Reserved On : 04/08/2025
Pronounced On : 20/08/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 363 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 3525 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 363 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 3525 of 2024
With
R/LETTERS PATENT APPEAL NO. 364 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16150 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 364 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16150 of 2016
With
R/LETTERS PATENT APPEAL NO. 365 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 2104 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 365 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 2104 of 2024
With
R/LETTERS PATENT APPEAL NO. 366 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16149 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 366 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16149 of 2016
With
R/LETTERS PATENT APPEAL NO. 367 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8164 of 2015
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2025
In R/LETTERS PATENT APPEAL NO. 367 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8164 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 367 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8164 of 2015
With
R/LETTERS PATENT APPEAL NO. 368 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 2049 of 2024
With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 368 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 2049 of 2024
With
R/LETTERS PATENT APPEAL NO. 369 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8165 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 369 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8165 of 2015
With
R/LETTERS PATENT APPEAL NO. 370 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16148 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 370 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16148 of 2016
With
R/LETTERS PATENT APPEAL NO. 371 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8167 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 371 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8167 of 2015
With
R/LETTERS PATENT APPEAL NO. 376 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16105 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 376 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16105 of 2016
With
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In R/SPECIAL CIVIL APPLICATION NO. 3525 of 2024
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In R/SPECIAL CIVIL APPLICATION NO. 16150 of 2016
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In R/LETTERS PATENT APPEAL NO. 387 of 2025
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R/LETTERS PATENT APPEAL NO. 508 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 8166 of 2015
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CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
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In R/LETTERS PATENT APPEAL NO. 510 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16104 of 2016
With
R/LETTERS PATENT APPEAL NO. 511 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15832 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 511 of 2025

In R/SPECIAL CIVIL APPLICATION NO. 15832 of 2016
With
R/LETTERS PATENT APPEAL NO. 512 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16148 of 2016
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CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
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In R/SPECIAL CIVIL APPLICATION NO. 16105 of 2016
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R/LETTERS PATENT APPEAL NO. 514 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15773 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 514 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15773 of 2016
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CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 515 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15773 of 2016
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In R/SPECIAL CIVIL APPLICATION NO. 15831 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 516 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15831 of 2016
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R/LETTERS PATENT APPEAL NO. 522 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15832 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 522 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 15832 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR.JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT & ORS.
Versus
ADARSH GUJARAT ANGANWADI UNION & ORS.

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Appearance:
In LPA Nos.508, 509, 514, 521, 522, 363-371, 376 of 2025
MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH
MR VINAY B. VISHEN, AGP AND MS NIRALI SARDA AGP
for the Appellant(s) No.1,2,3

MR SHALIN MEHTA, SENIOR ADVOCATE WITH
MS ADITI RAOL(8128) for Respondent(s) No.

MR VIKRAMJIT BANERJEE, ADDITIONAL SOLICITOR GENERAL OF INDIA
WITH MR KARTIK DEY AND MS VYOMA K JHAVERI for the Respondent(s)

In CA No.1 of 2025 in LPA No.367 of 2025
MR GAUTAM JOSHI, SENIOR ADVOCATE WITH
MR P C CHAUDHARI(5770) for the Applicant(s)

In LPA Nos.510-513,515-520,386-90 of 2025
MR VIKRAMJIT BANERJEE, ADDITIONAL SOLICITOR GENERAL OF INDIA
WITH MR KARTIK DEY AND MS VYOMA K JHAVERI for Appellant(s) No.1

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH
MR VINAY B. VISHEN, AGP AND MS NIRALI SARDA AGP for Appellant No.

MR SHALIN MEHTA, SENIOR ADVOCATE WITH
MS ADITI RAOL for Respondent(s)
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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR.JUSTICE R. T. VACHHANI

COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present group of Letters Patent Appeals emanates from the judgment and order dated 02.08.2024 passed by the learned Single Judge, wherein and whereby the learned Single Judge has declared that the Anganwadi Workers (AWWs) and Anganwadi Helpers (AWHs) shall be treated at par with the regularly selected permanent employees holding civil posts in the State or Central Government, and further directions are issued to

the Central Government and the State Government to formulate a policy for absorption of the posts of AWWs and AWHs in the Government service and confer consequential benefit of regularization to them.

BRIEF FACTS

2. In the captioned writ petitions, the respondent - AWWs and AWHs, have prayed for regularization of their service and to declare the honoraioum paid to them is violative of Articles 14, 16, 21, and 23 of the Constitution of India, 1950. A direction is also sought to pay the minimum wages, which is being paid to other part-time employers engaged in other departments of the State of Gujarat.

3. Learned Single Judge has primarily considered two judgments of the Apex Court for granting relief sought for by the respondent i.e. the original petitioners : the first judgment is in the case of State of Karnataka & Ors. vs. Ameerbi & Ors., (2007) 11 S.C.C. 681, and another in the case of Maniben Maganbhai Bhariya vs. District Development Officer, Dahod & Ors., (2022) 16 S.C.C. 343. After considering the aforesaid judgments, the learned Single Judge has considered the facets of Integrated Child Development Services Scheme (ICDS Scheme), the functions and onerous duties of both, the AWWs

and the AWHs threadbare, and has allowed the writ petitions.

4. Following issues were framed by the learned Single Judge, which are as under:

Issue No.1 : Whether AWWs and AWHs are employed on statutory posts.

Learned Single Judge has held that the posts held by the AWWs and AWHs can be said to be statutory posts.

Issue No.2 : Whether the AWWs and AWHs are entitled to claim regularization.

Learned Single Judge has also held the same in favour of the AWWs and AWHs.

Issue No.3 : Issue on the principle of equal pay for equal work.

Learned Single Judge has issued directions to the respondent State to pay salary at the minimum of pay-scale of Class-III post, and whereas the AWHs shall be paid salary in the minimum of pay-scale of Class-IV post employees.

Issue No.4 : Whether the services rendered by the respondents are honorary and voluntary services.

By holding that the AWWs and AWHs cannot be treated equally to those of persons employed on civil posts and cannot be discriminated in the matter of payment of emoluments, and hence, the services rendered by them honorarily or voluntarily cannot be discriminated, and the conduct of the State Government and the Central Government is held to be discriminative in violation of the fundamental rights of equality and equality in the matter of employment.

Issue No.5 : It is with regard to the judicial powers of the High Court under Article 226 of the Constitution of India, 1950, to issue directions to regularize the service of employees.

Issue No.6 : Another issue addressed by the learned Single Judge is whether the posts on which the present respondents - AWWs and AWHs are appointed can be said to be sanctioned posts or not.

By considering the recruitment process of the said AWWs and AWHs, the learned Single Judge, after considering their mode of appointment, has held that all the AWWs and AWHs are appointed on the sanctioned posts.

5. The learned Single Judge, while answering the issue of discrimination, has held that there is possible gender discrimination by the State

Government and Central Government, as the scheme is designed to take an advantage of the completely unequal bargaining power to an unemployed lady, more so when she is from a rural background. While referring to the provisions of Article 16(2) of the Constitution of India, 1950, it is held by the learned Single Judge that the AWWs and AWHs are discriminated in the matters of employment on the basis of their sex (gender).

6. Being aggrieved, the Central Government and State Government Departments have assailed the judgment and order of the learned Single Judge.

SUBMISSIONS MADE ON BEHALF OF APPELLANT-UNION OF INDIA

7. Learned Additional Solicitor General of India, Mr.Vikramjit Banerjee, while placing reliance on the judgment of the Apex Court in the case of **Ameerbi (supra)**, has submitted that the ratio of the said judgment is not diluted by the Apex Court in the subsequent judgment of **Maniben Maganbhai Bhariya (supra)** (for short **"Maniben").** He has submitted that in the judgment of **Ameerbi (supra)**, the Apex Court, after examination of ICDS Scheme has emphatically held that the posts of AWWs and AWHs cannot be treated as civil posts, and this observation of the Apex Court is neither altered nor diluted in the subsequent judgment of **Maniben (supra).** While referring to

Paragraphs Nos. 93 and 94, of **Ameerbi (supra),** it is contended that the Apex Court has not touched upon the issue of civil posts, and hence, it is urged that the learned Single Judge has committed an error in issuing the directions to the Central Government to treat the posts of AWWs and AWHs as civil posts, and confer the benefit of regularization.

8. Learned Additional Solicitor General of India, while referring to the affidavit filed on 18.07.2025, has pointed out that the Central Government has introduced the ICDS Scheme across the country for inviting community-based services from honorary workers, who are to be paid an honorarium. It is submitted that the Government of India, time and again, has enhanced the honorarium of AWWs and AWHs from Rs.3,000/- to Rs.4,000/- per month, and the State Governments are paying emoluments over and above what is paid by the Central Government, and from 1975 till 2018, the amount has been gradually increased every year, and from 2018, the AWWs are paid an amount of Rs.4,500/- by the Central Government, whereas AWHs are paid an amount of Rs.3,500/-. He has also referred to the other benefits of promotion, additional benefits, such as State insurance benefits under the Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY), which are also being extended to the AWWs and AWHs. While

referring to the budget of the Financial Year 2024-25, the benefit of Rs.5,000/- under the healthcare benefit of Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) to all AWWs and AWHs has been extended. It is submitted that approximately 13.17 lakh AWWs and AWHs have been engaged across the country, and the directions of regularization will invite huge financial burden.

9. By referring to the National Health Mission, it is contended that if the directions of the learned Single Judge are sustained, the same would have huge financial repercussions on all the schemes formulated by the Central government. It is urged that the learned Single Judge has erred in treating the posts of AWWs and AWHs as civil posts in a scheme formulated in cohesion with the State Government, where the expenses are also shared by the Central Government and the State Government. It is submitted that the creation of posts, as directed by the learned Single Judge, is not viable, and a civil post cannot be created in any project or a scheme, as the same cannot be said to be a regular recruitment process undertaken under the statutory rules at par with the other regularly employed Central Government or State Government employees. While referring to the judgment of the Apex Court in the case of Union of India & Ors. vs. A.S. Pillai & Ors., (2010) 13 S.C.C. 448, it

is contended that the respondents cannot be ordered to be regularized in service merely because they are engaged for a considerable period. It is urged that the appeals may be allowed by setting aside the common judgement and order passed by the learned Single Judge.

SUBMISSIONS ON BEHALF OF STATE GOVERNMENT

10. Learned Advocate General, Mr.Kamal Trivedi, appearing for the State Government Department, has submitted that the learned Single Judge, on four counts, has issued the following directions:

> *"a. Holding the posts of AWWs and AWHs as statutory posts.*
>
> *b. They are to be treated as sanctioned posts.*
>
> *c. They are discriminated among the regularized employees working in civil posts in the State Government.*
> *d. They are entitled to the minimum pay scale as available to Class III posts by invoking the principle of equal pay for equal work."*

11. While reiterating the submissions advanced by the learned Additional Solicitor General of India, Mr.Kamal Trivedi, learned Advocate General, has submitted that the learned Single Judge has misinterpreted the judgment of the Apex Court in the case of **Maniben (supra)** by treating the posts of AWWs and AWHs as civil posts. He has also placed reliance on the judgment of the Apex Court in the case of **Ameerbi (supra)** and has

reiterated that the said decision is not diluted by the Apex Court in the subsequent judgment in the case of **Maniben (supra).** He has submitted that the posts held by the AWWs and AWHs are created under the provisions of the Government Resolutions in particular Anganwadi Centers and hence, they cannot be said to be holding sanctioned posts, as the Anganwadi Centers are prone to be closed as and when the objective has been achieved. In this regard, he has referred to Clause - 15.7 of the Government Resolution dated 25.11.2019.

12. Learned Advocate General has referred to the Government Resolution dated 13.11.2009, which prescribes the standard rules for the appointment of AWWs and AWHs. It is submitted that the posts on which they are appointed cannot be equated with Class-III posts, and if it is done so, there are approximately 3 lakh Class-III and Class-IV employees in the State of Gujarat, and in case the directions issued by the learned Single Judge are accepted, these AWWs and AWHs would be 1 lakh and odd in number, which is a substantial figure for treating them as Class-III and Class-IV employees. It is submitted that there cannot be any comparison of any post held by a Government employee in a Government Department to that of AWWs and AWHs working in Anganwadi Centers.

13. Learned Advocate General has also referred to the Government Resolution dated 29.09.2022, fixing the honorarium of AWWs and AWHs and has submitted that the same is made in the ratio of 60:40, the amount of Rs.10,000/-, which is paid to the AWWs comprises Rs.7,300/- from the State Government, whereas Rs.2,700/- from the Central Government and in the case of AWHs, the amount of Rs.5,500/- comprises Rs.1,350/- from the Central Government and Rs.4,150/- from the State Government.

14. It is submitted by learned Advocate General that there cannot be a comparison of AWWs and AWHs with regularly selected employees in the Government as Class-III and Class-IV employees, as they are governed by the Recruitment Rules of the concerned Department. It is contended that the learned Single Judge has erred in considering that the AWWs are further appointed to the post of Mukhya Sevika, which is a Class-III post, after nomination from the AWWs. The educational qualifications of both Mukhya Sevika and Class-III employees and the AWWs are entirely different. It is submitted that those appointed from AWWs under the Recruitment Rules under the Gujarat Panchayat Service (Recruitment) Rules, 1998, to hold a Bachelor's Degree or a Master's Degree in Home Science or Social Work, whereas AWWs have the requirement of possessing 12th or

10th Standard pass plus an AICTE minimum 02 years Diploma Course, and in case of non-availability of candidates with the aforesaid qualification for three times, then the fourth time, 10th Standard pass candidate can be accepted. Further, it is submitted that passing of a competitive examination is prescribed for Class-III posts, whereas no entrance examination is prescribed for appointing the AWWs and AWHs. The total working hours for Class-III employees is almost 08 hours and 40 minutes, whereas AWWs and AWHs have to work only for 06 hours.

15. It is contended by the learned Advocate General that there cannot be any comparison of AWWs to Mukhya Sevika or Supervisor or various employees working in Class-III posts of the State Government and thus, the common judgment and order passed by the learned Single Judge requires to be interfered with. It is submitted that the minimum pay-scale applicable to Class-III and Class-IV employees cannot be extended to AWWs and AWHs, as both posts cannot be compared in any manner. So far as Class-IV posts are concerned, they are engaged by adopting the outsourcing policy of 2006, and such posts cannot be compared to Mukhya Sevika, and the learned Single Judge has erred in extending the minimum pay- scale of Class-IV employees to AWHs and extending the minimum pay-scale is not feasible.

16. Learned Advocate General has submitted that at present 53,065 AWWs and 53,062 AWHs are engaged for honorary services pursuant to the scheme launched by the Government of India on 01.10.1975, and right from the beginning, they are being paid an honorarium. It is submitted that, as of today, the total honorarium paid to the AWWs is approximately Rs.636.74 crores, introduced vide Government Resolution dated 29.09.2022, and an amount of Rs.350.04 crores is paid to AWHs. After the introduction of the Government Resolution dated 29.09.2022, it is submitted that in addition to the aforesaid amount Rs.145.8 crores is being paid to them. It is submitted that the learned Single Judge, by issuing the aforesaid directions, imposes a financial burden of Rs.109 crores per month and Rs.1,308 crores annually in the case of AWHs and Rs.114 crores per month, and Rs.1,368 crores annually in the case of AWWs. It is submitted that there would be a burden of Rs.2,676 crores on the State Exchequer under the ICDS Scheme, which is utilized for the nutrition of pregnant mothers, lactating women, and adolescent girls and the State’s financial burden would have a dragging effect on the sustainability of the schemes.

17. It is submitted by the learned Advocate General that the learned Single Judge has

primarily placed reliance on the judgment of the Apex Court in the case of **Maniben (supra)** and the learned Single Judge, while upholding the observations from the said judgment, which pertains to the National Food Security Act, 2013 (for short "the 2013 Act") and the Right of Children to Free and Compulsory Education Act, 2009 (for short "the RTE") has held that the AWWs and AWHs can be conferred the status of Government employees. It is submitted that the reliance placed by the learned Single Judge on the 2013 Act is misplaced and it does not automatically extend the status of Government employees to AWWs and AWHs.

18. By placing reliance on the judgment of the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 S.C.C. 1, it is submitted that the Apex Court has held that the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State, and hence, a financial burden cannot be imposed upon the State necessitating a permanency in employment.

19. It is submitted by the learned Advocate General that the learned Single Judge has recorded in the judgment that the regularization sought by the respondent original petitioners in the instant case is not construed as the prayer for regularization in its normal form. However, simultaneously, it is held that AWWs and AWHs are entitled to the benefit of regularization since they are functioning as any other regularly appointed permanent employee of the State Government. Reliance is also placed on the judgment of the Apex Court in the case of Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana, (2009) 8 S.C.C. 556 (for short "Casteribe"), for the proposition of law that the creation of posts is not within the domain of judicial function, and such function pertains to the executive, and the status of permanency cannot be granted by the Court where no such posts exist.

20. Finally, it is contended by the learned Advocate General that the learned Single Judge has, in fact, issued directions to pay arrears of 03 years prior to filing of the writ petition, which is also uncalled for. It is urged that the common judgment and order passed by the learned Single Judge may be quashed and set aside.

SUBMISSIONS MADE ON BEHALF OF RESPONDENT -AWWs and AWHs

21. In response to the aforesaid submissions, learned Senior Advocate, Mr.Shalin Mehta, appearing for the AWWs and AWHs, has submitted that the common judgment and order passed by the learned Single Judge may not be interfered with, as the same is precisely passed. He has referred to the observations made by the learned Single Judge, while pointing out the appointment order of one of the respondents and submitted that the said AWW was appointed on 23.05.1991 pursuant to the advertisement issued by the Child Development Project Officer. It is submitted that the appointment of the respondents cannot be said to be either a backdoor, illegal, or irregular entry. He has submitted that all the appointments are made pursuant to the Government Resolution issued under Article 162 of the Constitution of India, 1950, and hence, it cannot be said that the respondents do not hold a civil post. It is urged that the findings recorded by the learned Single Judge in this regard may not be interfered with, as the same is precisely passed, after considering the judgment of **Maniben (supra).**

22. Learned Senior Advocate, Mr.Mehta, has referred to the ICDS Scheme and the various objectives of the schemes referred to therein. It is submitted that the Apex Court has already

considered the laudable objectives of the ICDS scheme and the nature of the duties and engagement of AWWs and AWHs. He has submitted that the learned Single Judge has precisely reported the objective of the scheme and the sensitive nature of the duties undertaken by AWWs and AWHs, which have a direct impact on children below 6 years, pregnant and lactating mothers, and their health, etc. It is submitted that the Apex Court, after considering the manner of recruitment undertaken in the State of Gujarat, has held in the case of **Maniben (supra)** that the AWWs and AWHs cannot be considered as honorary workers, but are to be treated as employees holding statutory posts, and can be said to be full-time employees engaged in full-time employment.

23. Learned Senior Advocate, Mr.Mehta, has further invited the attention of this Court to the observations of the Apex Court in the case of **Maniben (supra)** and has submitted that, after the aforesaid judgment, it is not open for the Central Government or the State Government to address the AWWs and AWHs as honorary workers, and their status of honorary is not determinative of the posts, for which they are appointed. It is submitted that the fundamental rights cannot be curtailed on the pretext of financial implications, which has been canvassed by the

Learned Additional Solicitor General of India and Learned Advocate General appearing for the Central Government and State Government, respectively.

24. It is contended that the judgment of the Apex Court in the case of **Ameerbi (supra)** has been diluted by the Apex Court subsequently in the decision rendered in the case of **Maniben (supra).** It is contended by the respondents that they have rendered more than 10 to 20 years of service, and even after the judgment of the Constitution Bench of the Apex Court in the case of **Maniben (supra)**, as a one-time measure, the respondents are required to be regularized in service.

25. By placing reliance on the judgment of the Apex Court in the case of Jaggo vs. Union of India and Ors., 2024 INSC 1034 dated 20.12.2024 passed in S.L.P. (C) No.5580 of 2024, it is submitted by learned Senior Advocate Mr.Mehta that the nomenclature of sanctioned and non-sanctioned posts, daily wager, honorarium, etc., cannot be invoked to deny the benefit of regularization to all the employees like the respondents, who have been rendering their duties for more than a decade and, in some cases, for more than 20 years.

26. It is contended that the posts, on which AWWs and AWHs are appointed, after undergoing recruitment process, are sanctioned posts, hence the learned Single Judge has issued precise directions to treat them at par with permanently employed Class-III and Class-IV employees. While referring to the directions of the learned Single Judge, it is contended no directions are issued to treating the posts of AWWs and AWHs as Class-III and Class-IV posts, but the directions are only issued to the State Government and Central Government to undertake the necessary exercise and to fix the pay scales at par with Class-III or Class-IV employees. It is submitted that the reliance placed on the judgment of the Apex Court in the case of **Casteribe (supra)** is misconceived, as the learned Single Judge has neither directed the Central Government nor the State Government to create Class-III or Class-IV posts accommodating AWHs and AWWs. Similarly, it is submitted that the reliance placed on the case of **A.S.Pillai (supra)** is also misconceived and would not apply to the facts of the present case so as to dilute the directions issued by the learned Single Judge.

27. Finally, it is submitted by learned Senior Advocate Mr.Mehta that the respondents at least deserve minimum wages, which are being extended to Class-IV employees by the State Government,

and by not paying so, the State Government is running away from its constitutional obligation by discriminating the respondents from those employees, despite having rendered several years of service duly. It is urged that the directions issued by the learned Single Judge directing the respondent State to pay the minimum wages to the respondents during the intervening period till the policy is framed by the Central Government and State Government for absorption of AWHs and AWWs be upheld.

ANALYSIS AND OPINION

28. The entire case of the respective parties and the directions issued by the learned Single Judge hinges on two judgements of the Apex Court in the cases of – (i) **Ameerbi (supra); and (**ii) **Maniben (supra).** The common factual and legal nucleus is enveloped in these two judgements.

29. Learned Single Judge, in the common impugned judgement and order dated 02.08.2024 passed in the captioned writ petition, primarily by placing reliance on the judgement of the Apex Court in the case of **Maniben (supra),** has issued the directions as under:

> ***"6. The Directions** :*
>
> *62. Considering the discussion, observations and conclusion and the answers to the questions formulated, the following directions are issued.*

(i) The AWWs and AWHs are declared to be entitled to be treated at par with regularly selected permanent employees holding civil posts in the State or Central Government and whereas the Central Government and the State Government shall jointly formulate a policy for absorption of the posts AWWs and AWHs in Government service and to confer consequential benefit of regularization to the incumbents on the posts in question.

(ii) The Central Government and the State Government while formulating an appropriate policy shall ensure that the following aspects are appropriately addressed :

(a) The Classes (for the present purpose, as per the Gujarat Civil Services (Classification and Recruitment) (General) Rules, 1967) in which posts the post AWWs and AWHs would be absorbed.

(b) The pay scale/pay band/ pay grade which would be available to the post of AWWs/AWHs.

(c) The cut off date from which the incumbents on the post AWWs and AWHs would be entitled to arrears. It is clarified that in case of the petitioners, the cut off date shall not be less than a period of three years preceding the date of filing of the petitions.

(d) Any other ancillary related issue which may be deemed appropriate.

(iii) Insofar as the petitioners such incumbents on the post of AWWs shall be paid salary in the minimum of pay scale as available to Class-III post and whereas the petitioners on the post of AWHs shall be paid salary in the minimum of pay scale as available to Class-IV post

(iv) The Central Government and the State Government shall complete the exercise of formulating the policy as above, within a period of 06 months from the date of uploading of this judgment on the portal of the Gujarat High Court, till the time appropriate decisions are taken, the petitioners would be entitled to salary in the minimum of pay scale as declared above."

30. We may, first deal with the first direction of declaring the AWWs and AWHs to be treated at par with regularly selected permanent employees holding civil posts either in Central Government or State Government.

31. While issuing such directions, the learned Single Judge has also directed the appellants to address the aspects of (a), (b), (c) and (d) as mentioned hereinabove. The genesis of the aforesaid directions lies in the judgement of the Apex Court in the case of **Maniben (supra).**

32. At this stage, it would be apposite to refer to the decisions of **Ameerbi (supra)**, wherein the Apex Court, while examining the issue of jurisdiction of the Karnataka State Administrative Tribunal under Section 15 of the Administrative Tribunal Act, 1985 which addresses the dispute raised by the AWWs and AWHs, has held that they do not hold the civil post. The Apex Court in the said case has held thus:

> *"Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Article 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme existed. We do not think that the said decision has any application in the instant case."*

33. The appellants have vehemently stressed upon the foregoing observations made by the Apex Court in the case of **Maniben (supra)**, and it is contended that the directions in the case of **Ammeerbi (supra)** declaring that the AWWs do not hold a civil post is still a good law.

34. In the case of **Maniben (supra),** which stems out the dispute from the State of Gujarat, after examining the decision in the case of **Ameerbi (supra)** has held that the AWWs and AWHs are entitled to gratuity under the provisions of the Payment of Gratuity Act, 1972. It is pertinent to note that the issue there in has been examined in light of the provisions of the National Food Security Act, 2013, (in short "2013, Act"), and the State Government Resolution dated 25.11.2019. In paragraph No.3.8 **(speaking through Hon'ble Mr.Justice Abhay A. Oka**), in case the of **Maniben (supra)**it is held as under:

> ***"3.8.*** *This Court in state of Karnatak v. Ameerbi held that AWWs and AWHs are not the employees of Anganwadi centres or the ICDS scheme. In the said case, the dispute was confined to an issue of whether AWWs can be said to be holding civil posts to attract the jurisdiction of the Karnataka State Administrative Tribunal established under Section 15 of the Administrative Tribunals Act, 1985. Hence, the said decision is not relevant in this case."*
>
> ***"16.1.*** *Now, coming to the State of Gujarat, the Government Resolution dated 25-11-2019 (Annexure A-1 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 Appendix 1 to the Government Resolution.

XXXXXXXX

"The decision in the case of Ameerbi

22. *In Ameerbi, this Court dealt with the issue whether AWWs and AWHs were holding civil posts. The issue was whether the original applications filed by AWWs before the State Tribunal established under the Administrative Tribunals Act, 1985 were maintainable. This Court held that the posts of AWWs were not statutory posts and the same have been created in terms of ICDS. Therefore, there was no relationship of employer and employee between the State Government and AWWs. It was held that the AWWs do not carry on any function of the State. It was observed that no Recruitment Rules have been framed for appointing AWWs. Much water has flown after the decision in Ameerbi was rendered in the year 2007. When the said decision was rendered by this Court, the 2013 Act was not on the statute book. As noted earlier, the Anganwadi centres established under ICDS have been given statutory status under the 2013 Act. Moreover, under Sections 4, 5 and 6 of the 2013 Act, the Anganwadi centres perform statutory duties under the 2013 Act. I have already referred to the Government Resolution of the Government of Gujarat dated 25-11-2019 in extenso.*

23. *The Resolution incorporates the said Rules which lay down selection criteria, educational qualifications, the process of selection, etc. of AWWs and AWHs. Under the said Rules, a detailed process of making appointments of AWWs and AWHs has been incorporated. It also incorporates the marking system for the selection of AWWs and AWHs. The said Rules provide that the AWWs and AWHs will continue in the service till the age of 58 years. Even the minimum and maximum age of the candidates for participating*

in the process of recruitment has been laid down. There are provisions made for the termination of services of AWWs and AWHs. Though the said Rules refer to their service as honorary service, the use of the word "honorary" is not determinative of the status of AWWs and AWHs.

24. *In view of the provisions of the 2013 Act and Section 11 of the RTE Act, Anganwadi centres also perform statutory duties. Therefore, even AWWs and AWHs perform statutory duties under the said enactments. The Anganwadi centres have, thus, become an extended arm of the Government in view of the enactment of the 2013 Act and the Rules framed by the Government of Gujarat. The Anganwadi centres have been established to give effect to the obligations of the State defined under Article 47 of the Constitution. It can be safely said that the posts of AWWs and AWHs are statutory posts.*

25. *As far as the State of Gujarat is concerned, the appointments of AWWs and AWHs are governed by the said Rules. In view of the 2013 Act, AWWs and AWHs are no longer a part of any temporary scheme of ICDS. It cannot be said that the employment of AWWs and AWHs has temporary status. In view of the changes brought about by the 2013 Act and the aforesaid Rules framed by the Government of Gujarat, the law laid down by this Court in Ameerbi will not detain this Court any further from deciding the issue. For the reasons stated above, the decision in Ameerbi will not have any bearing on the issue involved in these appeals."*

35. The Apex Court has considered the Government Resolution dated 25.11.2019, which lays down exhaustive provisions regarding the selection criteria, duties, disciplinary action, rules etc. in respect of the AWWs and AWHs.

36. A careful reading of paragraph Nos.22 to 24 **(authored by Hon'ble Mr.Justice Abhay S Oka)** will

exposit that it is recorded that *"Much water has flown after the decision in Ameerbi was rendered in the year 2007. When the said decision was rendered by this Court, the 2013 Act was not on the statute book."* It is held that "*in view of the provisions of 2013 Act and Section 11 of the RTE Act Aanganwadi centers also perform statutory duties. Therefore, even AWWs and AWHs perform statutory duties under the said enactment."* Ultimately, it is concluded that "*It can be safely said that posts of AWWs and AWHs are statutory posts.*". Thus, while distinguishing the judgement of **Ameerbi (supra)**, in light of 2013, Act, it is held that they hold the '*statutory post*'.

37. In juxtaposition to the aforesaid observations, in paragraph No.83, (**speaking through Hon'ble Mr.Justice Ajay Rastogi),** it is recorded thus:

> ***"83.*** *If we look towards the problems plaguing the Anganwadi workers/helpers, the first and foremost, they are not holders of civil posts due to which they are deprived of a regular salary and other benefits that are available to employees of the State. Instead of a salary, they get only a so called paltry 'honorarium' (much lower than the minimum wages) on the specious ground that they are part-time voluntary workers, working only for about 4 hours a day."*
>
> ***91****……However, what is being paid to Anganwadi workers/helpers with a nomenclature used by the respondents in projecting the term 'honorarium', is*

in fact the 'wages' that has been paid for the services rendered at the end of the month. It is the form of emoluments which is being earned on discharge of duty in accordance with the terms of employment defined under Section 2(s) of the Act 1972.

92. *So far as the judgment in Ameerbi (supra) on which the Division Bench of the High Court has placed reliance is concerned, it was a case where the question raised for consideration was as to whether those who are appointed as Anganwadi workers/helpers are holders of civil posts and are entitled to seek protection of Article 311 of the Constitution. In that context, it was held by this Court that they are not holders of civil posts and protection of Article 311 of the Constitution is not available and that was the reason for which the application which was filed at the behest of Anganwadi workers/helpers under Section 15 of the Administrative Tribunal Act, 1985 was held to be not maintainable.*

93. *In the instant cases, the question which has been raised for consideration is limited to the extent as to whether those who are working as Anganwadi workers/helpers are eligible to claim gratuity under the provisions of the Act, 1972.*

94. *The judgment of Ameerbi (supra) relied upon by the Division Bench of the High Court and placed by the respondents before this Court is of no assistance and has no application so far as the question raised before us in the instant appeals."*

38. The collective reading of the foregoing observations of Hon'ble Mr.Justice Abhay S. Oka and Hon'ble Mr.Justice Ajay Rastogi projects dual answers. It can be envisaged that Hon'ble Mr.Justice Abhay S. Oka, in light of the provisions of 2013, Act has held that the Aangwadi Centers perform statutory duties, and

hence it is held that the AWWs and AWHs hold statutory posts, whereas Hon'ble Mr.Justice Ajay Rastogi has recorded that the *"the foremost problem, the Aganwadi Workers face is that they are not holding a civil post"*, and are deprived of regular salary. It is further held that "honorarium", is in fact "wages". Thus, the unabridged reading of the judgment of the Apex Court in the case of **Maniben (supra)** manifests that after holding that the "honorarium" is "wages", and is covered under the definition of 'wages' under the provisions of the Payment of Gratuity Act, 1972 and the status/establishment of Aganwadi Centers, it is held by the Apex Court that the AWWs and AWHs are entitled to the statutory benefit of gratuity. Hence, instead of "Honorarium" the remuneration paid to AWWs and AWHs has to be addressed as "Wages".

39. The observations made in paragraph No.25 of the judgment in the case of **Maniben (supra)**, refers to the appointment done in the State of Gujarat, as it begins with the expression *"As far as the State of Gujarat is concerned, the appointments of AWWs and AWHs are governed by the said Rules"*. This observation is made in context of Government Resolution dated 25.11.2019, which governs appointment and service conditions of AWWs and AWHs. Thus, as admitted by learned

Senior Advocate Mr.Shalin Mehta, the appointments of the respondent - AWWs and AWHs are made pursuant to the Government Resolution issued under Article 162 of the Constitution of India.

40. The issue, which still remains to be addressed, is as to whether the appellants i.e. State Government and Central Government can be directed to formulate the policy for absorption of AWWs and AWHs and treat them at par with permanent Class-III and Class-IV employees of the State Government.

41. The Apex Court, in light of the 2013, Act has declared that the Anganwadi Centers perform statutory function, and hence, it can be safely said that the AWWs and AWHs hold statutory posts. The Apex Court has also considered the mode of recruitment of the AWWs and AWHs, which is through a Government Resolution dated 25.11.2019, which lays down exhaustive provisions relating to selection criteria, duties, disciplinary action etc. The respondent - AWWs and AWHs have admitted their appointment, which is made under the Government Resolution, which has genesis under Article 162 of Constitution of India.

42. The Apex Court in the case of Security Printing and Minting Corporayion of India Limited

& Ors. vs. Vijay D.Kasbe & Ors., (2023) 18 S.C.C. 386 has held thus:

> ***"34.*** *It must be kept in mind that appointment either to a civil post or in the civil services of the Union or the State, is one of a status. It is not an employment governed strictly by a contract of service or solely by labour welfare legislations, but by statute or statutory rules issued under Article 309 or its proviso."*

43. Thus, it is no more *res integra* that the nature of the statutory civil posts flows from Article 309 of the Constitution of India. In this regard, we shall now refer to The Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, which regulate the appointment on various posts in the State Government Departments. The relevant Rules are as under:

> ***"RULE 2 : Definitions***
>
> *(iii) "Post" means a post under the State Government included in the State Services or Subordinate Service;*
> *(viii) "State Services" means the services and posts specified as such in sub-rule(1) of rule 4 :*
>
> ***RULE 4 : State Services, Subordinate Services and Inferior Services***
>
> *(1) The Services and posts classified-as Class-I or Class-II shall be known as State Services.*
> *(2) The Services and posts classified as Class-III shall be known as Subordinate Services.*
> *(3) The Services and posts classified as Class-IV shall be known as Inferior Services.*
>
> *XXXXXXXX*

RULE 8 : Condition as to prescribed qualifications

(1) Subject to the provisions of these rules, no person shall be appointed to any service or post. unless he possesses the qualification, if any, prescribed in the rules relating to the recruitment to such service or post (hereinafter referred to as "the prescribed qualifications").

(1-A) Notwithstanding anything contained in any other rule and subject to the provisions of these rules, no person shall be appointed to service, or post, except class-IV inferior service, unless at the time of appointment he possesses a certificate of basic knowledge of computer applications of any Institute.

(2) Where the prescribed qualifications include a qualification as to age limit the appointing authority may relax the age limit in favour of candidates belonging to the [4][Scheduled Castes, Scheduled Tribes] [5][[21]"Socially and Educationally Backward Class and Economically Weaker Sections"] to the following extent, that to is to say:-

XXXXXXXXX

RULE 9 : Appointment to service or post in State Service

(1) An appointment to any service or post included in the State Services shall be made by the State Government or by an authority duly on powered in that behalf by the State Government either:-

(a) on the result of a competitive examination held for the purpose.
(b) by direct selection, or
(c) by promotion, or
(d) by transfer

from amongst the persons satisfying the conditions prescribed in these rules and other rules. if any, relating to the recruitment to such service or post.

XXXXXX

(2) Every such appointment shall be made after consultation with the Commission, unless under a regu-

lation made under proviso to clause (3) of Article 320 of the Constitution of India, such consultation is not necessary."

44. Thus, as per Rule 4, the services and posts of Government servant in the State of Gujarat are classified in three categories — (a) State Services - Class-I or Class-II, (b) Subordinate Services, Class-III, and (c) Inferior Service Class-IV. Rule 9 prescribes mode of selection, which are four in number, i.e. (a) on the result of a competitive examination held for the purpose, (b) by direct selection, or (c) by promotion, or (d) by transfer.

45. The Government of Gujarat, through its Health and Family Welfare Department, issued Resolution dated 09.03.1984, for the implementation of the ICDS Scheme, through voluntary organization. Vide Resolution dated 09.12.1988, the State Government prescribed the eligibility criteria for appointment of AWWs only. The educational qualification prescribed was 12th, 10th and 7th Standard Pass in the order of preference. Vide Resolution dated 29.11.2003, the Government prescribed minimum educational qualification of 10th and 7th Standard pass for being appointed as AWWs / AWHs. On 28.02.2007, the State Government declared that those AWHs, who have completed 10 years will be entitled to be appointed as AWWs subject to fulfilling of the educational qualification. Finally, vide

Resolution dated 25.11.2019, the State Government issued fresh guidelines to appoint the AWWs and AWHs. The minimum educational qualification prescribed under this Resolution for AWWs is 12th Standard pass or 10th Standard pass with 02 years Diploma Course from AICTE recognition, and for AWHs minimum qualification is 10th Standard pass.

46. Though, as per the directions of the Apex Court in the case of **Maniben (supra)**, the AWWs and AWHs are declared as holding statutory posts in light of 2013, Act, the direction issued by the learned Single Judge to treat them at par with regularly selected permanent employees holding posts either in the Central Government or State Government is fallible, since there is fundamental difference of their source of recruitment. There is also vast difference in their mode and manner of recruitment, requisite educational qualifications etc. The AWWs and AWHs, though can be said to be holding statutory posts, and their appointments are neither illegal nor irregular, they still have to satisfy the mandate of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, more particularly Rule 4 and Rule 9 thereof. The AWWs cannot be treated at par with Subordinate Service of Class-III. Similarly, AWHs cannot be considered at par with Inferior Service of Class-IV. Class-III and Class-IV employees in

the State Government Departments, after undergoing recruitment process as prescribed under Rules 9 by the respective departments, are placed in particular pay scales. It is pertinent to note that the AWWs and AWHs are paid 'wages' and are not conferred regular pay-scale at par with the State Government Class-III employees, hence the comparison between AWWs and AWHs is impracticable and unworkable. In hybrid system of governance i.e. by the Central and States, the Courts cannot issue directions either to the Central Government or State Government treating the posts as comparable or undertake necessary exercise of comparison. The exclusive authority and dominion on these subjects are on the Central Government and the State Government, who have to work in sync, in order to see that the Schemes of such nature are effectively funded and implemented for the benefit of the lowest strata of society.

47. The Constitution Bench of the Apex Court in the case of State of Assam & Ors. vs. Shri Kanak Chandra Dutta, AIR 1967 SC 884, while examining the issue an employing holding a 'Post' in context of Articles 309, 310 and 311 of the Constitution has held thus:

> *" **10.** 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. 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. Art. 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."

48. The Constitution Bench of the Apex Court in the case of B.N.Nagarajan & Ors. vs. State of Mysore & Ors., AIR 1966 SC 1942 has held thus:

"5. *It would be convenient to deal with this argument at this stage. Mr. Nambiar contends that the words "shall be as set forth in the rules of recruitment of such service specially made in that behalf" clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to Art. 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in Ram Jawaya Kapur V/s. State of Punjab, 1955-2 SCR 225, that it is not necessary that there must be a law already in*

existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Art. 309 of the Constitution which abridges the power of the executive to act under Art. 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Art. 162 of the Constitution ignore or act contrary to that rule or act."

49. The Constitution Benches of the Apex Court have held that in the context of Articles 309, 310 and 311 of the Constitution, a post denotes an office, and a person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State. It is held that a post is an employment, but every employment is not a post, and a casual labourer is not the holder of a post. It is held that there is nothing in the terms of Article 309 of the Constitution, which abridges the power of the executive to act under Article 162 of the Constitution without a law, but if there is a statutory rule or an act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act.

50. At this stage, it would be apposite to refer to Clause 15.7 of the Government Resolution dated 25.11.2017 (considered in the case of **Maniben (supra)**. The same is translated as under:

> *"15.7. As per the decision of the Government, when the Aganwadi Center is closed due to termination of the scheme, restructuring, merger, or for any other reason, the honorary service of the Anganwadi worker/ Children Home will be automatically deemed to have ended and no dispute/claim can be raised in this regard".*

51. Thus, the status of AWWs and AWHs is coterminous with the status of Anaganwadi center. In case, a Center is closed down to various factors as mentioned in Clause 15.7, the service of AWWs and AWHs will automatically ends. It is also not disputed by the AWWs and AWHs that after the objective of the Scheme is achieved, the Anganwadi Centers are closed. Thus, the posts of AWWs and AWHs are created and the budget is sanctioned keeping in mind the feasibility of extending the services to minor children and mothers. Hence, such posts, which are created for running an Aanganwadi Center will always remain in the state of flux. Even if it held that the AWWs and AWHs are appointed on posts sanctioned by the State Government for a particular Anganwadi Center, such posts cannot assume the

colour of Class-III and Class-IV posts created and filled in under the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967.

52. From an overall analysis of the scheme of statutory Rules governing various categories of posts, and nature of appointment of the AWWs and AWHs, as prescribed under the Government Resolution dated 25.11.2019, and in light of settled legal precedents, we are of the opinion that the learned Single Judge has erred in issuing the directions to the Central Government and State Government Departments to treat the AWWs and AWHs at par to Class-III and Class-IV posts.

DIRECTIONS OF FORMULATING THE POLICY FOR REGULARIZATION

53. We shall now endevour to deal with the directions issued by the learned Single Judge with regard to the regularization.

54. Since, we have previously held that the Anganwadi Centers do not have a permanent status, and they are prone to be closed once the objective of the Scheme is achieved, the AWWs and AWHs, who are appointed in such Centers cannot be treated as permanent employees, as their service

has direct nexus with the perpetuation of the Anganwadi Center. The AWWs and AWHs are appointed under the ICDS Scheme and such scheme is sustained by the budgetary provision and the appointments are made looking to the budgetary constrain, which has direct impact on the beneficiaries such as lactating women, pregnant women, minor children etc. The Court cannot be oblivious of the fact of the financial burden, which would fall on the Central Government and State Government, in case the AWWs and AWHs are directed to be absorbed in Class-III and Class-IV posts respectively. In such scenario, the Constitution Bench of the Apex Court in the case of **Umadevi (supra)**, has already held as below:

> *"**19** One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly- As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive."*

55. The Scheme of ICDS is hybrid in nature and the governance is also hybrid. 60% wages / emoluments are being paid by the Central Government, as mentioned hereinabove, and 40% are being paid by the State Government. Thus, looking to the nature of the ICDS Scheme, it is not feasible to absorb the AWWs and AWHs in Class-III and Class-IV posts respectively of the State Government unless either the Central Government exclusively frames statutory rules in light of the 2013 Act or the State Government amends the Gujarat Civil Services Classification (General) Rules, 1967 or issues any statutory rules under Article 309 of the Constitution to create the posts for the AWWs and AWHs. The financial implicationss due to regularization of AWWs and AWHss will not be confined to the State of Gujarat since the ICDS Scheme involves the entire country. A huge financial burden on absorption to Class-III and Class-IV posts, will have a cascading effect on the effective implementation of the Scheme directly impacting the beneficiaries.

56. The Apex Court in the case of State of Karnataka vs. KGSD Canteen Employees Welfare Association, 2006 (1) SCC 567, while considering the issue of regularization in context of

Articles 162 and Article 309 of the Constitution has held thus:

> ***"44.*** *The question which now arises for consideration is as to whether the High Court was justified in directing regularization of the services of the respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Art. 226 of the Constitution of India either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wages employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Art. 309 of the Constitution of India. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Art. 162 of the Constitution of India cannot prevail over a statute or statutory rules framed under proviso to Art. 309 thereof. The State is obligated to make appointments only in fulfillment of its constitutional obligation as laid down in Art. 14,15 and 16 of the Constitution of India and not by way of any regularization scheme. In our constitutional schemes, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments at the hands of the authorities of the State. Denial of such a claim by some officers of the State times and again had been deprecated by this Court. In any view, in our democratic polity, an authority howsoever high it may be cannot act in breach of an existing statute or the rules which hold the field."*

57. The Apex court has cautioned the High Court in issuing directions either to frame a scheme by itself or to direct the State to frame a Scheme for regularization while exercising its discretion under Article 226 of the Constitution, in case of those employees, who are not appointed

in terms of either under a statute or under the proviso to Article 309 of the Constitution. It is further held that any scheme of regularization would not meet the requirements of law as the Executive Order made under Article 162 of the Constitution cannot prevail over a statute or statutory rules framed under the proviso to Article 309 thereof. Thus, the learned Single Judge has erred in issuing directions to the Central Government and State Government Departments to frame a scheme of regularization of AWWs and AWHs, who are working for upto 6 hours and are appointed under the Government Resolution issued under Article 162 of the Constitution by comparing them to Class-III and Class-IV posts, which are governed by the statutory Rules under Article 309 of the Constitution.

58. The decision of the Apex Court in case of **Jaggo (supra)** cannot come to the rescue of the AWWs and AWHs since, they are appointed in an Aaganwadi Center, which has no permanent status, and can be closed once the objective of the Scheme is achieved. In case of **Jaggo (supra)**, the Supreme court has considered the case of ad-hoc, temporary employees employed in a Central Water Commission, who were performing duties akin to regular employees since long. In the instant case, the AWWs and AWHs, though are performing

duties since long, cannot be made permanent looking to the nature of Scheme, which is mutually introduced and implemented by Central and State governments, and is run by allocation of yearly budget.

DIRECTIONS TO GRANT OF MINIMUM OF PAYSCALE BY INVOKING PRINCIPLE OF EQUAL PAY FOR EQUAL WORK

59. In the instant case, the learned Single Judge has directed the appellants to treat the AWWs and AWHs equivalent to Class-III and Class-IV employees and absorb them and confer the benefit of 'equal pay for equal work'. The doctrine of "equal pay for equal work" stems out of Article 39(d) of the Constitution of India. The Apex Court in the case of Punjab State Power Corporation Limited vs. Rajesh Kumar Jindal, 2019 (3) S.C.C. 547, has reiterated the parameters to be applied for claiming equal pay on equal work. The same are as under:

> ***"Burden of proof on the person claiming parity of pay scale:-***
> ***20.*** *Ordinarily, the scale of pay is fixed keeping in view the several factors i.e.*
> *(i) method of recruitment;*
> *(ii) level at which recruitment is made;*
> *(iii) the hierarchy of service in a given cadre;*
> *(iv) minimum educational/technical qualifications required; (v) avenues of promotion;*
> *(vi) the nature of duties and responsibilities; and*
> *(vii) employer's capacity to pay, etc.*
>
> ***21*** *It is well settled that for considering the equation of posts and the issue of equivalence of posts, the following factors had been held to be*

determinative:-

(i) The nature and duties of a post;
(ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
(iii) The minimum qualifications, if any, prescribed for recruitment to the post; and
(iv) The salary of the post (vide Union of India v. P.K. Roy AIR 1968 SC 850).

XXX XXX XXX
23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under:-

> *"22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of "equal pay for equal work" as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is*

only on the person claiming such right. (Vide U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others (2006) 9 SCC 82, Union of India and Another v. Mahajabeen Akhtar (2008) 1 SCC 368, Union of India v. Dineshan K.K (2008) 1 SCC 586, Union of India and Others v. Hiranmoy Sen and Others (2008) 1 SCC 630, Official Liquidator v. Dayanand and Others (2008) 10 SCC 1, U.P. SEB and Another v. Aziz Ahmad (2009) 2 SCC 606 and State of M.P. and Others v. Ramesh Chandra Bajpai (2009) 13 SCC 635)."

60. In the instant case, the AWWs and AWHs have not discharged their burden in proving their equivalence of work with any other Class-III and Class-IV posts. The most seminal facet for equation/comparison of posts is the qualifications prescribed for recruitment to the posts. The other is nature and responsibilities of duties and salary or pay of the post. Unless, the employees prove these factors on comparison to the post, of which they are claiming equal pay, the benefit of even minimum of pay-scale, which the regularly recruited Government employees under the statutory rules, cannot be conferred. In the present case, looking to the status and nature of duties of the AWWs and AWHs, it is impossible to compare their nature of duties to any other Class-III and Class-IV employees, who are regularly employed in the department of State of Gujarat. There are various departments in the State Government, which are

comprising of numerous Class-III and Class-IV employees. In such scenario, it is impossible to direct the appellants to confer the benefit of equal pay to AWWs and AWHs in wake of the fact that there is no post having similar duties listed under the Statutory Rules.

61. Thus, in absence of any comparison of work of AWWs and AWHs to the Class-III and IV posts, the learned Single Judge fell in error in invoking the principle of ‘equal pay for equal work’.

62. In the present case, the AWWs and AWHs are paid fixed wages for rendering upto 6 hours duties. Thus, the monthly remuneration, which is being paid to the AWWs and AWHs is impossible to be compared to the salary/pay-scale of the regularly appointed employees of the State Government and hence, the directions issued by the learned Single Judge by invoking the principle of ‘equal pay for equal work’ cannot be sustained.

63. The provisions of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, which are framed under Article 309 of the Constitution, cannot be made applicable to the AWWs and AWHs and correspondingly, the pay-scale / pay-grade / pay-band of Class-III and Class-IV employees cannot be extended to the AWWs

and AWHs. The mode of recruitment of the AWWs and AWHs and Class-III and Class-IV employees, who are being employed in different departments of the State of Gujarat, cannot be compared and the same are distinctly different. The appointment of the AWWs and AWHs stems out of the Government Resolution issued by the State Government, while exercising the powers under Article 162 of the Constitution, whereas the Class-III and Class-IV posts are governed by statutory Rules framed under Article 309 of the Constitution.

64. There is another aspect, which will also impact the directions issue by the learned Single Judge. The issue is about promotion / appointment from the post of the AWW to Mukhya Sevika. The post of Mukhya Sevika is Class-III post under the Panchayat Service Recruitment Rules, 2004, which are statutory. Rules 4, 5 and 6 of the said Rules read as thus:

> *"4. To be eligible for appointment by nomination from amongst the anganwadi Workers to the post mentioned in rule 2 above, a candidate shall-*
>
> *(a) Not be more than 45 years of age;*
>
> *(b) have passed Secondary School Certificate Examination with eleventh month;s training of Bal Sevika and have at least ten years experience as an Anganwadi Worker under the integrated Child Development Services Programme;*
>
> *(c) have adequate knowledge of Gujarati and Hindi*

5. The Nomination shall be made by the Gujarat District Panchayat Service Committee.

6. appointment by direct selection and by nomination from amonst the Anganwadi Workers shall be made in the ratio of 1:1."

65. Thus, the appointment to the post of Mukhya Sevikas, Class-III is made by way of nomination from amongst the AWWs, who possess the qualification / criteria mentioned in Rule 4. The nomination is to be done by the Gujarat District Panchayat Service Selection Committee following the aforesaid rules. The promotional post of Mukhya Sevika is Child Development Project Officer (CDPO), a Class-II post.

66. In case the AWWs, who are held to be eligible for the appointment, by nomination to the post of Mukhya Sevika, Class-III, under the Panchayat Service Recruitment Rules, 2004, are declared to be absorbed in Class-III post, this will have direct consequence on the post of Mukhya Sevikas, Class-III. The post of Mukhya Sevika is the statutory post under the Panchayat Service Recruitment Rules, 2004 and is governed by the revision of Pay Commission and they are conferred the pay-scale under such Pay Commissions and higher pay-scales under the State Government policies, and the AWWs i.e. feeder post, are paid wages. The AWHs, on completion of 10 years, are appointed as AWWs subject to fulfilling

eligibility. The wages of AWWs and AWHs are regulated by both Central Government and State Government in the ratio of 60:40, whereas the pay scale of Mukhiya Sevika, a Class-III post in the setup of the State Government Panchayat Department and borne exclusively by the State Government. Hence, the State Government cannot be directed to confer minimum pay scale of Class-III and Class-IV posts.

DIRECTION OF MINIMUM WAGES

67. The final issue, which remains to be deliberated upon, is the conferment of minimum wages to the AWWs and AWHs.

68. In this regard, we may borrow the perception of the Constitution Bench of the Apex Court in the decision rendered in the case of Hindustan Times Ltd., New Delhi vs. Workmen, AIR 1963 SC 1332, wherein the Apex Court, while examining the issue of fixation and revision of wages under the Industrial Disputes Act, 1947, has held as under:

> *"**5.** The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce, on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself. On the one hand, better living conditions for workmen that can only be possible by giving them a "living wage" will tend*

to increase the nation's wealth and income on the other hand, unreasonable inroads on the profits of the capitalists might have a tendency to drive capital away from fruitful employment and even to affect prejudicially capital formation itself. The rise in prices that often results from the rise of the workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the Country's international trade cannot also be always ignored. Thus numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of the numerous factors remain static.

6. *In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilised society." Above the fair wage is the "living wage" a wage "which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen." (Cited with approval by Mr. Justice Gajendragadkar in Standard Vacuum Company's Case (1) from "The living Wage" by Philip Snowden)."*

69. Subsequently, in the case of Workmen represented by Secretary vs. Reptakos Brett. & Co. Ltd. & Ors., (1992) 1 S.C.C. 290, the Apex Court has reiterated as under:

*"**12.** The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:*

"(vi) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage."

***13.** The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry".*

***14** A living wage has been promised to the workers under the Constitution. A 'socialist' framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are pilling-up but the day of fulfilment is nowhere in sight. Industrial wage - looking as a whole - has not yet risen higher than the level of minimum wage ."*

70. *Albeit*, we have addressed the financial implications of "regularization"-absorption" of AWWs and AWHs on Class-III and Class-IV posts however, concurrently, we cannot be seen as intransigent for enhancement of wages. Indubitably, the AWWs and AWHs are being paid a meager amount of Rs.10,000/- and Rs.5,500/-

respectively. Though, the foregoing decisions of the Apex Court relate to the fixation of wages of workmen / labourers governed by the Labour Laws, the observations made by the Apex Court relating to the socio-economic factors, while fixing the wages, cannot be ignored and will apply to the working conditions, responsibilities and the onerous duties of the AWWs and AWHs, more particularly on their inclusion under the umbrella of the Payment of Gratuity Act, 1972. The Constitution Bench of the Apex Court almost 60 years back has emphasized the living conditions of workmen, rise in prices and various complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. The Apex court has categorized, ‘minimum basic wage’, ‘fair wage’ and ‘living wage’. The ‘minimum basic wage’ is paid in order to be allowed to continue an industry. Thereafter, above that is the ‘fair wage’, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilized society." Above the fair wage is the "living wage" a wage "which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their

health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen. Subsequently, in the case of **Reptakos Brett. & Co. Ltd. (supra)**, the Apex Court has asserted the socio-economic facet of the wage structure. The Apex Court held that while fixing the minimum wage, the industry has to add the component of children's education, medical requirement minimum recreation, including festivals/ ceremonies and provision for old age marriages etc. It further held that a wage structure, which approximately answers the above six components, is nothing more than a minimum wage at subsistence level, and the employees are entitled to the minimum wage at all times and under all circumstances. The Apex Court has also cautioned that an employer, who cannot pay the minimum wage, has no right to engage labour and no justification to run the industry.

71. In the decision of **Maniben (supra)**, the Apex Court has held that *"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 establishment to which the 1972 Act "applies", the AWWs and AWHs are employee within the meaning of 1972 Act. In view of the said Rules of the Gujarat Government, the Aanganwadi Centers 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."

72. Thus, considering the nature of duties and the mode of appointment, in our considered opinion, the AWWs and AWHs are entitled to at least "Living wage" above the 'Minimum' and 'Fair wage' so that it may supply the need of their families with all the material things, which are needed for their health and physical well-being, enough to enable them to qualify to discharge their duties as a citizens. The meager amount of Rs.10,000/- and Rs.5,500/- to the AWWs and AWHs impinges their arduous obligations. The irony is that the AWWs and AWHs, who fulfill the needs of pregnant and lactating mothers, health and education of minors, are deprived of living a life with dignity and respect for want of apposite remuneration. Hence, the denial of "Living Wage" to the AWWs and AWHs is violative of fundamental rights enshrined under Article 21 of the Constitution of India.

73. Thus, the Central Government and the State Government cannot ignore the aforesaid aspects, while fixing and granting emoluments to the AWWs

and AWHs, more particularly in wake of the observations made by the Apex Court in the case of **Maniben (supra)**, to the extent as under:

> ***" PLIGHT OF AWWs AND AWHs***
>
> ***26.*** *AWWs and AWHs have been assigned all-pervasive duties, which include identification of the beneficiaries, cooking nutritious food, serving healthy food to the beneficiaries, conducting preschool for the children of the age group of 3 to 6 years, and making frequent home visits for various reasons. Implementation of very important and innovative provisions relating to children, pregnant women as well as lactating mothers under the 2013 Act has been entrusted to them. It is thus impossible to accept the contention that the job assigned to AWWs and AWHs is a part-time job. The Government Resolution dated 25th November 2019, which prescribes duties of AWWs and AWHs, does not lay down that their job is a part-time job. Considering the nature of duties specified thereunder, it is full-time employment.*
>
> ***27.*** *In the State of Gujarat, AWWs are being paid monthly remuneration of only Rs. 7,800/- and AWHs are being paid monthly remuneration of only Rs. 3,950/-. AWWs working in mini-Anganwadi centres are being paid a sum of Rs. 4,400/- per month. The important tasks of providing food security to children in the age group of 6 months to 6 years, pregnant women as well as lactating mothers have been assigned to them. In addition, there is a duty to render pre-school education. For all this, they are being paid very meagre remuneration and paltry benefits under an insurance scheme of the Central Government.* ***It is high time that the Central Government and State Governments take serious note of the plight of AWWs and AWHs who are expected to render such important services to the society."***
> (emphasis supplied)

POWER OF THE HIGH COURT TO DETERMINE WAGES

74. The core question, which stares at us, is that, whether this Court can snub the plight of AWWs and AWHs despite the observations of the Apex Court. We are conscious of the scope, ambit and restraints on the powers of High Court in issuing directions for determining the appropriate wages. It is trite that a Letters Patent Appeal, as permitted by the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as is was vested in the Single Bench. (vide: Baddula Lakshmaiah vs. Anjaneya Swami Temple, (1996) 3 S.C.C. 52). It has become obligatory for us to address the plight of AWWs and AWHs, so far, their claim for appropriate wage is concerned.

75. The Apex Court has taken note of the employment of the AWWs and AWHs as full-time, and their onerous and arduous duties, which have direct influence on health and education of minors and their mothers. The Central Government and the State Government are also called upon to take serious note of the plight of the AWWs and AWHs, who are rendering important services on a paltry monthly remuneration. Even after the judgement of the Apex Court in the case of **Maniben (supra),** the Central and State Government

have remained insouciant in addressing the issues. In order to verify the status of the AWWs and AWHs, after the judgment of the Apex Court, vide order dated 18.06.2025, we had called upon the appellants to produce the data showing any revision of wages, and accordingly an affidavit dated 18.07.2025 was filed showing the data of entire State. On a perusal of the same, we did not find any increase in the wages of the AWWs and AWHs and their plight remains inexorable, hence, this Court cannot have blinkered vision for the paltry remuneration paid to them.

76. Despite the observations made by the Apex Court, way back in the year 2022 in the case of **Maniben (supra)**, the wages remain paltry, and they are also not being paid minimum wages. We may derive the support from the below mentioned decision of the Apex Court for answering the issue of fixation and payment of wages by us. The Full Bench of the Apex Court in the case of Akhil Bharatiya Soshit Karamchari Sangh (Railway) vs. Union of India, (1981) 1 S.C.C. 246, while considering the State's obligation enshrined in Directive Principles in Part-IV of the Constitution and enforcement of the fundamental rights, has observed thus:

> ***"123.*** *… … … The Fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but*

they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the directive principles cannot in the very nature of things be enforced in a court of law. It is unimaginable that any court can compel a legislature to make a law. If the court can compel Parliament to make laws then parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in that sense that the Constitution says that the directive principles shall not be enforceable by courts. It does not mean that directive principles are less important than Fundamental rights or that they are not binding on the various organs of the State. Article 37 of the Constitution emphatically states that directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the court to apply the directive principles in interpreting the Constitution and the laws. The directive principles should serve the courts as a code of interpretation. Fundamental rights should thus be interpreted in the light of the directive principles and the latter should, whenever and wherever possible, be read into the former. Every law attacked on the ground of infringement of a Fundamental Right should, among other considerations, be examined to find out if the law does not advance one or other of the directive principles or if it is not in discharge of some of the undoubted obligations of the State, constitutional or otherwise, towards its citizens or sections of its citizens, flowing out of the preamble, the directive principles and other provisions of the Constitution."

77. Thus, the AWWs and AWHs, who constantly endeavour for upliftment of the vulnerable sections of society and are backbone of the ICDS Scheme, which stems out from the directive principles, for achieving constitutional goal of reducing and wiping out the mal-nutrition, health and illiteracy; cannot be deprived of better

wages. The Apex Court has held that the fundamental rights should be interpreted in the light of the directive principles and the latter should, whenever and wherever possible, be read into the former.

78. In the case of Benedict Denis Kinny vs. Tulip Brian Miranda, (2021) 12 S.C.C. 780, the Apex Court has emphasized on the power of the High Court under Article 226 of the Constitution. The relevant observations are as under:

> *"21. We need to first notice the nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India. The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty by the public authority. The jurisdiction under Article 226 is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found. The High Court and Supreme Court are the Constitutional Courts, which have been conferred right of judicial review to protect the fundamental and other rights of the citizens… … … "*

79. It is no more *res integra*, that the power of the High Courts under Article 226 of the Constitution though are discretionary and has no fetters, but it must be exercised subject to certain self-imposed limitations. It is declared by the Apex Court that while exercising the extraordinary and discretion jurisdiction under Article 226, the High Court has to examine that whether the injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within meaning of Article 12 of the Constitution, and the judicial review is intended to prevent cases of abuse of power or neglect of a duty by the public authority. The jurisdiction under Article 226 is a check on the discharge on public functions and statutory duties entrust to them, and the High Court is the guardians of the rights and liberties of the citizen and any failure in the responsibility will amount to abdication of solemn duty towards the citizens. It is held that the scope of Article 226 is very wide and can be used to remedy injustice wherever it is found, and the right of judicial review conferred to the Constitutional Court is to protect the fundamental and other rights of the citizens.

80. Thus, the settled legal precedent does restrain this Court to pass necessary directions

for addressing the issue of paltry wages to the AWWs and AWHs, more predominantly in wake of the observations made by the Apex court in the case of ***Maniben*** **(supra).**

81. Before venturing into the issue of determining the suitable wages for AWWs and AWHs, it is necessary to examine the hierarchy of posts in the ICDS Scheme. As per the "*Mukhya Sevika, Class-III in the Superior Panchayat Service Recruitment Rules, 2013*", an AWW who has passed the Secondary School Certificate Examination from Secondary and/or Higher Secondary Education Board; and has at least ten years' experience as Anganwadi worker under the Integrated Child Development Services Programme can be appointed as Mukhya Sevika by way of direct selection. Similarly, the AWHs are appointed as AWWs after rendering 10 years of service in the Aaganwadi Centre.

82. Presently, the Mukhya Sevikas are being paid a fixed pay of Rs.40,800/- for five years, and on completion of five years, they are placed in regular pay scale of Rs.29,200-92,300/-. There is vast difference of Rs.4,500/- between the wages/honorarium paid to the AWWs and AWHs. Thus, the directions to pay only minimum wages of Rs.14,800/- at par with the part-time employees employed for six hours in other departments

cannot be uniformly applied to AWWs and AWHs. The nature of duties under the ICDS Scheme of the AWWs and AWHs are different hence, the amount of remuneration varies. There is also huge difference between the onerous duties rendered by the AWWs and AWHs and the part-timers employed by other State Departments. The duties and obligations of AWWs and AWHs influence the lowest strata of social fabric, and their duties cannot be compared to the duties rendered by other part-timers engaged for six hours by the State Departments, for whom the policy of minimum wages of paying Rs.14,800/- is implemented vide Circular dated 16.07.2019. The amount of Rs.14,800/-, in the said Circular, is fixed from 01.01.2019, considering the minimum wages payable to Class-IV employees.

83. In order to sort out the conundrum, and to see that appropriate Living Wage is paid, we have considered the following aspects :

(a) Full time employment of the AWWs and AWHs, as held by the Apex Court in the case of **Maniben (supra);**

(b) Applicability of the Payment of Gratuity Act, 1972 to the AWWs and AWHs, and inclusion of “Honorarium” in the definition of “Wages”;

(c) Entitlement of minimum wages under the Minimum Wages Act, 1972 to the AWWs and AWHs, once they are declared to be holding a statutory post;

(d) Working for six hours;

(e) Entitlement of Rs.14,800/- under the State Government Resolution dated 16.07.2019 fixing minimum wages of part-time employees working for six hours, which is minimum pay-scale of Class-IV employees;

(f) Onerous and arduous duties and obligations involving pregnant and lactating women and minors, which is unmatched to the duties of other part-time employees.

(g) Fixed wages of Rs.40,800/- paid to Mukhya Sevikas.

84. By considering the foregoing features, we issue the following directions.

A) The Appellants - Central Government and the State Government Departments, jointly or the State Government exclusively, shall pay the minimum monthly wages of Rs.14,800/- over and above of Rs.10,000/- to the AWWs (i.e Rs.24,800/- which is less than the fixed pay

of Mukhiya Sevika, i.e Rs.40,800/-. Correspondingly, the AWHs shall also be paid the minimum wages of Rs.14.800/- plus Rs.5,500/- (i.e Rs.20,300/-). The aforesaid wages, shall be subject to further corresponding revisions as and when declared by the Central Government or the State Government.

B) Since, the AWWs and AWHs are being paid from the allocated budgetary funds of particular financial year for implementation and running Integrated Child Development Service Scheme, and the funds are tailored looking to the strength of the AWWs and AWHs, the directions to grant aforesaid wages retrospectively from preceding three years of filing of the writ petitions, as directed by the learned Single Judge will increase the financial burden substantially and retrospectively. Hence, we direct that the AWWs and AWHs shall be paid the arrears of wages fixed by this Court w.e.f. from Financial Year 01.04.2025.

C) The arrears and the actual minimum wages shall be paid within a period of 06 (six) months from the date of receipt of the writ of the present order.

D) The present directions will apply to all the AWWs and AWHs engaged in all the Anganwadi Centers of the State of Gujarat, and those who have not approached this Court, shall not be compelled to file writ petition(s) for obtaining similar order from the High Court.

E) The directions issued by the learned Single Judge declaring to treat the AWWs and AWHs at par with regularly selected permanent employees holding civil posts in State Government and Central Government and further directing to frame a policy for absorption and to confer consequential benefit of regularization are set aside.

F) The direction issued by the learned Single Judge for payment of salary of minimum of pay-scale is modified to the aforesaid extent.

85. We appreciate the endeavor of the learned Single Judge in perceiving the plight of the AWWs and AWHs, which has influenced us to increase their wages. The Letters Patent Appeals are allowed to the aforesaid extent.

86. As a sequel, the connected civil applications also stand disposed of.

Registry to place a copy of this order in each of the connected matters.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(R. T. VACHHANI, J)

MVP / NVMEWADA /S-1-30

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: NEHABEN VINODBHAI MEWADA(HC01571), PRIVATE SECRETARY, at High Court of Gujarat on 20/08/2025 15:53:19