

**A.F.R.**

**HIGH COURT OF ORISSA: CUTTACK**

**W.A. No.618 of 2011**

The appeal arises out of order dated 19.12.2011 passed by the learned Single Judge in W.P.(C) No.32010 of 2011.

-----

Anandaram Sunani, aged about 45 years,  
S/o. Late Laxmikanta Sunani,  
resident of At/P.O. Manjhari,  
P.S. Golamunda, Dist: Kalahandi

... Appellant

-Versus-

State of Orissa and others

... Respondents

For Appellant : M/s. S.K. Dalai, D. Mahakud &  
S. Mahapatra

For Respondents : Mr. R.K. Mohapatra,  
Government Advocate

-----

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA  
AND**

**THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

---

Date of Judgment: 30.11.2012

---

**B.N. Mahapatra, J.** This writ appeal has been filed challenging the legality, propriety and correctness of the order dated 19.12.2011 (Annexure-8) passed by the learned Single Judge in W.P.(C) No.32010 of 2011, wherein the learned Single Judge has directed the appellant to prefer appeal against the order dated 16.07.2011 passed by respondent No.3-District Panchayat Officer. Further, prayer of the appellant is to declare the order dated 16.07.2011 (Annexure-6) passed by respondent No.3-District Panchayat Officer, Kalahandi, wherein he rejected the representation of the appellant

dated 26.05.2011 to appoint him as Grama Panchayat Secretary in Manjari Grama Panchayat on the ground that the appointment for the post of Grama Panchayat Secretary is banned by the Government of Odisha vide letter No.19428/PR, dated 01.10.2002 of Government in P.R. Department, Odisha as illegal.

2. Appellant's case in a nutshell is that he was appointed as Grama Panchayat Secretary in Manjari Grama Panchayat under Golamunda Block in the district of Kalahandi vide resolution dated 07.02.1992 of the Grama Panchayat which was subsequently approved by the respondent No.3-District Panchayat Officer on 23.03.1992 as required under Rule 213 of the Orissa Grama Panchayat Rules, 1968 (for short, "Rules, 1968"). Pursuant to such appointment, the appellant was continuing in service peacefully, sincerely, honestly and with utmost satisfaction of the authority. During the service period, there was no allegation either by the Grama Panchayat or by any authorities regarding his misconduct, wilful violation of any direction of the Grama Panchayat or any negligence in his duty. While the appellant was continuing as such, due to his sincerity on 01.07.1997, he was promoted to the higher post and also accordingly gradation list was prepared under Annexure-2 series by the State Government, wherein the name of the appellant was available at Sl.No.28. While the matter stood thus, on 12.05.2000, the District Panchayat Officer wrote a letter to the Grama Panchayat for engagement of one Meghanada Aghria, who was earlier disengaged from service due to his

involvement in a criminal case and the Grama Panchayat was directed to disengage the appellant. Pursuant to the direction made by the District Panchayat Officer under Annexurer-3, the Grama Panchayat immediately made a resolution on 24.05.2000 stating therein that in view of the direction made by the District Panchayat Officer, the appellant has been disengaged from service, which was communicated to the appellant on 26.06.2000. Being aggrieved, the appellant approached several authorities and he was assured that after retirement of Meghanada Aghria, the appellant would get service and accordingly, the appellant waited. In the meantime, Meghanada Aghria has retired from service and the said post is lying vacant. The appellant has approached this Court twice. This Court vide order dated 05.05.2011 passed in W.P.(C) No.9744 of 2011 disposed of the writ petition directing the District Panchayat Officer, Kalahandi, Bhawanipatna to dispose of the representation of the appellant strictly in accordance with law, if the same has not been disposed of within 21 days of receipt of that order. Pursuant to the said order of this Court, the District Panchayat Officer, Kalahandi vide order dated 16.07.2011 (Annexure-6) rejected the representation of the appellant on the ground that the appointment to the post of Grama Panchayat Secretary is banned by the Government of Orissa. Being aggrieved, he approached this Court in W.P. (C) No.32010 of 2011 which was disposed of on 19.12.2011 at the stage of admission giving liberty to the petitioner to prefer appeal before the Sub-Collector, Bhawanipatna, Kalahandi, who was to decide the same strictly in

accordance with law. Aggrieved of the impugned order passed by the learned Single Judge in directing the appellant to approach the Appellate Authority as there is no need for him to approach the Appellate Authority at this stage and therefore the impugned order is bad in law and the order of termination is contrary to the statutory and fundamental rights of the appellant, this Writ Appeal is filed urging various legal grounds.

3. Mr. S.K. Dalai, learned counsel appearing for the appellant submitted that order passed by the District Panchayat Officer under Annexure-6 as well as order under Annexure-8 passed by learned Single Judge of this Court are unjust and against the settled principles of law. Hence, the same are liable to be set aside. It is submitted that the appellant was appointed against a regular vacancy following due procedure of law and in accordance with the provisions made under the Grama Panchayat Act. The order disengaging the appellant without following the mandatory provisions of the Grama Panchayat Rules contained in Rule 216(a) is bad in law. No opportunity of hearing was given to the appellant before removing him from service which is in violation of the Grama Panchayat Rules. When statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. The appointment of the appellant was approved by the District Panchayat Officer and his promotion was considered and also his name was available in the gradation list for the post of Village Level

Workers (VLWs). His disengagement at a belated stage is unwarranted. Working under the Grama Panchayat as a Secretary is not a civil post. Therefore, removal of the appellant at the behest of the officer of the Government is illegal. Representation of the appellant has been rejected under Annexure-6 on the ground that appointment to the post of Grama Panchayat Secretary is banned by the Government. This Court vide order dated 06.04.2009 passed in W.P.(C) No.6579 of 2003 held that such government notification is illegal and the ban to that effect is also not legal and sustainable in law. Therefore, order passed under Annexure-6 rejecting the representation of the appellant is also not sustainable in law. Concluding his argument, Mr. Dalai, prays to allow the writ appeal.

4. Mr. R.K. Mohapatra, learned Government Advocate supporting the order of the learned Single Judge submitted that there is no infirmity or illegality in the order passed by the learned Single Judge directing the petitioner to approach the appellate authority. It is further submitted that the order passed by the District Panchayat Officer under Annexure-6 rejecting the representation of the appellant on the ground that the appointment to the post of Grama Panchayat Secretary is banned is perfectly correct.

5. On the rival factual and legal contentions urged on behalf of the parties, the following questions fall for consideration by this Court:-

- (i) Whether the District Panchayat Officer is justified to reject the representation of the appellant on the ground

that appointment to the post of Grama Panchayat Secretary is banned by the Government of Odisha?

- (ii) Whether in the peculiar facts and circumstances of the case, learned Single Judge is justified to direct the petitioner to approach the appellate authority when no disputed question of fact is involved in this case?

6. So far question No.(i) is concerned, we don't want to retain for a longer period to decide this question. The order of the Government banning appointment to the post of Grama Panchayat Secretary was challenged before this Court in W.P.(C) No.6579 of 2003 and this Court vide order dated 06.04.2009 quashed the said decision of the Government and directed to consider the proposal of four Grama Panchayats for appointment of four persons to the post of Panchayat Secretary. It is not the case of the respondents that the said order has been challenged either before this Court in Writ Appeal or the Hon'ble Supreme Court. Thus, the said order has attained finality.

7. In view of the above, we are of the view that Annexure-6 passed by the District Panchayat Officer is not legally sustainable in view of the order passed by this Court dated 06.04.2009 passed in W.P.(C) No.6579 of 2003.

8. So far question No.(ii) is concerned, the specific stand of the petitioner is that though the order of this Court dated 06.04.2009 passed in W.P.(C) No.6579 of 2003 was brought to the notice of the learned Single Judge, the same has not been considered and the impugned order under

Annexure-8 was passed directing the appellant to approach the appellate authority. The order passed by the District Panchayat Officer under Annexure-6 was under challenge before the learned Single Judge. The representation of the appellant to engage him as Grama Panchayat Secretary was rejected by the District Panchayat Officer under Annexure-6 on the sole ground that the appointment to the post of Grama Panchayat Officer is banned by the Government. In such circumstances, in our view, learned Single Judge should have considered the earlier order passed by this Court on 06.04.2009 in W.P.(C) No.6579 of 2003.

9. It is not in dispute that the petitioner has been appointed since 23.03.1992 as Panchayat Secretary in Manjhari Grama Panchayat under Golanda Block in the District of Kalahandi against a regular vacancy after following proper procedure provided under the Orissa Grama Panchayat Rules and his appointment has been approved by the District Panchayat Officer as required under Rule 213 of the Rules, 1968. The appellant has served for a period of more than eight years. During the period of his service, there was no allegation raised against the appellant either by the Grama Panchayat or any other competent authority regarding his misconduct, willful violation of any direction of the Grama Panchayat or any negligence in his duties. However, he was removed from service as one person, namely, Meghanada Aghria, who was earlier disengaged from service due to his involvement in criminal case, was acquitted from the criminal charge. Moreover, though Rule 216(a) of the Rules, 1968 provides

that before removing Secretary, a reasonable opportunity of show cause and the grounds on which he was proposed to be removed shall be communicated to him in writing and after considering his explanation the Grama Panchayat shall take a decision, the said procedure has not been followed in the present case. The appellant has been removed from service at the behest of the District Panchayat Officer which is violative of statutory and fundamental rights of the appellant. Hence, the learned Single Judge should have exercised his discretionary power and granted the reliefs as prayed in the writ petition. However, Meghanada Aghria has already retired from service on attaining the age of superannuation and the post is lying vacant. As it appears from the affidavit sworn by the appellant-petitioner in this writ appeal, he was 45 years old in the year 2011, which shows that by that time he had become over-aged to apply for any other post. Apart from the above reason, the order of termination is violative of Articles 14, 19 (1) (g) and Article 21 of the Constitution of India.

10. In the peculiar facts and circumstances of the case, the appellant is entitled to be reinstated as Secretary or in any equivalent post in Manjhari Grama Panchayat within four weeks which we direct. However, the appellant shall be entitled to 25% of his back salary from the date of his termination till the date of pronouncement of the judgment, but the said period shall be reckoned for other service benefits, such as gratuity, pension and Provident Fund.



11. In view of the above, the order of the learned Single Judge under Annexure-8 as well as order of the District Panchayat Officer under Annexure-6 is set aside.

12. In the result, the writ appeal is allowed to the extent indicated above.

No order as to costs.

.....  
*B.N.Mahapatra, J.*

**V. Gopala Gowda, C.J.** I agree.

.....  
*Chief Justice*