

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
[KOHIMA BENCH]

WRIT PETITION (C) NO. 126(K) OF 2019

1. Smti Meyalemla,
Sr. Supervisor, CDPO Office, Dimapur (U),
Nagaland.
2. Smti Unice Sema,
Sr. Supervisor, CDPO Office, Dansiripar,
Dimapur.
3. Smti Reyivolu Kezo,
Sr. Supervisor, CDPO Tribal, Kohima.
4. Shri Zubemo Jami,
Sr. Supervisor, DWO Office, Wokha.
5. Shri Alongla Aonok,
Sr. Supervisor,
Special Home & Observation Home, Pherima.
6. Smti Khonbeni Jami,
Sr. Supervisor, CDPO Office,
Dimapur (U).
7. Smti Limasangla,
Sr. Supervisor, AWTC Diphubar, Dimapur.
8. Shri Sunepwapang,
Sr. Supervisor, DWO Office, Mokokchung.
9. Shri M. Lakiumong,
Sr. Supervisor, DWO Office, Shamator.
10. Smti R. Lanuakum Walling,
Sr. Supervisor, CDPO Office,
Chantongya, Mokokchung.

11. Smti Meyangla Pongner,
Sr. Supervisor, CDPO Office,
Chukitong, Wokha.

12. Shri L. Nikuto Chishi,
Sr. Supervisor, CDPO Office,
Dimapur (U).

13. Shri Zachamo Ngullie,
Sr. Supervisor, CDPO Office,
Jakahama, Kohima.

14. Smti Amilo Yanthan,
Sr. Supervisor, CDPO Office,
Sanis, Wokha.

15. Shri Longshithung,
Sr. Supervisor, CDPO Office,
Wozhuro.

16. Smti Atsole Khalo,
Sr. Supervisor, CDPO Office,
Ongpangkong (N).

17. Smti Erenbeni Kikon,
Sr. Supervisor, CDPO Office,
Wokha.

18. Shri Bendangtemsu,
Sr. Supervisor, CDPO Office,
Wakching, Mon.

 19. Shri A. Nzanbemo Jami,
Sr. Supervisor, CDPO Office,
Chukitong, Wokha.

20. Shri Vishiho Aye,
Sr. Supervisor, CDPO Office,
Sataka, Zunheboto.

21. Shri Emlitenzuk,
Sr. Supervisor, CDPO Office,
Mangkolemba, Mokokchung.

22. Shri Obed Magh,
Sr. Supervisor, CDPO Office,
Tseminyu, Kohima.

23. Shri Chubameren,
Sr. Supervisor, CDPO Office,
Longchem, Mokokchung.

----- Petitioners.

Versus

The State of Nagaland,
Represented by the Chief Secretary
to the Government of Nagaland.

2. The Secretary,
Department of Social Security & Welfare,
Nagaland, Kohima.

3. The Director,
Department of Social Security & Welfare,
Nagaland, Kohima.

4. Shri Moba Wenkhang,
Probation Officer,
Special Home & Observation Home,
Pherima, District, Dimapur.

5. Shri Venedule Vero,
Research Officer,
Directorate of Social Welfare,
Kohima, Nagaland.

6. Shri Rukevoto Ringa,
Superintendent Special Home & Observation,
Pherima, District-Dimapur.

7. Shri Kelevinu Naleo,
Chief Instructor, Anganwadi Training Centre,
Diphubar, District-Dimapur.

8. Smti Anuo Longho,
Child Development Project Officer,
ICDS Project, Chizami, District Phek.

9. Shri Vezhotso Khamo,
Probation Officer,
Special Home & Observation,
Pherima, District-Dimapur.

10. Shri Kedozokho Peseyie,
Child Development Project Officer,
ICDS Project, Dhansiripar, Dimapur, Nagaland.

11. Shri Junito K. Zhimo,
Child Development Project Officer,
ICDS Project, Satakha, District Zunheboto.

----- Respondents.

PRESENT
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

For the petitioners : Ms. Z. Zhimomi, Advocate.
For the private respondents : Mr. R. Iralu, Sr. Adv., L. Iralu, Advocate.
For the State respondent : Mr. N. Mozhui, Advocates.

Date of hearing : 22.10.2022
Date of Judgment : 22.12.2023

JUDGMENT AND ORDER
[C.A.V]

m The petitioner Nos. 1 to 4 were appointed as Supervisors under the Directorate of Social Security and Welfare, Nagaland on temporary basis by an order dated 10th March, 2003. The petitioner Nos. 5 to 16 were also appointed as Supervisors under the establishment of the Directorate of Social Security and Welfare, Nagaland on temporary basis by an order dated 17th May, 2003. The petitioner Nos. 17 and 18 were also appointed as Supervisors under the establishment of the Directorate of Social Security and Welfare, Nagaland on temporary basis by order dated 1st July, 2003. The petitioner Nos. 19 to 22 were

also appointed as Supervisors on temporary basis by an order dated 1st May, 2006 and the petitioner No. 23 was also appointed to the post of Supervisor on temporary basis by order dated 22nd February, 2008. It is pertinent to mention here that the appointment of the petitioner Nos. 1 to 18 were made against Co-terminus post created by Government letter dated 24.02.1997.

2. The respondent No.4 was appointed as Child Development Project Officer (CDPO in short) under the Social Welfare Department (Class-II Gazetted) on contract basis for a period of 1(one) year by an order dated 14th June, 2010. The service of the respondent No.4 was regularised by Notification dated 11th March,2015 on the approval of the Cabinet w.e.f 25.02.2015.

The respondent Nos. 5, 6 and 7 were appointed as CDPO on contract basis for a period of 1(one) year by an order dated 7th June, 2011. The services of the respondent Nos. 5 to 7 were regularised by Notification dated 17th October, 2016 w.e.f 26.09.2016 on the approval of the Cabinet. The Notification further stipulates that the services rendered by the respondent Nos. 6 to 7 on contract basis prior to 26.09.2016 will be counted for increment, leave, pension and other service benefits except seniority.

 The respondent No. 8 was also appointed to the post of CDPO (Class-II Gazetted) on contract basis for a period of 2(two) years or till the post is filled up by direct recruitment through the Nagaland Public Service Commission (NPSC in short) by Notification dated 31st October, 2008. The service of the respondent No.8 was regularised by Notification dated 11th March,2015 w.e.f 25.02.2015 i.e, the date of approval of the Cabinet.

The respondent No.9 was appointed to the post of Probation Officer (Class-II gazetted) for a period of 1(one) year or till the post is filled up by direct recruitment through NPSC by Notification dated 10th December, 2012.

The respondent No.10 was also appointed to the post of CDPO (Class-I) on contract basis for a period of 1(one) year or till the post is filled up by direct recruitment through NPSC by Notification dated 9th April, 2013.

The respondent No.11 was also appointed as CDPO on contract basis for a period of 1(one) year or till the post is filled up by direct recruitment through NPSC by Notification dated 28th May, 2013.

3. The respondent Nos. 5, 6 and 7 were transferred as Research Officer, Directorate of Social Welfare, Superintendent, Special Home & Observation Home and Chief Instructor, Anganwadi Training Centre respectively vide a common Notification dated 31.08.2012. The said 3(three) posts of Research Officer, Superintendent, Child Instructor along with the post of Probation Officer were all Class-II Gazetted and equivalent and transferable with the post of CDPO as per the Nagaland Social Security & Welfare Service(Revised) Rules, 1997 (the Rules of 1997 in short).

4. In the meantime, the Post of CDPO which was Class-II Gazetted was upgraded to Class-I Gazetted by a Notification dated 21.09.2012. However, the post held by the respondent Nos. 5, 6 and 7 including the Probation Officer which are all equivalent to CDPO were not accorded up-gradation at that point of time.

Accordingly, the Director of Social Welfare by a communication dated 14.11.2012 wrote to the Secretary to the Government of Nagaland, Department of Social Welfare, Kohima proposing for up-gradation of the post of Research Officer, Superintendent, Special Home, Probation Officer Special Home and Chief Instructor, AWTC for up-gradation to that of Class-I inasmuch as these posts were equivalent to that of the post of CDPO. Thereafter, a Cadre Review Committee was constituted on 02.09.2013 and the recommendation of the Cadre Review Committee was forwarded to the Secretary to the Government of Nagaland, Department of Social Welfare, Nagaland by forwarding letter dated 28.04.2014, wherein, the Cadre Review Committee had mentioned that up-gradation of the post of Superintendent, Research Officer, Chief Instructor and Probation Officer were overlooked due to oversight at the time of upgrading the post of CDPO. The Committee therefore recommended that the four posts be also upgraded to ensure fairness and to restore parity that existed prior to up-gradation of post of CDPO to Class-I.

5. Consequently, the Personnel and Administrative Reforms Department, the Planning Department and the Finance Department accorded the approval on 11.08.2014, 28.09.2014 and 04.08.2015 for up-gradation of the posts held by the respondent Nos.5, 6 and 7. Thereafter the Committee on creation and up-gradation of posts in its meeting held on 06.11.2015 recommended to upgrade the post of Superintendent, Research Officer, Chief Instructor and Probation Officer from Class-II to Class-I in order to enable proper management of the cadre.

6. While the post up-gradation process was continuing, there was a series of litigation and on the basis of the Cabinet decision dated 06.05.2019, the Social Welfare Department issued two Notifications both dated 11th June, 2019, whereby, the post of Chief Instructor AWTC, the post of Superintendent, Research Officer and Probation Officer were upgraded to that of Class-I Gazetted, equivalent to the post of CDPO and also by fixing the seniority of the Officers holding the upgraded post, wherein, the private respondent Nos. 5, 6 and 7 were kept at the bottom of the seniority list of CDPO.

7. The Department of Social Welfare by a letter dated 20.03.2020, forwarded an inter-say seniority list of both Officers and Ministerial staffs of Social Welfare Department, wherein, the names of the respondent Nos. 4, 5, 6, 7 and 8 appeared at Sl. No. 67, 69, 68, 70 and 55 respectively (Class-I Gazetted) and the names of the petitioners appeared from Sl. No. 89 downwards.

8. Heard Ms. Z. Zhimomi, learned counsel for the petitioners. Also heard Mr. N. Mozhui, learned counsel for the State respondents as well as Mr. R. Iralu, learned Senior counsel, assisted by Mr. L. Iralu, learned counsel for the private respondents.

9. Ms. Z. Zhimomi, learned counsel for the petitioners submits that the services of the petitioners and the private respondents are strictly governed by the Rules of 1997, wherein, it is clearly provided that the Head of Department shall send the requisition to the NPSC through the Government in the form prescribed by the NPSC and the NPSC shall advertise the post specifying the terms and conditions. However, the Official respondents in absolute violation of the Rules of 1997 had

appointed the respondent Nos. 4 to 8 through back door and subsequently, regularised the contract services of the said respondents. She also submits that the State respondents had issued Office Memoranda dated 07.07.1976, 24.08.1994, 26.02.2001, 18.02.2004 and 13.01.2010, wherein, it was specifically provided that no direct recruitment shall be made by the Departments without publicly inviting applications in prescribed procedure. However, the official respondents in total contravention of the Rules of 1997 and the Office Memoranda had appointed the private respondent Nos. 4 to 11 without advertisement and thereafter continued to regularise their services. The action of the official respondents in regularising the back door appointment of the respondent Nos. 4 to 8 is an abuse of law. She submits that regularisation is not permissible in exercise of the executive powers of the Government in contravention of the Rules and any benefit bypassing the constitutional scheme cannot be perpetuated by passing of illegal Orders/Notifications.

 **10.** She also submits that after the up-gradation of the post of CDPO Class-II Gazetted to that of Class-I Gazetted, discrepancies arose with regard to the promotion channel and accordingly the All Nagaland Social Welfare Field Staff Association (ANSWFSEA in short) submitted representation to the respondent No.3 demanding for up-gradation of Superintendent Officer/ Welfare Inspector/ Child Guide Class-III Non-Gazetted to Class-II Gazetted. The Association further contended that the post of CDPO are being filled up to direct recruitment/ deputation/ contract basis by persons who have no knowledge and skills to man the child development and welfare programs for successful implementation of the ICDS Schemes and

further, 50% of the post of CDPO and equivalent posts are reserved for Supervisors/Welfare Instructors/ Child Guide Instructor for promotion. However, the reserved quotas are being filled up by back door appointees on deputation/ contract basis and accordingly stagnation of the service of the Supervisors.

It is submitted that by a Notification dated 29th September, 2016, the State respondents upgraded 60 (sixty) posts of Supervisors (Class-III Non-Gazetted) to Senior Supervisors (Class-II Gazetted) who have completed ten years and above continue service in the post of Supervisor. The said up-gradation was done on the basis of the recommendation made by the Post Creation and Up-gradation Committee. She therefore submits that the illegal appointment of the private respondents has blocked the promotion avenues of the petitioners and therefore, their appointment orders as well as regulation orders should be set aside and quashed.

The learned counsel for the petitioners also placed reliance in the cases of **M.P. State Coop. Bank Ltd., Bhopal -vs- Nanuram Yadav and others**, reported in (2007) 8 SCC 264; **Renu and others -vs- District and Sessions Judge, Tis Hazari Courts, Delhi and others**, reported in (2014) 14 SCC 50; **Union Public Service Commission -vs- Girish Jayanti Lal Vaghela and others**, reported in (2006) 2 SCC 482; **State of Manipur and others -vs- Y. Token Singh and others**, reported in (2007) 5 SCC 65; **State of Uttar Pradesh and others -vs- Rekha Rani**, reported in (2011) 11 SCC 441; **State of Bihar and others -vs- Chandreshwar Pathak**, reported in (2014) 13 SCC 232; **K. Shekar -vs- V. Indiramma and others**, reported in (2002) 3 SCC 586; **B. Thirumal -vs- Ananda Sivakumar and others**, reported in (2014) 16 SCC 593; **Nagendra**

Chandra and others -vs- State of Jharkhand and others, reported in (2008) 1 SCC 798; **Binod Kumar Gupta and others -vs- Ram Ashray Mahoto and others**, reported in (2005) 4 SCC 209; **State of Karnataka and others -vs- M.L. Kesari and others**, reported in (2010) 9 SCC 247 and the case of **Neidilhou Angami and ors. -vs- State of Nagaland and ors.**, reported in 2009 (3) GLT 692.

11. Mr. N. Mozhui, learned counsel for the Social Welfare Department submits that the respondent Nos. 9, 10 and 11 are still working on contract basis after their services were extended by various orders and the post held by the respondent Nos. 10 and 11 have already been requisitioned to the NPSC for direct recruitment. He submits that the appointment of the private respondents were made under the direct recruitment quota and therefore, such appointment does not infringe into the promotional quote i.e, the promotional avenues of the petitioners. He further submits that after the upgradation of the post of Supervisors to Senior Supervisors, the Rules of 1997 is yet to be amended and therefore, no post of Senior Supervisor figures in the Rules of 1997. Drawing the attention of this Court to the Judgement and Order dated 07.06.2018 passed in WP(C)/83(K)2017, he submits that this Court had already made an observation that there is no provision in the Rules of 1997 for promotion of Senior Supervisors to the post of CDPO. He therefore submits that as the appointment of the private respondents does not infringe into the promotional quota of the petitioners, they have no *locus standi* to challenge the appointment orders/regularisation orders of the private respondents and therefore there is no merit in the writ petition and the same deserves to be dismissed.

12. Mr. R. Iralu, learned counsel for the private respondents while endorsing the submissions made by Mr. N. Mozhui, learned counsel for the Social Welfare Department submits that the President and General Secretary of the Petitioner's Association along with the Association filed the writ petition being WP(C)/247(K)/2016 challenging the appointments of the respondent Nos. 5, 6 and 7. However, the said writ petition was dismissed by judgment dated 06.06.2018, on the ground that the petition filed by the Association was not maintainable. The petitioners being members of the said Association knew the filing of WP(C)/247(K)/2016 and as the same was also dismissed, they are now barred by the principle of constructive *res judicata* to file the present writ petition against respondent Nos. 5, 6 and 7. It is also submitted that the petitioners have no locus to challenge the appointment of the private respondents inasmuch as the appointment made was against the direct recruitment quota and as the petitioners were already serving as Supervisors, they required 7(seven) years of continue service to be considered for eligible for promotion to the post of CDPO. However, none of the petitioners were in the zone of consideration as they did not have the requisite 7(seven) years of continuous service as Supervisors. He also submits that the respondents were appointed as early as from the year 2010 onwards and making a challenge to the appointment of the private respondents at this stage is hit by the principles of delay, laches, and acquiescence. It is further submitted that the petitioners are holding the post of Supervisor (Class-II), whereas, the private respondents are Class-I Gazetted Officers and therefore, challenge being made to the appointment of the petitioners is an abuse of the

process of Court and therefore, the writ petition deserves to be dismissed. The learned Senior counsel for the private respondents also submits that the post of CDPO is responsible for the implementation of the Centrally Sponsored Scheme (CSS) namely, Integrated Child Development Scheme (ICDS) under the Ministry of Women and Child Development, Government of India. The said Ministry has issued a framework for the effective implementation of the ICDS and in that respect, the respective States have been allowed to fill up vacant post on contract basis and therefore, there is nothing wrong in the appointment of the private respondents as CDPOs, Project Officers etc,. Accordingly, the present writ petition has no merits and the same deserves to be dismissed.

The learned counsel for the respondent Nos. 4, 5, 6, 7, 8, 10 and 11 has also placed reliance to (i) **AIR 1965 SC 1150 [Devilal Modi -vs- Sales Tax Officer, Ratlam and others]** (ii) (2009) 10 SCC 273 **[Ramchandra Dagdu Sonavane (Dead) by LRS. and others -vs- Vithu Hira Mahar (Dead) by LRS. and others]** (iii) (2017) 15 SCC 333 **[K.S. Varghese and others -vs- Saint Peter's and saint Paul's Syrian orthodox church and others]** (iv) (2007) 8 SCC 329 **[Saroja -vs- Chinnusamy (Dead) by LRS. and another]** (v) (2013) 5 SCC 252 **[Kalinga Mining Corporation -vs- Union of India and others]** (vi) (2008) 10 SCC 187 **[TATA Industries Limited and another -vs- Grasim Industries Limited]** (vii) 1984 SCC Online Bom 66 **[Ramrao Dayanu Pawar and others -vs- Shankar Bhau Alrekar and another]** (viii) (1998) 3 SCC 573 **[K.N. Modi -vs- K.N. Modi and others]** (ix) (2008) 1 SCC 560 **[Udayami Evam Khadi Gramodyog Welfare Sanstha and another -vs- State of Uttar Pradesh and others]** (x) 2021 SCC On Line SC 1194 **[K. Jayaram and Others -vs- Bangaalore Development Authority and Others]** (xi) (2014) 4 SCC 108

[Chennai Metropolitan Water Supply and Sewerage Board and others - vs- T.T. Murali Babu] (xii) 1980 Supp SCC 449 **[Roshan Lal and Others - vs- International Airport Authority of India and others]** (xii) (2003) 2 GauLR 28 **[Lily Tep & Ors. -vs- State of Nagaland & Ors.]** (xiii) (2020) 5 SCC 732 **[Chander Mohan Negi and others -vs- State of Himachal Pradesh and others]** (xv) (2020) 12 SCC 87 **[Shripal Bhati and another - vs- State of Uttar Pradesh and others]** (xvi) (2006) 4 GLT 503 **[Smt. Baphindalin Giri, Chief Judicial Magistrate, Shillong and others -vs- State of Meghalaya, represented by the Additional Chief Secretary to the Govt. of Meghalaya Cum Special Secretary Law (A) Department and others]** (xvii) 2013 SCC On Line P&H 6859 **[Union Territory, Chandigarh and others -vs- Shri Arun Kumar and others]**

13. I have considered the submission made by the learned counsel for the parties.

The respondent Nos.4 to 11 were appointed by different Notification from the year 2010 up to May, 2013. In the meantime, some attempts were made by the petitioners' Association to challenge the appointments of the private respondent Nos. 5, 6 and 7 by way of filing WP(C)/247(K)/2016, which was however dismissed by order dated 06.06.2018 on the ground of maintainability. No appeal was filed against the said judgment dated 06.06.2018, passed in WP(C)/247(K)/2016 and therefore, in the considered opinion of this Court, the said judgment dated 06.06.2018 has attained finality.

14. This Court has also noticed that the private respondent Nos. 5, 6 and 7 had filed WP(C)/83(K)/2017, which was disposed of by order dated 07.06.2018, wherein, this Court had made an observation that there is no provision in the Rules of 1997 for promotion of Senior

Supervisors to the post of CDPO and therefore, any proposal made by the State Government for promotion of the Senior Supervisors to the post of CDPO shall be acted upon only if the Rules of 1997 permits such action. What this court has noticed is that the Rules of 1997 is yet to be amended till date.

15. This Court has also considered "The Broad Framework for Implementation" for ICDS Mission issued by the Ministry of Women and Child Development, Govt. of India, wherein, at Clause 2.2.1 (ii) (c) it is stated that for the success of ICDS programs and to overcome the difficulty and as a temporary and interim arrangement, the State Government would have powers to fill up vacant post through job contract from outsource/placement agencies on a temporary basis till such time the regular posts are filled to avoid any interruption in the services. The States/UTs may also explore the possibility of filling up such vacancies on deputation basis on temporary basis.

16. It is an undisputed fact that all the petitioners were appointed as Supervisors by various orders from the year 2003 up to year 2008. What is to be noted is that they were appointed as direct recruits to the post of Supervisors Class-III post Gazetted in different batches. The private respondents were appointed as CDPO Class-II Gazetted from the year 2010 onwards. Schedule-II to the Rules of 1997 provides that for Supervisors to be eligible to be promoted to the post of CDPO and other equivalent post requires 7(seven) years of continuous service in that grade provided the Officials have undergone training in their respective subject matters. Further, Rule 5(2) provides that for filling up the post of CDPO and any other equivalent Class-II

Gazetted post, the same shall be done by way of 50% by direct recruitment and 50% by departmental promotion. In the case in hand, what is noticed is that if the petitioners are to be promoted to the post of CDPO, they will have to come under the 50% promotional quota. However, it is seen that the private respondents were appointed against direct recruitment quota which becomes more evident by the fact that the post held by the respondent Nos. 10 and 11 has been requisitioned to the NPSC for filling up by way of direct recruitment. In that view of the matter, this Court is of the considered opinion that the petitioners have no locus to challenge the appointment of the private respondents by way of the present writ petition. Another important aspect of the matter is that the challenge made to appointment of the private respondents as CDPO and other equivalent post is made belatedly and accordingly, the actions of the petitioners are hit by the principles of delay, laches and acquiescence.

17. In view of the discussions made hereinabove, this Court is of the considered opinion that there is no merit in the present writ petition and the same is accordingly dismissed.

18. No costs.


JUDGE

Monalisa/Paul