

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.14851 of 2010

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

Sudhamayee Dash,
W/o Maheswar Satpathy,
Anganwadi Worker, Bidanasi-1,
(Under ICDS Project, Cuttack City-II)
Cuttack-14, Dist: Cuttack

... Petitioner

-Versus-

Chief Secretary, Government of Odisha,
Secretariat Building, Bhubaneswar,
Dist: Khurda and others

... Opp. Parties

For Petitioner : Mr. Maheswar Satapathy
For Opp. Parties : Mr.S.Mishra,
Addl. Government Advocate
(For Opp. Parties 1 to 7)

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 15.05.2013

B.N.Mahapatra,J.

This writ petition has been filed with the following
prayers:-

“Under the above circumstances, the humble
petitioner prays that your Lordships may graciously be
pleased to admit this writ petition, issue notice to the
opposite parties and be further pleased to issue Rule

NISI calling upon the opposite parties to show cause as to why the petitioner shall not be promoted to the post of Lady Supervisor with retrospective effect from 5.2.2008 with all other consequential service benefits vide the order No.289/SW, dated 5.2.2008 of the Collector, Cuttack when juniors to the petitioner were promoted basing on the date of joining of the petitioner on 20.02.1982 quashing Annexures-6,19,25 and 30 and if the Opp. parties fail to show cause or show insufficient cause, the Rule may be made absolute against the Opposite parties and the Opp. party No.4 and 5 may be directed to give promotion to the petitioner as Lady Supervisor with retrospective effect from 5.2.2008 with all other consequential service benefits;

And directing the Opp. party Nos.4 and 5 to make necessary correction of the final gradation list of Anganwadi workers of Cuttack District fixing the inter-se-seniority of the petitioner at Sl.No.8/12 and/or just below the December, 81 batch and just before the February, 82 batch and not at serial No.366 basing on her confirmed date of joining on 20.2.82 as A.W.Ws instead of 29.6.1990 deleting the date of joining on 20.2.82 from the Remark Column of the final gradation list quashing Annexure-6 vide letter No.1764/SW, dated 4.6.2010 of the Collector, Cuttack and by any other communication by any authority in this matter and also quashing Annexure-30 vide letter No.7499, dated 24.03.2009 and Annexure-19 vide

copy of letter No.289/SW dated 5.2.2008 of the Collector, Cuttack;

And directing the Opp. parties No.4 and 5 to take immediate action to rectify the manipulations in imposing the date of joining of December, 81 batch and February, 82 batch on 5.12.81 and 26.2.82 and for reflecting the exact qualifications of the concerned AWWs and changing of their dates of birth and joining after verification of the certificate in the final gradation list with specific direction to rectify the deviation of ORV Act, 1975 wherein one Anganwadi worker Opp. party No.11 was accommodated and regarding her marital status as per Rules, 7, Sub-Rule (e) and for all other rectifications in the final gradation list as per the contentions in this writ petition and holding and quashing Annexures-24, 25, 26 and 27 series are not applicable to the petitioner;

And be pleased to direct the Opposite party No.4 and 5 not to take any other step for promotion of any batch of AWWs either being matriculates or on contract basis;

And/or pass any appropriate Order for stay of further proceedings and not to regularize the promotions/appointments of AWWs on contract basis, as per order No.2795, dated 4.9.2009 vide Annexure – 23 and to stay further promotions as Lady Supervisor on contract or regular basis till disposal of the case;

And be further pleased to direct the Opposite party No.4 and 5 not to take any coercive action

against the petitioner during the pendency of this writ petition;

And/or be pleased to issue any appropriate order(s), direction(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case for ends of natural justice, equity and substantial justice in this case;

And for this act of kindness, the petitioner shall as in duty bound ever pray."

2. Mr. M. Satapathy, learned counsel appearing on behalf of the petitioner submitted that the petitioner was initially appointed as an Anganwadi Worker on 20.02.1982 in Athagarh ICDS project of Cuttack district and by virtue of order of the Collector passed on recommendation of the Sub-Collector, Athagarh vide memo No.3019/SW dated 27.06.1990 she was transferred to Cuttack City ICDS project. She was relieved vide memo No.388 dated 28.06.1990 by the CDPO, Athagarh and joined at Bidanasi-1 (Gopal Sahi) Anganwadi Centre on 29.06.1990 under the CDPO, Cuttack. The petitioner has been enjoying her seniority and all the facilities of the post till date as per Annexures-8, 9, 10 series, 11, 12, 13 and 15 series. It was submitted that the petitioner was transferred on the basis of representation dated 25.05.1990 made to the Collector, Cuttack, who is Chairman of the ICDS project of Cuttack district. The Collector, Cuttack and Sub-Collector, Athagarh, were all

aware of the guideline of Government of Odisha letter dated 10145/CD dated 31.12.1984 (Annexure-25) of the Director of C.D. and ex-Officio Additional Secretary to the Government in the C.D. and R.R. Department.

3. Mr. Satapathy submitted that there is no stipulation in the order of transfer that the past service of the petitioner from 20.02.1982 till 28.06.1990 shall not be counted for the purpose of fixation of her seniority. Had the petitioner not been transferred from Athagarh ICDS project to Cuttack City ICDS project she could have been promoted with other batch-mate from February' 82 to the post of Lady Supervisor vide order No.289 dated 05.02.2008 of Collector, Cuttack and would not have preferred to come to Cuttack ICDS project with breakage of service.

Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Food Corporation of India & Anr. Vs. Ram Kesh Yadav & Anr.*, AIR 2007 SC 1421, it was submitted that since the Collector transferred the petitioner from Radhagobindapur Anganwadi Centre under Athagarh ICDS project to Bidanasi-1 Gopala Sahi Anganwadi Centre under Cuttack ICDS project without informing the petitioner that the service rendered by her in Athagarh ICDS project shall not be counted for the purpose of fixing seniority, the service rendered by the petitioner in Athagarh ICDS project shall be taken into consideration for the purpose of fixation of her seniority.

4. Mr.Satapathy referring to his Written Notes of Arguments submitted that the petitioner initially approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.361(C) of 2009 and as directed by the learned Tribunal vide order dated 09.4.2009 the petitioner filed W.P.(C) No.6328 of 2009 challenging inter alia final gradation list of Anganwadi Workers of Cuttack district for fixing the inter se seniority of the petitioner at Sl. No.8/12 or after December 81 batch and just before February'82 batch on the basis of initial date of joining of the petitioner as 20.02.1982 instead of 26.02.1982. It was submitted that date of joining of the petitioner had been taken by the opposite parties as 26.02.1982 arbitrarily by manipulation. However, the Revenue Divisional Commissioner, Cuttack has confirmed the date of joining of the petitioner as 20.02.1982 instead of 26.02.1982. It was further submitted that because of fixation of the date of joining of December' 81 batch as 05.12.1981 and February' 82 batch as 26.02.1982, four Anganwadi Workers (opposite parties 8, 9, 10 and 11) were shown as seniors to the petitioner and promoted to the post of Lady Supervisor, vide order No. 289 dated 05.02.2008 of the Collector, Cuttack. Therefore, the petitioner is entitled to be promoted with retrospective effect from 05.02.2008 under Order No.289 dated

05.02.2008 of Collector, Cuttack and also entitled to get the other consequential service benefits till date.

5. Mr. Satapathy further submitted that while fixing the date of joining of the opposite parties 8, 9, 10 and 11 of Anganwadi Workers of December' 81 batch and February' 82 batch one Anganwadi Worker (opposite party No.11) was promoted in Scheduled Caste quota and another Prafuli Dei (SC) was placed at Sl. No.36 and her date of joining has been mischievously taken as 29.03.1982 as because she was under-aged on 21.12.1981, i.e., at the time of her entry, she had undergone training in December' 81, who was 17 years 9 months 27 days. It is further alleged that one Smt. Shanti Kumari Sahoo (SC) was arbitrarily and illegally taken in the unreserved position No.1 in the promotion list to accommodate one Manjulata Das (SC) with oblique purpose by deviating ORV Act, 1975. Mr.Satapathy emphatically submitted that by a conspiracy in a "racket in the Scam of promotion fixing", the petitioner was deprived of her promotion to the post of Lady Supervisor.

6. It was further submitted that the promotion to the post of Lady Supervisor was given by pick and choose method by imposing date of joining of December'81 batch and February'82 batch and March'82 batch on 05.12.1981, 26.02.1982 and 29.03.1982 respectively contrary to the date of joining recorded in the entry stage. The objection of the petitioner dated 12.11.2008 was clandestinely suppressed during

preparation of gradation list of Anganwadi Workers of Cuttack district. The dates of joining of the employees have been changed by taking the signatures of the Anganwadi Workers, which is contrary to law. Hence, the entire gradation list is illegal, arbitrary and liable to be quashed. One Smt. Jayanti Kar, whose name appears against Sl. No. 103 of the gradation list, is under-aged and she has been promoted as Lady Supervisor. One Manjulata Das (O.P. No.11) has been promoted as Lady Supervisor, who had married to one Alekha Das, whose wife Smt. Sandhya Mallik, HLV is working under the State Government. Such matter has not yet been enquired into by the Government. Another Smt. K.Routrary, OBC against Sl. No.111 of the gradation list has married to one Bhagaban Behera, whose wife Belarani Sahoo is alive. In that case also, no action has yet been taken.

7. It was further submitted that the entire exercise regarding giving promotion to the posts of Lady Supervisor beginning from 05.02.2008 till date, either on regular basis or on contractual basis has been pioneered by one Sri Manoj Kumar Mishra, Statistical Assistant of the office of D.S.W.O., Cuttack who has been continuing on deputation since about 20 years, in spite of his transfer on several occasions. Mr.Mishra is also mischievous, who is responsible for all the manipulations. One Smt. Arundhati Tripathy, a Graduate Anganwadi Worker along with three others were promoted ignoring regular

Anganwadi Workers including the petitioner. Otherwise the petitioner would have also been promoted vide order No.1245 dated 30.03.2010. The regular Anganwadi Workers were promoted at a later stage vide Order No.3680 dated 29.12.2010.

8. Mr. Satapathy, raising complaint against Mr. M.K. Mishra submitted that Mr. Mishra has played a mischievous role for which irregularity was done in respect of the Mini Anganwadi Workers, namely, Premalata Bhakta, Sabitri Mishra, Pramila Mishra and Kalpalata Routray. At the time of preparation of final gradation list, objections were invited vide letter dated 05.11.2007 by DSWO, Cuttack pursuant to which the petitioner on 12.01.2008 under Annexure-17 filed objection but the said objection was suppressed and by a conspiracy against the petitioner the undeserving A.W.Ws. were promoted as Lady Supervisors. Applying his mastermind, Mr. Mishra, changed the gradation list at the time of preparation of draft gradation list from time to time till the final gradation list was prepared. Due to mischief of Mr. Mishra, in letter No.1401 dated 31.03.2008 of the Collector, Cuttack, the date of joining of the petitioner was shown 29.06.1990. Mr. Misra has been enjoying the house rent facility @ 20% per month by falsely filing his statement that he has been staying in Arunodaya Nagar in Cuttack City, who is the epitome of all types of mischievous activities during 20 years.

9. Mr.Satapathy placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550; *Rama Chandra Singh Vs. Savitri Devi and others*, (2003) 8 SCC 319; and judgment of this Court in the case of *Umesh Chandra Chinera Vs. Chairman & Managing Director, Bharat Petroleum Corpn. and others*, 2012 (II) ILR CUT 604 submitted that since the opposite parties practised fraud while preparing final gradation list, the same is liable to be quashed.

10. In W.P.(C) No.6368 of 2009, Collector, Cuttack misled this Court in filing additional affidavit dated 21.01.2010 stating therein the date of joining of the petitioner as 26.02.1982 instead of 20.02.1982. The Collector, Cuttack has arbitrarily and illegally fixed the seniority of the petitioner at Sl. No.336 in the final gradation list by ignoring the entire period of service of the petitioner under Athagarh ICDS project from 20.02.1982 to 29.06.1990 in spite of the unbreakable service of the petitioner, which is not sustainable in law.

It was further submitted that the guidelines vide letter No.14105/CD dated 31.12.1984 issued by the Government of Orissa in the Department of CD and RR with regard to transfer of Anganwadi Worker have no legal sanctity. The Collector, Cuttack vide order No.3675 dated 29.12.2010 has illegally promoted the graduate Anganwadi Workers on contractual basis debarring the regular Matriculate Anganwadi

Workers. The Matriculate Anganwadi Workers were promoted vide order No.3680 dated 29.12.2010 of the Collector, Cuttack wherein the juniors to the petitioner were also promoted.

11. As per order of this Court dated 27.09.2010 passed in Misc. Case No.13984 of 2010 arising out of W.P.(C) No.14851 of 2010, there was an interim protection to the effect that “Any selection/promotion made shall be subject to the result of the writ petition.” Even if notices were duly served on opposite parties, all of them have not appeared for obvious reason that they have been unduly promoted. The order of this Court dated 28.03.2012 that “one post of lady supervisor shall be kept reserved till the next date”, which is in vogue.

12. Concluding his argument, Mr. Satapathy, learned counsel for the petitioner submitted that Final gradation list of Anganwadi Workers of Cuttack district is required to be modified/rectified/reviewed/recast after thorough enquiry by an impartial authority and the petitioner is entitled to be promoted to the post of Lady Supervisor with retrospective effect from 05.03.2008 with all consequential service benefits.

13. Per contra, Mr. Somanath Mishra, learned Additional Government Advocate submitted that the petitioner has been transferred from Athagarh I.C.D.S. Project, Athagarh to Cuttack City I.C.D.S. Project, Cuttack on her representation dated 25.05.1990 (Annexure-7). The Sub-

Collector, Athagarh passed order dated 27.06.1990 (Annexure-8) to adjust the petitioner in any place of Cuttack City ICDS Project. The Collector in his order neither accepted the prayer of the petitioner to protect her period of service rendered in Athagarh I.C.D.S. Project for the purpose of maintaining her seniority nor had protected her salary. Referring to Annexure-10, it was submitted that in pursuance of the District Office order No.3016 dated 27.06.1990 the petitioner was relieved from Radhagovindapur Anganwadi Centre with immediate effect from 28.06.1990 afternoon under Annexure-9 to join in the new place of posting in Cuttack City I.C.D.S. Project under Annexure-3. Referring to the letter of the C.D.P.O., Cuttack dated 29.06.1990 (Annexure-10 series), Mr. Mishra submitted that the petitioner was allowed to join in Bidanasi-I Biswal Sahi Anganwadi Centre at a monthly salary of Rs.275/- and it was made clear that her appointment was temporary. Further placing reliance upon the letter of CDPO, Athagarh, Mr. Mishra submitted that the last honorarium drawn by the petitioner as Anganwadi Worker of Radhagovindapur Anganwadi Centre under Athagarh I.C.D.S. Project was Rs.300/- per month whereas in I.C.D.S. Project, Cuttack she was adjusted at an honorarium of Rs.275/-. Thus, her pay was not protected.

14. Further, placing reliance on the letter dated 24.03.2009 (Annexure-30) issued by the Under Secretary to Government,

Department of Women & Child Development addressed to the Collector, Cuttack regarding pay fixation of the petitioner-Sudhamayee Dash, Anganwadi Worker, Bidanasi-I Anganwadi Centre, Mr. Mishra submitted that the pay of the petitioner would be counted from 29.06.1990 the date on which she joined as Anganwadi Worker in Bidanasi-I Anganwadi Centre under Cuttack (Urban) ICDS Project.

15. Mr. Mishra submitted that it is not a fact that there is any illegality in promotion of Anganwadi Workers. The allegation of scam and functioning of a racket in the matter of promotion of Anganwadi Worker to the post of Supervisor is baseless as this has been done strictly adhering to the existing Rules and instructions of the State Government.

A bare reading of the Notification No.2323 dated 8.10.2007 in W & C.D. Deptt. would reveal that for preparation of gradation list of Anganwadi Worker ICDS wise and preparation of District level gradation list would reveal that, an Anganwadi Worker, joining earlier in any ICDS Project, if found suitable will be promoted to the post of Supervisor on the basis of seniority adjudged in the District gradation list.

16. Mr. Mishra further submitted that the petitioner joined as Anganwadi Worker on 20.02.1982 under Athagarh ICDS Project. On consideration of her representation, she was adjusted in Cuttack City ICDS Project w.e.f. 29.06.1990. As she was not a Govt. Servant but a

volunteer with prescribed Honorarium, she was adjusted in Cuttack City ICDS Project when the Rule for such transfer was not in existence. Her adjustment at Cuttack City ICDS project is therefore a fresh case, where her date of joining at Cuttack City ICDS Project, i.e., 29.06.1990 is bound to be the cutoff date as Anganwadi Worker working in the said project. Hence even though her date of joining is 20/02/1982 in Athagarh ICDS project, for the purpose of promotion her date of joining at Cuttack City ICDS Project is the rational cut off date, which has been clarified by Govt. in W & C.D. Deptt. in their letter dated 24.03.2009. It is pertinent to mention here that, Govt. in W. & C.D. Deptt. in their letter No.14105, dated 31.12.1984 has categorically instructed that transfer of Anganwadi Worker from their centre is not permissible. Hence, the claim of the Petitioner that she was transferred and posted to Cuttack City ICDS Project w.e.f. 29.06.1990 is not supported by law and her adjustment at Cuttack ICDS Project pursuant the order of the Collector is an adjustment and a fresh beginning by letter and spirit where no retrospective seniority can be claimed for the past Voluntership. Accordingly her date of joining has been considered from the date of joining at Cuttack City ICDS Project and in the DPC, dated 23.11.2010, she was not found senior enough to be considered for promotion to the post of Supervisor.

17. On the rival, factual and legal contentions of the parties, the following questions fall for consideration by this Court:

- (i) Whether adjustment of the petitioner working in Radhagobindapur Anganwadi Centre under Athagarh ICDS Project in Bidanasi-1 (Gopal Sahi) Anganwadi Centre under ICDS project Cuttack city by order of the Collector dated 27.06.1990 consequent upon representation of the petitioner and recommendation of the Sub-Collector, Athagarh to adjust the petitioner in any place of Cuttack City ICDS project is legally valid ?
- (ii) Whether the Collector in his order dated 27.06.1990 directing adjustment of the petitioner working under Athagarh I.C.D.S. Project in any place of Cuttack City ICDS Project has protected petitioner's service rendered in Athagarh ICDS project during the period from 20.02.1982 to 27.06.1990 for the purpose of maintaining her seniority as requested in her representation dated 25.05.1990?
- (iii) Whether the period of service rendered by the petitioner under Athagarh ICDS project during the period from 20.02.1982 till her engagement in Cuttack ICDS project on 29.06.1990 shall be taken into consideration for the purpose of fixation of her seniority to promote her to the post of Lady Supervisor and for all consequential financial service benefits?
- (iv) Whether the petitioner is entitled to be promoted to the post of Lady Supervisor with retrospective effect

from 05.02.2008 with all other consequential service benefit fixing the inter se seniority of the petitioner at Sl.No.82 i.e., just after December 1981 batch and just before February, 1982 batch and not at Sl.No.336 basing on her date of joining on 20.02.1982 as Anganwadi Worker instead of 29.06.1990?

- (v) Whether the final gradation list of Cuttack district is required to be reviewed/rectified/modified/re-cast after thorough enquiry with regard to various allegations made by the petitioner in the writ petition including allegation of violation of ORV Act, 1975, showing four Anganwadi Workers as senior to the petitioner, who were in fact juniors to the petitioner, regularization of promotion/appointment of Anganwadi Workers on contract basis and the allegation against Mr. M.K. Mishra, Statistical Assistant and to grant relief to the petitioner as claimed by her in the writ petition?

18. Question No.(i) is as to whether adjustment of the petitioner working in Radhagobindapur Anganwadi Centre under Athagarh ICDS Project in Bidanasi-1 (Gopal Sahi) Anganwadi Centre under ICDS project Cuttack City, Cuttack is valid.

19. The petitioner was initially appointed as Anganwadi Worker on 20.02.1982 in Radhagobindapur Anganwadi Centre under Athagarh ICDS Project in Cuttack District. On her representation she was adjusted

in Bidanasi-1 Gopal Sahi Anganwadi Centre under Cuttack City ICDS Project by order of the Collector, Cuttack dated 27.06.1990.

Now, the question arises whether such adjustment of the petitioner is permissible and valid in law. The specific stand of the opposite party-State is that there is no provision for transfer of Angwanwadi Worker from one service centre to another service centre even in the same I.C.D.S. project. Referring to the guideline dated 31.12.1984 issued by the Government of Odisha in C.S. and R.R. Department for transfer and posting of Anganwadi Workers, Mr.S.Mishra submitted that the adjustment of the petitioner, who was working in Radhagobindapur Anganwadi Centre under Athagarh ICDS project in Bidanasi-1 Gopal Sahi Anganwadi Centre in Cuttack ICDS project is not valid. Therefore, the adjustment of the petitioner in Bidanasi-1 Anganwadi Centre under Cuttack City ICDS project can at best be taken as her fresh appointment in Cuttack ICDS project.

Despite opportunities given to the petitioner she could not draw the attention of this Court to any guideline, notification or regulation to show that an Anganwadi Worker can be transferred from one Anganwadi Centre to another Anganwadi Centre even in same project. Similarly, none of the parties has brought to the notice of this Court any such guideline, notification or regulation authorizing Collector to transfer one Anganwadi Worker from one Anganwadi Centre to

another, even in the same ICDS project much less from one ICDS project to another ICDS project.

20. At this juncture, it will be appropriate to reproduce here the guideline dated 31.12.1984 issued by the Government of Odisha in CD & RR Department for transfer and posting of Anganwadi Worker.

“Government of Orissa
C.D. & R.R. Department
No.14105/CD. Bhubaneswar Dated 31.12.84
V-ICES.23/84.

From:

Sri S.K. Menon, IAS,
Director, C.D. & Ex-Officio-
Addl. Secretary to Government

To

All Child Development Project Officer,

Sub: Guideline for transfer and posting of
Anganwadi Workers.

Madam,

It has been brought to the notice of this Department that the Anganwadi Workers are being transferred by the C.D.P.O's within the Project. Under the Guidelines issued in this Department letter No.8947 CD dated 27.08.83 selection of the Anganwadi Workers is made from the resident of villages in which the Anganwadi Centres are located. The intention of making such a selection is to ensure that the programme is accepted by the community. A local resident, who is a member of the community, will carry much greater credibilities than anyone from outside. Moreover, they would also in the long be able to elicit the participation of the Members of the Community in the Project. Transfer of Anganwadi Workers from their own village or community,

would defeat the purpose of selecting a local lady. Moreover, Anganwadi workers are not Government servants. They are honorary workers who receive only an honorarium. In the light of these considerations, the transfer of Anganwadi workers from their centre is not permissible. ‘

You are therefore, directed not to transfer the Anganwadi Workers from one Centre to another within the project for any reasons. If the Anganwadi Worker is found unsuitable or does not discharge her duty properly or if serious allegations are made against her services, of the Anganwadi Worker should be terminated with the prior written orders of the S.D.O., who is the Chairman of the Selection Committee and fresh appointment should be made according to the procedure laid down.

Yours faithfully,

Sd/-

Director

C.D. & R.R. (C.D.) Department”

21. Thus, an Anganwadi Worker cannot be transferred from one Anganwadi Centre to another even within the same project for the reasons stated in the aforesaid Guideline dated 31.12.1984 issued in the matter of transfer and posting of Anganwadi Workers. The petitioner made representation to the Collector, Cuttack through concerned authority to consider her case sympathetically and transfer her to any Anganwadi Centre under Cuttack City ICDS project. The reasons assigned in the said representation requesting her transfer from Athagarh ICDS project to Cuttack ICDS project are that she was working as Anganwadi Worker in Radhagobindapur Anganwadi Centre under

Athagarh ICDS project for 9 years; she was deprived of giving service to her old mother in-law, dependant unmarried brother in-law and sister in-law; her husband is a Lawyer practising in Cuttack; her eldest son was a student of Ravenshaw Collegiate School, who is deprived of getting her love and affection, her small kid is deprived of getting love and affection of father and elder brother. Considering the request of the petitioner, the Collector, Cuttack directed to adjust the petitioner in any Anganwadi Centre under Cuttack ICDS project.

Since transfer of an Anganwadi Worker from one Anganwadi Centre to another centre, even within the same ICDS project, is not permissible and the Collector of a district is not authorized by any guideline, circular, notification, regulation to transfer any Anganwadi Worker from one Anganwadi Centre to another much less from one I.C.D.S. Project to other I.C.D.S. Project, the adjustment of the petitioner, who was working in Radhagobindapur Anganwadi Centre under Athagarh ICDS project, in Bidanasi-1 Gopala Sahi Anganwadi Centre under Cuttack City ICDS project by order of Collector dated 27.06.1990 is not valid in law. At best, it can be in the given circumstances treated as fresh engagement in Cuttack ICDS project. Therefore, for all purposes, the seniority of the petitioner can be taken from her date of joining, i.e., 27.06.1990 in Bidanasi-1 Gopala Sahi Anganwadi Centre under Cuttack City ICDS project. Consequentially,

claim of any benefit on the basis of such illegal transfer is also not permissible in law.

22. Question Nos.(ii), (iii) and (iv) being interlinked, they are dealt with together.

Undisputedly, in the present case the petitioner was adjusted in Bidanasi-1 Gopal Sahi Anganwadi Centre on her representation made on 25.05.1990, wherein she had described her difficulties to work in the Anganwadi Centre of the Athagarh ICDS Project. In the said representation, she had also requested to protect/secure her period of service rendered in the Athagarh ICDS Project. The Collector, Cuttack on the recommendation of the Sub-Collector, Athagarh considered the representation of the petitioner and directed vide order dated 27.06.1990 to adjust the petitioner in any place of Cuttack City ICDS Project. The said order does not show that the petitioner's request to protect the period of service she rendered in Athagarh ICDS Project for any purpose has been considered by the Collector, Cuttack in her favour. Thus, the Collector, Cuttack has allowed only prayer of the petitioner i.e. her request to transfer her from I.C.D.S. Project Athagarh to I.C.D.S. Project Cuttack City and rejected her other prayer. It is also pertinent to note that on receiving the order of adjustment dated 27.06.1990, wherein it was directed to adjust the petitioner in any place of Cuttack City ICDS Project, the petitioner has

not made any grievance with regard to non-consideration of her prayer to protect the period of service rendered by her in Athagarh. It was open for her not to accept the order of the Collector dated 27.06.1990, wherein the period of service rendered by the petitioner in Athagarh ICDS Project has not been protected or preserved but the petitioner accepted such order of transfer without raising any objection.

23. At this stage, it is relevant to quote the order of the Collector, Cuttack dated 27.06.1990 (Annexure-8):

“DISTRICT OFFICE CUTTACK
(SOCIAL WELFARE SECTION)
No._____/SW DT 27-06-90

ORDER

Consequent upon the representation of Smt. Sudhamayee Dash, Anganwadi Worker of Athagarh ICDS Project duly forwarded and recommended by the Sub-Collector, Athagarh, Collector has been pleased to adjust Smt. Dash in any place of Cuttack City ICDS project with immediate effect:

By order of Collector
Sd/-
District Social Welfare
Officer, Cuttack”

24. This Court further noticed that the C.D.P.O., Cuttack City vide her letter dated 29.06.1990 issued to the petitioner intimating her that she was engaged in Bidanasi-I Gopal Sahi Anganwadi Centre on temporary basis. Her engagement is not permanent. In the said letter, it

was further noted that petitioner was engaged at a salary of Rs.275/- per month. The letter of the CDPO reveals that the last honorarium drawn by the petitioner was at Rs.300/- per month. Thus, despite reduction of salary, the petitioner accepted the transfer order issued by the Collector, Cuttack without raising any objection.

25. Needless to say that any action of public authority de hors the public policy and/or not supported by any provisions of law/guideline/circular/notification lacks legal sanction and therefore does not confer any enforceable right in law.

In the instant case, the Collector, Cuttack has no power to transfer the petitioner from Radhagobindapur Anganwadi Centre under I.C.D.S. Project Athagarh to Bidanasi-I Gopal Sahi Anganwadi Centre under I.C.D.S. Project, Cuttack (Rural) and the order passed by the Collector is also contrary to the guideline No.14105/CD, Bhubaneswar dated 31.12.84 issued by Government of Odisha in CD and RR Department, which clearly rules out any relief as claimed by the petitioner.

26. Law is well-settled that an order passed by the Court must not only be inconsistent with the fundamental rights guaranteed by the Constitution, but also it cannot even be inconsistent with the substantive provision of the relevant statute. [See *A.B. Bhaskar Rao vs. Inspector of Police, CBI, Bisakhpatnam*, (2011) 10 SCC 259]

27. Needless to say that Court is the custodian of law and it cannot pass order contrary to law. High Court under Article 226 of the Constitution is required to enforce the rule of law and not pass an order or direction which is contrary to law. [See *Karnataka State Road Transport Corpn. vs. Ashrafulla Khan and others* (2002) 2 SCC 560]

28. At this stage, it will be relevant to refer to the letter dated 24.03.2009 (Annexure-30) issued by the Under Secretary to Government, Department of Women & Child Development addressed to the Collector, Cuttack regarding pay fixation/ seniority of the petitioner-Sudhamayee Dash, Anganwadi Worker, Bidanasi-I Anganwadi Centre, which shows that the seniority of the petitioner will be counted from 29.06.1990 the date on which she joined as Anganwadi Worker in Bidanasi-I Anganwadi Centre under Cuttack (Urban) ICDS Project. For ready reference, the said letter is reproduced below:

“Government of Orissa
Women & Child Development Department

No.IV-ICDS-II-91/08 7499/WCD, Dt. 24.03.09

From:

Smt. S. Nanda
Under Secretary to Govt.

To

The Collector, Cuttack

Sub: Fixation of seniority of Smt. Sudhamayee Dash, AWW, Bidanasi-I AWC.

Sir,

In inviting a reference to your letter No.444/SW dt. 20.02.08 on the above subject, I am

directed to clarify that the seniority of Smt. Sudhamayee Dash, AWW, Bidanasi-I AWC will be counted from 29.06.1990 the date on which she joined as AWW in Bidanasi-I AWC under Cuttack (Urban) ICDS Project.

Yours faithfully
Under Secretary to Govt.”

29. It is pertinent to mention here that in the final gradation list though the date of joining of the petitioner is shown as 26.02.1982 in Athagarh ICDS Project in the remarks column it is noted that “joined at Athagarh on 26.2.1982 and relieved from Athagarh ICDS project on 28.6.90 vide order No.3015 dated 27.6.90 of Collector, Cuttack and joined on 29.06.90 Cuttack ICDS.”

30. In the case of *Ram Kesh Yadav (supra)*, the Food Corporation of India introduced a Scheme for granting compassionate appointment to dependants of departmental workers, who died while in service or who were retired by FCI on medical grounds, vide Circular dated 2.2.1977. By a subsequent circular dated 3.7.1996, the said benefit of compassionate appointment was extended to dependants of departmental workers who sought voluntary retirement on medical grounds at their own request, subject to the conditions stipulated in the said Circular. In that case, the Hon’ble Supreme Court held that when an offer is based upon any condition, the offeree has the choice of either accepting the conditional offer or refusing the conditional offer, or making a counter offer. But

what the offeree cannot do, when an offer is conditional is to accept a part of the offer which results in performance by the offerer and then refuse the condition subject to which the offer is made.

In the present case, unlike the case of *Ram Kesh Yadav (supra)* there is no scheme, rule, regulation or guideline issued by the Government authorizing the Collector to transfer one Anganwadi Worker from one Anganwadi Centre to another Anganwadi Centre protecting the period of service rendered in the earlier centre for the purpose of fixation of seniority. In other words, there is no such circular, scheme, rule, guideline or regulation under which an Anganwadi Worker can be transferred from one Anganwadi Centre to another much less protecting her service rendered in earlier Anganwadi Centre for the purpose of fixation of seniority. On the contrary, as per the guideline dated 31.12.1984, issued by the Government of Odisha in C.D. and R.R. Department, the transfer of Anganwadi Worker from one centre to another is not permissible for the reasons stated therein. This Court has already held that the engagement of the petitioner as Anganwadi Worker in Gopala Sahi, Bidanadi-I Anganwadi Centre is not valid in law. Therefore, the decision of the Hon'ble Supreme Court in the case of *Ram Kesh Yadav (supra)* is of no help to the petitioner.

31. In view of the above, I am of the considered view that the Collector, Cuttack passed order dated 27.06.1990 directing adjustment

of the petitioner in any place of Cuttack City ICDS Project without protecting her service rendered in the earlier place of posting in Athagarh I.C.D.S. Project. Therefore, the period of service rendered in Athagarh I.C.D.S. Project cannot be taken into consideration for the purpose of fixation of petitioner's seniority. The petitioner's seniority shall be counted from 29.06.1990, the day when she joined as Anganwadi Worker in Bidanasi-I Anganwadi Centre under Cuttack ICDS Project. Petitioner's prayer relating to her promotion from an anterior point of time does not merit consideration. Thus, the petitioner is not entitled to be promoted to the post of lady Supervisor w.e.f. 05.02.2008 with any consequential service benefit fixing her inter se seniority at Sl.No.82 i.e. just after December, 1981 batch and just before February, 1982 batch and not at Sl.No.336 basing her date of joining as 20.02.1982 instead of 29.06.1990.

32. Question No.(v) is whether the final gradation list of Cuttack district is required to be reviewed/rectified/modified/re-cast after thorough enquiry with regard to various allegations made in the writ petition including the allegation against Mr. M.K. Mishra, Statistical Assistant to grant relief to the petitioner as claimed by her in the writ petition.

33. In view of the answer given to question Nos.(i), (ii), (iii) and (iv), there is no need to adjudicate question No.(v). Moreover, all the

Anganwadi Workers against whom allegations were raised by the petitioner undisputedly were engaged as Anganwadi Workers prior to 29.06.1990 when the petitioner was adjusted as Anganwadi Worker in Bidanasi-I Gopal Sahi, Anganwadi Centre under Cuttack ICDS Project. The opposite party Nos. 8 to 11 are senior to the petitioner as the date of joining of Manasi Sahu, Chhayabati Devi and Biroj Mohini Swain respectively, (opposite parties 8, 9 and 10) was 26.02.1982 and the date of joining of Manjulata Das (Malick) (S.C.) (O.P. No.11) is 06.11.1985 which are prior to the date of joining of the petitioner in Cuttack ICDS project on 29.06.1990.

As per revised guideline for selection of Anganwadi Workers dated 2nd May, 2007, the provision of ORV Act (for SC and ST), 1975 and Employment Exchange(Compulsory Notification of Vacancies), Act, 1959 shall not apply in selection of Anganwadi Workers.

Lady Supervisors are selected from amongst the Anganwadi Workers working in different ICDS Projects taking into consideration their seniority in working as Anganwadi Workers in their respective ICDS project according to the vacancy available. Lady Supervisor posts are district level posts. Since the petitioner joined in the Cuttack ICDS project on 29.06.1990, the same is to be taken into consideration for the purpose of fixing her seniority.

It is to be noted that all allegations including allegation of fraud relate to the cases of periods earlier to the date of appointment of petitioner in Cuttack ICDS project. Since this Court has held that for the purpose of fixation of seniority of the petitioner her date of joining in Bidanasi-1 Gopala Sahi Anganwadi Centre, i.e., 29.06.1990 shall be taken into consideration and that Anganwadi Workers in respect of whom the practice of fraud has been alleged are appointees of the year 1982 and 1985, petitioner's allegation of practising fraud while preparing the final gradation list of Anganwadi Workers in Cuttack ICDS Project has become irrelevant. Therefore, there is no need to deal with various allegations including allegation of fraud raised in the writ petition, which will be mere hypothetical and academic in nature.

Decisions of the Hon'ble Supreme Court in case of *Satyam Fibres (India) Pvt. Ltd.* (supra); *Rama Chandra Singh* (supra); and judgment of this Court in the case of *Umesh Chandra Chinera* (supra) are also of no help to the petitioner as facts of those cases are completely different from the present case.

34. In the fact situation, the petitioner is not entitled to the reliefs claimed in the writ petition. Interim orders passed earlier stand vacated.

35. In the result, the writ petition is dismissed.

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B.N.Mahapatra, J.