

**ORISSA HIGH COURT  
CUTTACK**

WP(C) Nos.15667 of 2011 & 7952 of 2008

In the matter of an application under Articles 226 & 227 of the Constitution of India.

**In both the writ petitions**

Kalyani Mohanty ..... Petitioner

-Versus-

The State of Orissa & others ..... Opp. Parties

For Petitioner : M/s.S.N.Satpathy  
& S.Mishra

For Opp. Parties: M/s.S.K.Padhi (Sr. Advocate)  
M.Padhi, A.Das, B.Panigrahi,  
& S.B.Dash  
(For O.P.8)

M/s.S.K.Pattanaik, U.C.Mohanty  
P.K.Pattanaik, D.Pattanaik  
& K.S.Pattanaik  
(For O.Ps.4 & 5)

M/s.Prasanna Kr. Nayak-1,  
P.Mohanty & M.K.Das  
(For O.P.6)

M/s.Bibhuti Bhusan Swain,  
K.K.Gaya, J.Ray &  
S.P.Dash  
(For O.Ps.7 & 9)

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**Date of Judgment: 26.04.2013**  
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P R E S E N T:

**THE HONOURABLE KUMARI JUSTICE SANJU PANDA**  
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**S. Panda, J.** Since the cause of action arises in both the writ petitions being one and the same, they were heard together and are being disposed of by this common judgment.

**2.** The petitioner in both the writ petitions challenges the action of the opposite parties in the matter of promotion to the post of Supervisor ignoring her seniority and promoting and placing opposite parties 4 to 10 above her.

**3.** The factual backdrops of the case are as follows:

The petitioner being matriculate and unemployed applied for the post of Anganwadi Worker and selected as such. Engagement order was issued by the Collector, Puri on 31.10.1979. She was engaged as Anganwadi Worker under the Child Development Project Officer, Brahmagiri. She worked as Anganwadi Worker at Palanka and Sahaspur Anganwadi Centres from 31.10.1979 to 31.5.1993. The petitioner discharged her duties with sincerity and efficiently and her service report was all through good. There was no break up service and no departmental proceeding was initiated against her. On 31.5.1983, she was transferred and posted at Tikarpada Anganwadi Centre under the Child Development Project Officer, Bhubaneswar which was at that time in Puri District. On 31.7.1983, she was posted at Nargada Anganwadi Centre under the urban area of Bhubaneswar Municipality. Thereafter, she was posted in different Anganwadi Centres under the rural area of Bhubaneswar with effect from 1983 to 2002. At the time of filing of the writ petition, she was working at Naragada Anganwadi Centre.

**4.** While the matter stood thus, a set of Rules were framed by the Government of Odisha in the Department of Women and Child Development which were called as the Orissa Children and Women's Welfare Service Rules, 1989. The said Rule was amended in 2007. As per the said amended Rules, the petitioner deserved to get for promotion to the post of Supervisor as she had the requisite criteria,

i.e. seniority-cum-merit in service. The Child Development Project Officer, Bhubaneswar, in pursuance of the amended Rules, 2007, prepared a gradation list of Anganwadi workers of the district. She, for the first time, came to know that in the said gradation list, her date of engagement as Anganwadi Worker had been wrongly recorded as 21.7.1983 instead of 31.10.1979 and the names of juniors had been reflected above her. Finding the said mistake in the gradation list, she made a representation on 25.1.2008 to correct the gradation list and record her date of engagement as 31.10.1979 as revealed from Annexure-2. She also obtained an experience certificate from C.D.P.O, Brahmagiri on 4.1.2008, who after verifying the record had issued an experience certificate that she was working as an Anganwadi Worker from 31.10.1979 to 31.5.1993. It is stated that she had lost all her service records, appointment letters and other connecting documents in 1999 Super Cyclone. As such, she could not produce the record before the Child Development Project Officer and requested to supply her copy of service records to establish her seniority in service. However, the CDPO on 28.1.2008 informed her that the documents could not be supplied to her as the same were eaten by white ants. She thereafter made another representation. However, without correcting the gradation list, promotion was given to the other persons from the post of Anganwadi Worker to the post of Supervisor on 5.5.2008 ignoring her seniority. She has also stated that opposite party no.5 was not qualified to be engaged as matric pass Anganwadi Worker in the scale of pay of Rs.175/- as she was appointed on 4.10.1982. She completed the "Madhyama" in Sanskrit (equivalent to HSC Examination) in the year 1999 in Regular Course. An Anganwadi Worker is to discharge her duty as full time and in such event how she could take admission in the course as regular students and attend the class. Therefore, the said certificate was obtained without due permission from the authority and by neglecting the full time duties.

The authorities had not taken any action as such. Similarly, opposite party no.6 passed the matriculation in the year 1993. She was engaged as matric pass candidate on 4.10.1982 in the pay scale of Rs.175/-. However, the pay scale of non-matric Anganwadi Worker at the time of engagement was only Rs.125/-. Therefore, the authorities had not taken into consideration all those facts and engaged them as Matriculation Anganwadi Workers on 4.10.1982. Copy of the matriculation certificates and engagement orders are annexed to the writ petition as Annexure-8 series. The matriculation certificate reveals that she passed matriculation in September, 1993. In view of the above, the petitioner has challenged the promotion order of opposite parties 4 to 10.

**5.** A counter affidavit has been filed by the District Social Welfare Officer, Khurda. In paragraph-10 thereof, he has reiterated the fact regarding non-availability of the records as the same were eaten by white ants as reported by C.D.P.O, Bhubaneswar (Urban). However, at paragraph-1 of the said counter affidavit it is stated that the petitioner was engaged as Anganwadi Worker at Bhubaneswar (Urban) on fresh selection and she was not transferred from Brahmagiri ICDS Project to Bhubaneswar (Urban) ICDS Project. She was paid honorarium upto 31.5.1983 and her honorarium was held up for June, 1983 at Brahmagiri ICDS Project as per acquaintance roll. She has neither worked at Brahmagiri nor at Bhubaneswar (Urban) from 1.6.1983 to 20.7.1983 as she herself admitted that she had joined at Bhubaneswar (Urban) on 21.7.1983. Hence, her seniority was counted from her date of joining on 21.7.1983 as a fresh candidate as there was no provision for approval of Anganwadi Worker. The copy of the acquaintance roll of Brahmagiri ICDS Project for June, 2006 is annexed as Annexure C/2 to show that the honorarium of the petitioner, namely, Kalyani Mohanty was held up for June, 1983. The said document reveals that the acquaintance roll had been checked in

accordance with the Treasury Manual by the Drawing Officer. He had also reiterated that since the petitioner joined service on 21.7.1983, she was not senior to opposite parties 4 to 10. It was also stated that opposite party no.6 had passed HSC Examination in the year 1982. At paragraph-15 of the counter affidavit, a copy of the HSC Examination of opposite party no.6 is annexed as Annexure D/2 which reveals that she has passed HSC Examination in the year 1993.

**6.** From the said counter affidavit, it appears that the said counter affidavit has been filed by a responsible officer, i.e. District Social Welfare Officer without verifying all the documents.

**7.** So far as opposite party no.5 is concerned, it is only stated that she had passed the Madhayama Examination equivalent to HSC Examination. Therefore, she is eligible for promotion to the post of Supervisor.

**8.** Opposite party no.8 has also filed the counter affidavit taking a stand that the petitioner was not in continuous service from 31.10.1979 to 21.7.1983. As it reveals from the record that she was in continuous service from 31.10.1979 to 31.5.1983 and thereafter, she resigned from the said post and joined afresh on 21.7.1983. Therefore, the petitioner joining date i.e. 21.7.1983 was considered afresh as the date of engagement where opposite party no.8 was engaged on 8.10.1982. Hence, the gradation list was prepared correctly and interference is not necessary. It is further stated that the engagement of the petitioner in the year 1979 is baseless and is not supported by any document. Therefore, the claim of the petitioner is liable to be rejected.

**9.** On the above narration of facts, it appears that District Social Welfare Officer, Khurda filed acquaintance roll of the petitioner for the month of June, 1983, i.e., Annexure C/2 which reveals that the petitioner was working as Anganwadi Worker prior to that. Therefore, the plea of opposite party no.2 that all the service records of

the petitioner were eaten by white ants is not accepted. The matriculation certificate of opposite party no.6 reveals that she appeared the matriculation examination in the year 1993 and the certificate thereof was issued to her. However, opposite party no.2 has stated in the counter affidavit that the petitioner had passed the HSC Examination in the year 1983 appears to be tale tell and the action of the authorities is to deprive the petitioner to get her past service.

**10.** Admittedly, in 1999 Super Cyclone, the costal belt of Odisha was badly affected. Therefore, the plea of the petitioner that she lost her all documents regarding certificates in that super cyclone is accepted.

**11.** It appears from the record that letter dated 31.7.1982 issued by the Government of India, Ministry of Social Welfare filed by opposite party no.2 reveals that an Anganwadi Worker is entitled to honorarium, distribute the equipment and materials to the anganwadi centre and discharge duty of literacy centres as per the advice of the Directorate of Adult Education/District Adult Education Officer. Mere procurement of equipment and materials for the anganwadi centre and the functional literacy centre is not enough. It must be ensured that the equipment and materials reach the anganwadi centres expeditiously. Special care should be taken to see that the place is selected in such a manner that children and women belonging to Scheduled Castes and Scheduled Tribes and other weaker sections of society can freely go and take the benefit of services at the anganwadi functional literacy centre. The said letter also stipulates that how trainings are to be given to the Anganwadi Workers and they have to select the beneficiaries of supplementary nutrition in case of children and enlistment of selected beneficiaries (both children and pregnant and nursing mothers) and also maintain the relevant Register and regarding treatment of minor ailments as mentioned in the guide book for Anganwadi Workers under Primary Health Care.

**12.** Similarly, another letter dated 2.12.1987 was issued by the Under Secretary to the Government of India in the Ministry of Human Resource Department of Women and Child Development wherein the Central Government has given clarification regarding facilities given to the Anganwadi Workers under the ICDS Project. The said letter reveals that on 19.3.1985 the Ministry of Social Welfare issued a letter wherein it had been laid down that an Anganwadi Worker should be given the benefit of her experience as Anganwadi Worker while considering her to direct recruitment to the post of Supervisor. A letter was issued on 15.9.1986 whereby increased scales of honorarium had been prescribed for Anganwadi Workers with 5 years and 10 years experience as Anganwadi Workers. It was also laid down that an Anganwadi Worker shifts from one State to another State her experience in the first State as Anganwadi Worker is not counted in the second State for the purpose of fixation of honorarium, age relaxation etc. It is, therefore, clarified that an Anganwadi Worker should be given the benefit of her total experience as an Anganwadi Worker and her experience is to be cumulative in that post; rather than experience as Anganwadi Worker in any one particular State or Project. The State Government, Union Territories should therefore take into account the experience of an Anganwadi Worker in a previous ICDS Project and in other States as well, while considering her eligibility for appointment to the post of Supervisor and while fixation of the scale of honorarium on her first appointment as an Anganwadi Worker in an ICDS Project (Emphasis supplied).

**13.** In view of the above clarification of the Central Government, it is crystal clear that the past service of an Anganwadi Worker is to be considered cumulatively while considering her case for the post of Supervisor.

**14.** As stated above, the Government of Odisha in Women and Child Development Department have framed a set of Rules under

Article 309 of the Constitution of India, namely, Orissa Children and Women's Welfare Service Rules, 1989 for recruitment, promotion and filling up vacancies in junior grade of services by promotion. The said Rule was amended in the year 2007. For better appreciation, the said Rules are excerpted below:

"The posts in Junior Grade of Service shall be filled up in the following manner.

(a) Thirty per cent of the total number of vacancies arising in a recruitment year shall be filled up in accordance with Rule 7 by way of direct recruitment.

(b) The remaining vacancies shall be filled up in accordance with the provisions of Rule 8 by way of selection in the following manner.

(i) nor more than thirty per cent from Anganwadi Workers of the District and;

(ii) remaining forty per cent of vacancies from amongst the lady village level worker (LVLW) of the district.

Provided that in case of non-availability of sufficient eligible candidates for promotion by way of selection under Clause (4) the vacancies remaining unfilled during the year shall be filled up by way of direct recruitment."

Rule 6(2) – Selection of candidates for direct recruitment under Clause (1) of Sub-clause (1) the selection from amongst the eligible Anganwadi Workers and Lady Village Workers under Clause (b) of Sub-Rule (1) to a post. In the junior grade of service shall be made through a selection committee consisting of;

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|-------------------------------------|---|------------------|
| (a) Collector of the District       | - | Chairman         |
| (b) Chief District Medical Officer  | - | Member           |
| (c) District Welfare Officer        | - | Member           |
| (d) District Social Welfare Officer | - | Member Secretary |

Amendment Rule 2007 (Rule-8) says that in order to be eligible for appointment to the cadre of junior grade of service by selection.

8(1)(a) - An Anganwadi Worker must have

(i) passed at least the H.S.C. or equivalent examination from Broad of Secondary Education, Orissa or equivalent Board, Council and

(ii) rendered on 1<sup>st</sup> day of January of recruitment year, minimum of 10 years of service as such

xxx                      xxx                      xxx

8(2) - A list of eligible candidates shall be prepared in accordance with Sub-rule (3) and placed before the selection committee for consideration.



8(3)(a) the appointment to junior grade service shall be made by a selection from Anganwadi Workers on the basis of seniority.

If Selection Committee finds any candidate not suitable, the same shall be recorded in proceeding of the meeting.

8(4)(b) The final list of Anganwadi Workers selected for appointment as Supervisors prepared on the basis of seniority and suitability in pursuance of Clause (a) of Sub-Rule (3) shall be submitted to the Collector for approval.

8(4)(c) The list shall remain valid for a period of one year from the date of such approval.”

**15.** In view of the above and since opposite parties 2 and 3 have not produced the service records of the petitioner and C.D.P.O., Brahmagiri had issued an experience certificate in favour of the petitioner on 4.1.2008 which reveals that the petitioner was working as Anganwadi Worker from 31.10.1979 to 31.5.1993 as per the acquaintance roll and she had been shifted from one place to another ICDS Project as per the order of the authority and there was no proceeding or any allegation against the petitioner, it cannot be said that she was engaged afresh in July, 1983 and her engagement shall be counted from that date, i.e. 21.7.1983.

**16.** Accordingly, this Court directs opposite parties 2 and 3 to correct the service record of the petitioner by accepting her engagement as Anganwadi Worker from 31.10.1979 instead of 21.7.1983 and correct the gradation list of the petitioner from Anganwadi Worker to the post of Supervisor accordingly.

The writ petitions are accordingly disposed of.

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Sanju Panda, J.

**High Court of Orissa, Cuttack**  
**Dated 26<sup>th</sup> April, 2013/ Pradeep**