levels. Social Welfare Advisory Boards were also supposed to have active involvement in the Scheme.

(3) It is not necessary to state in detail the nature of the scheme except the glimpse thereof which is already taken note of above. In these appeals, we are concerned with the status of the personnel appointed under the Scheme including the remunerations, which are required to be paid to them, and who is to bear the burden thereof. Insofar as this aspect is concerned, Clause-6 of these guidelines provided that all the personnel under the ICDS Scheme should be borne on the respective cadres of the State Government and, therefore, these posts should be sanctioned in the appropriate pay scales of the State Government. The entire cost on training including TA/DA of the trainees as well as officers attending the workshop is to be borne by the Government of India. Since it is a centrally-sponsored scheme, the guidelines also provided that except the nutrition component, which is to be met from the State sector under the Minimum Need Programme, entire expenditure on other components is to be reimbursed by the Government of India.

(4) In the State of Punjab, there are 142 such projects sponsored by the Government of India. The ICDS Scheme was implemented by the State of Punjab up to the year 1991-92 on the basis of aforesaid guidelines. The staff appointed for implementation of various projects was appointed by the State Government. They were/are, therefore, treated as State Government employees. On their retirement, they are allowed pension and other retiral/terminal benefits at par with other Punjab Government employees. Out of 142 projects, 134 projects are being run under the administrative control of the State of Punjab and 5 projects under the control of Punjab Social Advisory Board. Qua these 139 projects, the employees have been treated as Government employees getting the benefits of pension, etc., as pointed out above.

(5) We are, here, concerned with three other projects which are being run by the voluntary organisations. It so happened that during the year 1992-93, a decision was taken by the Government of India to allocate 10% of the ICDS Scheme Projects to the registered voluntary organisations with a view to involve these organisations in the implementation of ICDS Scheme. Guidelines for running these projects were issued by the Government of India vide D.O. No. 14-32/92-CD-I dated 8.7.1993 which were reiterated vide letter No.1-14/91-CD-I dated 23.11.1993. These instructions were contained in Annexure R-1 to letter dated 23.11.1993. Relevant portion thereof is as under:-

“Characteristics of the organisation/institutions for undertaking the scheme :

1. An organization launched by a State Government or a local body or establishment under an Act of State Legislature or resolution of State Government shall not be entitled to assistance under this scheme.
2. It should ordinary have been registered for a period of three years.
3. It should have properly constituted managing body with its powers, duty and responsibilities clearly defined and laid down in written constitution.
4. It must be dealing with child/women development
5. It must have a good record in the field of child development.
6. Its financial position should be sound.
7. It should have facilities, resources and experience for undertaking a needed welfare programme.
8. It is not to run for a profit to any individual or a body of individuals.”

These Annexures stipulated ‘Characteristics of the organisations/institutions for undertaking the Scheme’ as well as ‘Conditions for Granting Aid’. Apart from stating that such voluntary organisations have to be registered with properly constituted Managing Committee, etc. and should be dealing with

child/women development and should have sound financial position, etc., the relevant clauses stipulating conditions for granting aid are as under:-

“CONDITIONS FOR GRANTING AID

Assistance to the Organisation/institutions for implementation of Integrated Child Development Services Scheme.

1. Assistance under this scheme shall be admissible for the following items:- Honorarium of anganwari workers and helpers, contingencies, equipments (non-recurring). Supervision work etc. as per norms fixed by Government from time to time.

2. “Supplementary Nutrition will be provided at the rate of 95 paise for children, 135 paise for severely malnourished children, 115 paise for mothers per day per beneficiary for 300 days in a year. While providing supplementary nutrition to the beneficiaries in the ICDS project at the revised rates it has to be ensured that the average expenditure incurred on all beneficiaries in a ICDS project should not exceed Rs.1/- per beneficiary, per day.

xx xx xx xx

10. An aided Organization/Institution should have its organization budget for the year for which it propose to apply for assistance approved by the State Government to qualify for assistance.

11. The quantum of grant is decided by State Directorate incharge of ICDS programme as per the norms fixed by the Government or the actual expenditure incurred by voluntary organization which ever is less.

xx xx xx xx

15. An aided Organization/Institution shall furnish to the State Department a monthly/quarterly progress report of activities as per requirement of the State Government and Govt. of India.

16. An aided Organization/Institution shall furnish to the State Department such information as the Department may require from time to time.”

Annexure R-II provided the procedure for applying for assistance. The Government of India also issued another instructions vide communication dated 18.8.1994 regarding entrustment of ICDS Scheme Projects sanctioned during 1992-93 to the NGOs and relevant portions of these instructions are the following:

“3. Recruitment of CDPOs/ACDPOs, Supervisors, Anganwadi Workers and Helpers shall be done by the NGO itself, as per qualifications prescribed for the said posts. However, where, more than one NGOs are involved in the implementation of an ICDS project, the CDPO/ACDPO will be appointed by the State Government and the other functionaries shall be appointed by the respective NGOs in their respective areas of operation.

xx xx xx xx

5. The organization will have the same responsibility for getting its workers trained and submission of progress reports, as are applicable to the existing projects run by the nodal departments of the State/ Union Territory. The Central and State Government Officers and their representatives will continue to visit, inspect and guide the projects/anganwadis run by the voluntary organizations.

6. The amounts released by this Department @ Rs.14.56 lakhs per block to the State Government for the implementation of the ICDS Scheme should in turn be released to the voluntary organizations in instalments by the State Government concerned.

xx xx xx xx

8. The State Government is responsible for ensuring proper coordination between voluntary organization and other community etc., the Health and education Department for providing the package of services under the Scheme.”

Under these guidelines, three projects are given to NGOs in the State of Punjab. The respondents herein are the employees of these three projects. The projects are under the administrative control of the Child Welfare Council, Punjab which is a Society registered under the Societies Registration Act. These three projects are at Bathinda, Sidwan Bet (Ludhiana) and Tarsikka (Amritsar).

(6) These 29 employees working in aforesaid three projects filed writ petition in this Court under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing for grant of benefits of CPF/Pension, Gratuity, Leave Encashment, Group Insurance Scheme (GIS) as well as facilities of medical reimbursement and the LTC. The State of Punjab as also the Union of India were impleaded as respondents. In addition, the Director, Department of Social Security and Women and Child Development, Punjab as well as Child Welfare Council, Punjab were also impleaded as respondents.

(7) In the writ petitions, the respondents stated that in other 139 offices of the ICDS Scheme, the Project Officers were being given the aforesaid benefits and non-grant thereof to the employees of the three projects was unconstitutional and discriminatory, as it amounted to violating Article 14 of the Constitution of India. Because of the reason that these respondents were identically placed as the Project Officers of the 139 projects, there was no reason to deny them the aforesaid benefits.

(8) Both Union of India as well as State of Punjab filed their separate replies. Insofar as State of Punjab is concerned, its defence was that the State Government was only an implementing agency of the project which was sponsored and financed by the Government of India and, therefore, there was no obligation on its part to make any financial contribution. It was further stated that representations of the respondents for grant of these benefits were forwarded by the State Government to the Government of India vide letter dated 24.1.2007, but no reply has been received therefrom. The Government of India, on the other hand, though conceded that the entire financial burden for the planning and operation is to be borne by the Government of India, but stated that as and when any demand is raised by the State Government for expenditure on these counts, the Union Government would reimburse the same to the State Government. However, it was submitted that insofar as implementation of the ICDS Projects allotted to an NGO is concerned, as per the instructions dated 23.11.1993 read with instructions dated 18.8.1994, such a staff is appointed by the NGO itself. It would necessarily imply that the staff was under the employment of the NGO concerned for all intents and purposes and they were not to be borne on the respective cadres of the State Government. Therefore, they

were not to be treated as State Government employees and State Government could not be held responsible for whatever payments to be made to them in return for services rendered by them.

(9) When the matter was heard, insofar as State Government is concerned, its counsel took the plea in consonance with the reply filed, stating that the entire financial burden was on the Government of India and the State Government had even forwarded the representations of the respondents to the Government of India. However, as far as Union of India is concerned, the only plea which was noted was that the entire financial burden for the planning and operation is to be borne by the Government of India and as and when demand is raised by the State Government for expenditure on this count, that would be reimbursed by the Union of India to the State Government. The Counsel for the Child Welfare Council, Punjab stated that as and when these funds are received by the agency, the benefits will be paid to the respondents. Taking these arguments as virtually conceding the case, the learned single Judge has directed for making payment to the respondents vide the impugned judgment, in the following manner:

“In view of the replies and submissions made by the learned counsel for the parties, it is evident that these projects are 100% centrally sponsored projects. The entire cost of planning and operations is to be borne by the Govt. of India and the State Govt. is the implementing agency through various organizations including respondent no.3. The petitioners being the employees are entitled to the benefits of the CPF/EPF Scheme as also the other benefits like Pension, Gratuity, Leave encashment, GIS, medical reimbursement and LTC etc. but the petitioners have been denied all these benefits. Since the benefits are being confined upon other employees working under ICDS Scheme, the same cannot be denied to the petitioners as they are also governed by the same scheme, sponsored by the Govt. of India, though managed by respondent No.3.

Mr. Renu Bala Sharma, learned counsel appearing for Govt. of India submits to lodge the claim with respondent No.4 within two months for payments to be made to the petitioners on account of various schemes referred to above. On receipt of such claims, respondent

No.4 shall disburse the requisite funds to respondent no.1 and 2 within a period of two months. The State Govt. on receipt of the funds will provide all necessary facilities/benefits to the petitioners as are available to the employees under the ICDS Scheme Projects being managed by the State of Punjab and the Punjab Social Advisory Board.”

(10) From the aforesaid, it becomes clear that the learned single Judge has held:

(i) The respondents herein are entitled to the same benefits which are given to the employees working in other 139 projects under the ICDS Schemes even when these three NGOs are managed by the Child Welfare Council, Punjab;

(ii) Statement of counsel for the Government of India is taken note of to the effect that on lodging the claim with the Union of India, the same shall be paid within two months;

(iii) Direction is given to the State Government to provide all necessary facilities/benefits to the respondents as available to the employees under the ICDS Scheme Projects being managed by the State of Punjab and the Punjab Social Advisory Board on receipt of funds from the Central Government.

(11) Challenging the aforesaid directions, both the Union of India and the State of Punjab have filed the instant appeals.

(12) The contention of the appellant-Union of India is that these projects run by NGOs under the ICDS Scheme are not comparable with other projects under the ICDS Scheme as the two are fundamentally different and, therefore, the respondents cannot claim parity with the workers who are working in the other 139 projects. It is further argued that in any case, the appellant is responsible for only programme, planning and operation costs and it is the State Government which is responsible for programme implementation and its share of expenditure. As per ICDS Scheme, the appellant-UOI even provided the funds towards the honorarium of Anganwadi Workers and Anganwadi Helpers and salary and allowances of the staff appointed for implementation of ICDS Scheme are not borne by the

appellant-UOI nor does it provide any funds towards pension or other terminal benefits of the employees appointed by the State Government for implementation of ICDS Scheme. The State Government is permitted to engage NGOs for running the projects and the staff so engaged by NGOs is governed by the mutually agreed terms and conditions. The appellant-UOI has, therefore, no role to play. Thus, no question arises to claim the funds for terminal and other benefits by the respondents in respect of the staff appointed under ICDS Scheme, either administered by the State Government or any NGO, as no such provisions exist in the Scheme.

(13) Insofar as State of Punjab is concerned, the submission is that these respondents are the employees of NGOs and since they are not the employees of the State Government, there is no question of granting any retirement/post-retirement benefits to them. Attention is drawn to the reply filed before the writ court as per which the employees, who were engaged by the NGOs undertaking the projects, could not be treated as State Government employees. In the alternative, it is argued that the liability, if at all, is that of NGOs engaging the staff or that of the Central Government, which is funding these projects and, in no case, it can be held to be the liability of the State of Punjab.

(14) From the aforesaid, it is clear that two questions arise for consideration, namely:

(i) Whether the respondents are entitled to same benefits which are being derived by the employees of 139 projects run by the State Government/Punjab Social Advisory Board and an incidental question would be as to whether these respondents are the employees of the State Government?

(ii) In case the respondents are entitled to same benefits, whether these are to be borne by the Union of India or the State of Punjab or the NGO, namely, Child Welfare Council, Punjab?

(15) Before we proceed to answer these questions, it is necessary to point out that as per the initial ICDS Scheme launched in 1975, the State Government was made the implementing agency. However, in the year 1992-93, a decision was taken by the Government of India to allocate 10% of ICDS Scheme Projects to the registered voluntary organisations with a

view to involve these organisations as well. It is for this purpose that the instructions were issued including instructions dated 23.11.1993 and 18.8.1994. A reading of the main provisions of these instructions, already noted above, clearly reveal that these projects were to be run by the NGOs of their own with some financial support from the Government of India which could be taken by them after following the procedure contained in the aforesaid instructions. These instructions specifically provided that it would be NGOs which are required to employ the manpower for running these projects. As per these instructions, the employees were not to be treated as employees of State Government and, in no case, that of the Central Government. It is more so when the appointments of these employees are also made by the Child Welfare Council, Punjab (NGO). Moreover, para-9 of the appointment letters amply clarifies the position, as it states in the following terms:

“9. Your services will be under Voluntary Organization and you will have no claim for absorption/transfer under the State Govt.”

(16) The argument of the respondents for treating them at par with State Government employees for all intents and purposes seems to have been made on the principle of legitimate expectation. This argument appears to be attractive at first blush, however, such principles cannot be applied in oblivion of the express and specific conditions of services by which the respondents were governed in the ICDS Scheme Projects assigned to the NGOs. An identical question came up for determination before the Division Bench of the Delhi High Court in *All India Confederation of the Blind v. Union of India (UOI) and Ors.*, [W.P. (C) No. 2040/1995 decided on 04.07.2008] and the Bench after delving deep into the matter and considering plethora of case-law on the issue, reached the following conclusion:

“..... Lastly, Mr. Lekhi invoked the principle of legitimate expectation. He submitted that the petitioner and its employees have legitimate expectation that they would be disbursed grants-in-aid by the Government so that the employees of the petitioner could be paid salary and allowances at the same rate at which their counterparts in the Government and autonomous bodies are being paid, since they are discharging the same nature of duties. He relies on “U.P. Avas Evam Vikas Parishad v. Gyan Devi (dead) by LRs

and Ors.” MANU/SC/0144/1995 : AIR 1995SC724, wherein the issue before the Supreme Court was whether a local authority/company, for whose purpose land is being acquired, has a right to appear and adduce evidence in proceedings before Collector and the reference Court for determination of compensation. In paragraph 41 of the said decision (in the judgment R.M. Sahai, J.) the Supreme Court observed:

In situations where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the courts have evolved the principle of legitimate expectations. The expression which is said to have originated from the judgment of Lord Denning in *Schmidt v. Secy. of State for Home Affairs* (1969) 2 Ch. 149 is now well established in public law. In *Attorney-General of Hong Kong v. Ng Yuen Shiu* (1983) 2 A.C. 629 Privy Council applied this principle where expectations were, “based upon some statement or undertaking by or on behalf of, the public authority”, and observed:

Accordingly ‘legitimate expectations’ in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis’. ‘A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment’ *Halsbury’s Laws of England*, 4th Edn., Vol. 1 (1), re-issue para 81.

29. We are afraid, we cannot agree with this submission of the petitioner. The principle of legitimate expectation has no application in the facts of this case. The respondents, while granting aid to the petitioners had in no uncertain terms made it clear that the grant-in-aid would, inter alia, include 90% of the expenditure incurred by the voluntary organisations towards salaries of the staff employed by such organisations and as approved by the Government. There was no ambiguity in the representation made by the Government that 90% of the approved expenditure is the maximum aid that the Government would provide and under the schemes it was also made clear that the voluntary organisations should be in a position to meet

the remaining expenditure from out of its own accruals and collections. It cannot, therefore, be said that the petitioners entertained a legitimate expectation towards receiving higher grants from the Government to be able to pay to its employees, higher salaries or other allowances at par with those admissible to Government employees/teachers and employees of autonomous institutions such as the NIVII.

30. Under the "Scheme of Assistance to Voluntary Organisations for Special Schools for Handicapped Children", the teachers and the staff of the special school were paid a consolidated salary and it was expressly clarified that no scale of pay and other allowances would be admissible. Under the "Scheme to Promote Voluntary Action for Persons with Disabilities", the consolidated salary was replaced by a fixed honourarium. Nowhere in the above schemes has other allowances like DA, HRA, CCA etc. found express mention. On the other hand, we find that at the time of filing of the petition, the pay scales were not only comparable but in some cases, the teachers employed by the voluntary organisations received a higher pay scale than their counterparts employed by the Government. Whatever be the case, since emoluments such as DA, HRA, CCA etc. have not been provided for in the present case, we rely on the judgments that we have cited during our deliberations and, therefore, we do not find any merit in the case of the petitioners.

31. Therefore, we are of the view that the teachers/employees of the petitioner cannot enjoy parity in pay-scales if the educational qualifications required are different, regardless of whether the duties and the responsibilities are identical."

(17) Notwithstanding the above, it is the submission of the learned counsel for the respondents that even as per the terms and conditions of the appointment letter, these employees are entitled to the same benefits. He has referred to para-2 and 3 of the appointment letter which ensure the same benefits to these employees as given to the employees of the Punjab Government in the following manner:

"2. You will be entitled to the pay scale of Rs.2000-3500 the other allowances as sanctioned by the Punjab Govt. to its employees from time to time.

3. You will abide the rules and regulations of the Punjab Govt. which have been adopted/will be adopted by the Council."

(18) It is clear from the above that these 29 employees are the employees of the Child Welfare Council, Punjab. They are not the employees of the State Government, Punjab. These workers are admittedly, not the holders of the civil posts as held by the Supreme Court in *State of Karnataka and others versus Ameerbi and others (1)*. However, at the same time, the Child Welfare Council, Punjab has itself assured that the employees would be entitled to same pay scales and other allowances as sanctioned by the Punjab Government to its employees. The Child Welfare Council, Punjab has even adopted the Punjab Government rules which are made applicable to these employees. It is trite that the employees would be entitled to the benefits as per the contractual terms contained in the appointment letters. Therefore, these employees are entitled to the pay scales and other allowances which the Punjab Government sanctioned for its employees from time to time.

(19) However, what is the meaning assigned to 'other allowances'? Would it mean that the respondents had claimed CPF/Pension, Gratuity, Leave Encashment and GIS and also the facilities of medical reimbursement and LTC. We are of the opinion that 'other allowances' would mean fringe benefits given along with the pay in a particular pay scale, like DA, HRA, Medical Allowance. But, on the other hand, insofar as CPF/Pension, Gratuity, Leave Encashment, GIS and LTC are concerned, these are other service conditions which may not come in the expression 'other allowances'. Such benefits are admissible only to Government employees as per the Government rules. The Child Welfare Council, Punjab does not have any CPF/Pension Scheme. They do not have LTC Scheme or Group Insurance Scheme either. Therefore, these benefits would not be admissible to these employees of the NGOs. Insofar as payment of gratuity is concerned, same would be subject to applicability of the Payment of Gratuity Act, 1972 to these employees for which these employees can make claim before the competent authority under the Payment of Gratuity Act. There may be some medical allowance that can be claimed as 'other allowance', but medical reimbursement is an altogether different benefit for which there has to be specific rule/rules and in the absence of such specific rule/rules, the respondent employees cannot claim the same. Same would be the decision regarding the leave encashment. These employees may be entitled to leave but when it comes to encashment of leave, again, there have to be specific rules.

(1) (2007) 11 SCC 681

(20) No doubt, para-3 of the appointment letter states that these employees would be governed by the rules and regulations of the Punjab Government which have been adopted/will be adopted by the Child Welfare Council, Punjab. However, it appears that the indicator is disciplinary rules, etc. In any case, unless it is shown that the Child Welfare Council, Punjab, has, in fact, adopted the rules and regulations qua leave encashment, GIS, LTC, medical reimbursement, etc. the employees cannot claim these benefits.

(21) Further, in any case, financial liability, if any, would be that of the Child Welfare Council, Punjab and it is not of the State of Punjab or the Union of India. The directions given to Union of India in this behalf, therefore, cannot be sustained and are accordingly set aside. As a result, the writ petition has to fail, insofar as State of Punjab and Union of India are concerned. As far as liability of Child Welfare Council, Punjab is concerned, it would be admissible within four corners of the appointment letters and in the absence of any clear position emerging regarding rules and regulations of the Council, it is difficult to give any positive directions. Even otherwise, as far as claim of the employees against their employer, namely, Child Welfare Council, Punjab is concerned, it is an NGO and writ petition against it under Article 226 cannot be maintained. More appropriate cause of action would be to file a civil suit, if at all. While giving that liberty, these appeals are allowed and the order of the learned single Judge is set aside, dismissing the writ petition filed by the respondents.

S. Gupta