IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 25th OF JANUARY, 2024

WRIT PETITION No. 4970 of 2014

BETWEEN:-

SMT. TULSA BAI GOND W/O SHRI RAMNARAYAN GOND, AGED ABOUT 25 YEARS, VILLAGE CHOUPRA, TEHSIL AND DISTT. PANNA, M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI BRIJESH CHOUBEY - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH SECRETARY WOMEN AND CHILD DEVELOPMEENT DEPTT. (MADHYA PRADESH)**

2. **COMMISSIONER SAGAR COMMISSIONER SAGAR (MADHYA PRADESH)**

3. **COLLECTOR PANNA COLLECTOR PANNA (MADHYA PRADESH)**

4. **DISTRICT PROGRAMME OFFICER WOMAN AND CHILD DEBELOPMENT WOMAN AND CHILD DEBELOPMENT PANNA (MADHYA PRADESH)**

5. **PROJECT OFFICER INTEGRATED CHILD DEVELOPMENT PROJECT PANNA (MADHYA PRADESH)**

6. **SMT. ANITA GOND W/O BAHADUR GOND VILLAGE GHOUPRA TEHSIL AND DISTT. PANNA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR THE STATE)
(BY SHRI DEVENDRA KUMAR TRIPATHI - ADVOCATE FOR RESPONDENT NO.6)

This petition coming on for admission this day, the court passed the following Order dictated in the open Court*:*

This petition is filed being aggrieved of selection of respondent No.6 on the post of Anganwadi Karyakarta and the appeal which was filed before respondent No.2 Commissioner, Sagar Division, Sagar as was registered as Appeal No.269/A-89/2009-10 on 30.11.2013 rejected the petitioner's appeal, hence this writ petition.

2. On 21.04.2022, this Court had allowed the writ petition but the respondent No.6 herein had approached the Division Bench of this Court by filing W.A. No.533/2022 taking a ground that she was not given an opportunity of hearing and, therefore, Hon'ble Division Bench was pleased to remand the matter to the Single Bench. Hence this matter is taken up today.

3. Issue involved herein is that whether the respondent No.6 whose husband was admittedly a Panch at the time of her making an application for appointment as Anganwadi Karyakarta at Anganwadi Kendra, Chopra, Gram Panchayat Sakariya, District Panna was whether eligible for such appointment in terms of the stipulations contained in Office Memorandum No./F3-2/06/50-2 dated 27.05.2006 issued by the State of Madhya Pradesh Women and Child Development Department, Mantralay.

4. Petitioner's contention is that as per the requirements of eligibility for appointment as Anganwadi Karyakarta contained in the said Office Memorandum, Clause अ-1(4) provides that "चयनित की जाने वाली आंगनबाडी कार्यकर्ता की चयन प्रक्रिया के प्रत्यक्ष या अप्रत्यक्ष संबंध रखने वाले सरकारी अथवा पंचायती राज संस्थाओ/नगरीय निकायो के निर्वाचित अथवा मनोनीत सदस्य अथवा उसके सगे संबंधी नहीं होना

चाहिये। सगे संबंधी से अभिप्राय है कि शासकीय अधिकारी/कर्मचारी के पिता–माता, भाई–बहन, पति–पत्नी, पुत्र–पुत्री, ससुर–सास, साला (ब्रदर इन लॉ), दामाद (सन इन लॉ), पुत्र वधु।"

5. Thus, it is submitted that since husband of the respondent No.6 was an elected Panch of the same Gram Panchayat, therefore, she was not eligible to be appointed as Anganwadi Karyakarta.

6. Shri Devendra Kumar Tripathi, learned counsel for respondent No.6, in his turn, places reliance on a Division Bench decision of this Court in **Draupathi Tiwari Vs. State of M.P. and others, 2013(2) MPLJ 407**.

7. Reading from paragraph 12, it is submitted that Division Bench of this High Court has laid down a ratio which is having two folds bearing namely, to be disqualify a person, should be within the prohibited degrees as mentioned in the relevant clause extracted above.

In that case the candidate Draupati Tiwari's borther in law i.e. brother of the husband (Devar) was a Panchayat Karmi/Panchayat Secretary and, therefore, she having not fallen in the prohibited degree was held to be eligible.

8. It is further submitted by Shri Devendra Kumar Tripathi, learned counsel for respondent No.6, that Division Bench of the High Court has held that since Panchayat Karmi has no role in the selection of an Anganwadi Karyakarta, therefore, relationship with Anganwadi Karyakarta will not be a disqualification.

9. After hearing learned counsel for the parties and going through the record, it is evident that Division Bench did not quash the Office Memorandum dated 27.05.2006, though it was within its authority to have quashed the Office Memorandum dated 27.05.2006 on the ground that since Panchayat Karmi/Panchayat Secretary has no role in the selection disqualification prescribed in the said Office Memorandum is arbitrary or illegal.

10. However, it ventured to further held that since the process of selection provides for constitution of a committee under the Chairmanship of the Sub Divisional Officer of which the Child Development Project Officer is the Secretary and Chief Executive Officer of a Janpad Panchayat is one of the nominated members, if selection is made, another committee is constituted to decide the objections with respect to the preliminary selection which consists of the Chief Executive Officer of Jila Panchayat as President and District Programme Officer, Child Development Officer, President of the Women and Child Development Committee of Jila Panchayat and one of the woman member nominated by the Jila Panchayat as member of the said committee, therefore, being related to the Panchayat Karmi or the Panchayat Secretary will not be a disqualification.

11. In my humble opinion, as far as, first part of the ratio of law that if a person is not falling within the prohibited degrees of relationships mentioned in the Office Memorandum dated 27.05.2006 is concerned i.e. binding on this Court, inasmuch as, that is the spirit of the circular. But second part of the judgment rendered by the Hon'ble Division Bench holding that since the Selection Committee or the Committee constituted to decide the objections does not constitute of a particular post bearer, therefore, even if a person is related to such post bearer, then it will not cause any prejudice in the process of selection is clearly an obiter and is not binding on this Court for the reason that unless the Office Memorandum in question would have been set aside, and the circular is still in existence and it is to be read as it is and it cannot be given any interpretation other than what is intended by the makers of the policy contained in Annexure P-1. Giving some other interpretation by the Court is doing

violence to the principles of interpretation and that violence cannot be accepted and perpetuated by this Court though I am conscious that I am sitting here as a Single Bench and the decision of the Division Bench have binding precedent to the extent they are not against the law. This law get support from the judgment of Supreme Court in **Arun Kumar Agrawal Vs. State of Madhya Pradesh and Others, (2014) 13 SCC 707**, wherein referring to para Nos. 24, 25, 26, 27, 28, 29, 30, 31 32 and 33 held as under -:

> **24.** At this stage, it is pertinent to consider the nature and scope of a mere observation or obiter dictum in the Order of the Court. The expression obiter dicta or dicta has been discussed in *American Jurisprudence 2d, Vol. 20, at pg. 437* as thus:
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> "74. -Dicta
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> Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. *An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.*
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> 'Dictum' or 'obiter dictum' is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis.
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> As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of

argument. And while the terms 'dictum' and 'obiter dictum' are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, *a distinction has been drawn between mere obiter and 'judicial dicta,' the latter being an expression of opinion on a point deliberately passed upon by the court.*"

(Emphasis supplied).

Further at pp. 525 and 526, the effect of dictum has been discussed:

"190. Decision on legal point; effect of dictum

... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where 'judicial dicta' as distinguished from 'obiter dicta' are involved."

25. According to P. Ramanatha Aiyar,s *Advanced Law Lexicon* (3rd ed. 2005), the expression "observation" means a

"view, reflection; remark; statement; observed truth or facts; remarks in speech or writing in reference to something observed".

26. *Wharton's Law Lexicon* (14th Ed. 1993) defines term 'obiter dictum' as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; 'a remark by the way'.

27. *The Blacks Law Dictionary*, (9th ed, 2009) defines term "obiter

dictum" as:

"*Obiter dictum.* - A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to *dictum* or, less commonly, obiter.....

'Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way" -- that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as "dicta," or "obiter dicta", these two terms being used interchangeably.' "

28. *Words and Phrases* , Permanent Edition, Vol. 29 defines the expression "obiter dicta" or "dicta" thus:

"Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; 'Obiter dictum' is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is 'obiter dictum'."

29. The concept of "dicta" has also been considered in *Corpus Juris Secundum*, Vol. 21, at pg. 309-12 as thus:

"190. Dicta

a. In General

A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and noty necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term 'dictum' is generally used as an abbreviation of 'obiter dictum' which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case,' nor res judicata."

30. The concept of "dicta" has been discussed in *Halsbury's Laws of England*, 4th Edition (Reissue), Vol. 26, para. 574 as thus:

"574. Dicta. - Statements which are not necessary to the decision,

which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed 'dicta'. They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as 'obiter dicta', whilst considered enunciations of the Judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "Judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.

... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

31. In *Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101* and *Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197*, this Court has observed that

"Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

32. In *State of Haryana v. Ranbir, (2006) 5 SCC 167* , this Court has discussed the concept of the obiter dictum thus:

"A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ADM, Jabalpur v. Shivakant Shukla. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. [See Divisional Controller, KSRTC v. Mahadeva Shetty(2003) 7 scc 197 : 2003 SCC (Cri) 1722".

33. In *Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555*, this Court has held:

"Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

12. In para 34 it is held that **"**it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment."

13. As far as interpretation of Clause 4 reproduced above is concerned, law is very clear that how words 'or' are to be interpreted. Words used in Clause 4 dealing with eligibility for appointment uses word 'अथवा' . English equivalent of word अथवा' is 'or'.

14. In the case of **Hyderabad Asbestos Cement Products and Another Vs. Union of India and Others, (2000)1 SCC 426**, it is held that word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as *vice versa* to give effect to the manifest intention of the

Legislature as disclosed from the context.

So also in case of **Ishwar Singh Bindra Vs. State of U.P., AIR 1968 SC 1450**.

15. As per the Principles of Statutory Interpretation, 12th Edition 2010 by Justice G.P. Singh, Former Chief Justice M.P. High Court as he was then by Lexis Nexis, Butterworths Wadhwa, Nagpur at page 477, it is mentioned as under :-

> "As stated by SCRUTTON, L.J. in Green Vs. Premier Glynrhonwy Slate Co., (1928) 1 KB 561, P.568.: "You do sometimes read 'or' as 'and' n a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'.
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> In the same book LORD HALSBURY has been referred to suggest that the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done" as held in **Mersy Docks and Harbour Board Vs. Henderson Bros., (1888) 13 AC 595, p.603: 58 LJ QB 152 (HL)**.
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> In case of A.**G. Vs. Beauchamp, (1920) 1 KB 650**; **R. Vs. Oakes, (1959) 2 All ER 92**, it is held that "but if the literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear."

16. When these facts are taken into consideration then intention of the policy makers is that any person who is related to the Government Employee having direct or indirect relationship with the selection process or elected or nominated members of the Panchayat Raj Institutions/Local Bodies, then that will be a disqualification. Thereafter, close relatives have been described and since admittedly respondent No.6 falls within the definition of close relative and

merely saying that close relative i.e. the husband of the respondent No.6 being not part of the selection committee will not earn disqualification will be contrary to the spirit of the Office Memorandum and unless that Office Memorandum is challenged and set aside, ratio of the law laid down in case of **Draupati Tiwari (supra)** in the second part of para 12 will have no application to the facts of the present case.

17. Accordingly, petition deserves to be allowed and is hereby allowed. Impugned order passed in favour of the respondent No.6 is set aside. All consequences to follow.

(VIVEK AGARWAL)
JUDGE

MTK