

IN THE HIGH COURT OF ORISSA AT CUTTACK

**WPC(OAC) Nos.286, 348, 350, 351, 352,
353 & 355 of 2015**

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

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WPC(OAC) No.286 of 2015

Ratnamani Mahanta

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.348 of 2015

Sukanti Sethi

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.350 of 2015

Baruni Biswal

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Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.351 of 2015

Subhadra Mahanta

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Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.352 of 2015

Debaki Mahanta

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Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.353 of 2015

Santari Mahanta

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Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

-AND-

WPC(OAC) No.355 of 2015

Malati Prusty

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Mohanty,
M.R.Pradhan, T.P.Pradhan &
S.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:05.05.2022 and Date of Order: 13.07.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Since common question is involved in all the aforesaid Writ Petitions, all are heard analogously and disposed of by this common order.

3. Heard Mr. M.K.Mohanty, learned counsel for the Petitioners and Mr. N.K. Praharaj, learned Standing Counsel for the State-Opposite Parties.

3. All these Writ Petitions have been filed by the Petitioners challenging the impugned order No.20999 dated 22.12.2014 under Annexure-9, whereby the Petitioners were deprived from being regularly absorbed as Aganwadi Supervisors from the date of their engagement.

4. It is submitted that all the Petitioners with qualification of graduate were initially appointed as Aganwadi Worker in different Aganwadi Centers coming under I.C.D.S, Project, Keonjhar.

5. It is submitted that by the time, the Petitioners were so appointed as Aganwadi Workers, the projects were coming under the Panchayatiraj Department.

6. It is submitted that subsequently Government in the Department of Women and Child Development became the employer and guideline was issued on 07.10.1998 under Annexure-2 prescribing the qualification for appointment of such Aganwardi Worker.

7. It is submitted that in the said circulars dated 07.10.1998 the minimum prescribed qualification for engagement of Aganwadi Worker was prescribed as Matriculation. But it was provided that candidates with having higher qualification will be awarded three extra marks.

8. It is further submitted that subsequently a revised guidelines was issued by the Department on 02.05.2007, wherein while prescribing the minimum educational

qualification of Aganwadi Worker as matriculation, it was provided to give 5% extra marks for candidates having higher qualification. It is further submitted that while the matter stood thus on 04.10.2008, Government-Opposite Party No.1 issued a letter addressed to all the Collectors of the State as has been issued earlier vide letter dated 04.04.2008 and with a direction to fill up the post of Supervisor through direct recruitment on contractual basis.

9. It was further stipulated that only graduate Aganwadi Workers who have rendered five years of service as Aganwadi Workers are eligible for appointment as Supervisors on contractual basis.

10. It is also provided that on the basis of the seniority, the Aganwadi Worker with having graduate qualification shall be appointed by following the principle of reservation. Subsequently, another guidelines was issued vide letter dated 29.07.2009 under Annexure-5, wherein it was indicated that the aforesaid decision to appoint Supervisors on contractual basis is being done with due concurrence of the Finance Department.

11. Mr. Mohanty, further submitted that basing on the guidelines issued under Annexures-4 & 5, the Petitioners being Aganwadi Workers with having graduate qualification, were selected and appointed as Supervisor on contractual basis vide order dated 25.08.2009 under Annexure-6.

12. It is submitted that pursuant to the said order, the

Petitioners joined as contractual Supervisor and allowed to continue as such.

13. It is further submitted that since the Petitioners were duly selected and appointed as contractual Supervisor, where they joined on 25.08.2009, the Petitioners though became eligible for their absorptions in the regular establishment in view of the resolution issued by the General Administration Department of the Government on 17.9.2013 and 16.1.2014, but no action was taken to absorb the Petitioners in the regular establishment.

14. It is also submitted that in the meantime a gradation list of matriculate Aganwadi Workers and graduate Aganwadi Worker was also published vide Annexures-7 & 8. The present petitioners were placed in the said gradation list of the Graduate Aganwadi Workers. But it is submitted that Government-Opposite Party No.1 in the meantime issued the impugned order dated 22.12.2014 under Annexure-9 for the purpose of regular appointment of Supervisor, wherein it was indicated that 40% of the total sanctioned strength shall be filled up by appointment of matriculate Aganwadi Workers having at least 10 years of experience. The said decision was taken basing on the rules framed by the Government i.e. Orissa Children and Women Survey Rules, 1989 read with Women and Child Development Department notification dated 08.10.2007.

15. It is submitted that because of the stipulation contained in the said rules, the Petitioners though were engaged as contractual supervisors vide order dated 25.08.2009 under Annexure-6, they were deprived from

being regularly appointed as against those 40% of the sanctioned strength. In the said communication, it was also indicated that there is no provision in the rule for engagement of the graduate Aganwadi Worker with at least five years of experience as Supervisors.

16. It is accordingly submitted that since the Petitioners were all engaged as Aganwadi Workers with having qualification of Graduate and above and the minimum prescribed qualification for appointment as Aganwadi Worker was subsequently taken up as matriculation and preference to such candidates with having higher qualification, the action of the opposite Party No.1 in depriving the petitioners from the purview of the regular absorption as against 40% of the total sanctioned strength is illegal.

17. It is submitted that there is a separate gradation list of Aganwadi Workers with having 10 years of service experience with qualification of matriculate and gradation of list graduate Aganwadi Worker with having five years of experience. It is therefore submitted that the action of the Department in not considering the graduate Aganwadi workers with five years of experience for their absorption in the regular cadre of Supervisor needs interference of this Court.

18. Even though notice has been issued vide order dated 09.12.2016, but no counter was filed in spite of opportunity provided to the learned State Counsel. But Mr. Praharaj, learned State Counsel made his submission that since the Petitioners were already appointed as contractual

Supervisors pursuant to the guidelines issued under Annexures-4 & 5, they will be absorbed in such post in due course and no illegality has been committed by the Department to fill up 40% of the total sanctioned strength of Supervisors from amongst matriculate Aganwadi workers having 10 years of service experience. Accordingly, it is submitted that there is no illegality on the part of the Opposite Party No.1 in issuing the impugned order under Annexure-9.

19. Heard learned counsel for the Parties at length.

20. Perused the materials available on record. It is not disputed that all the Petitioners were having graduate qualification and were engaged as Aganwadi Workers when Panchayatiraj Department was the Administrative Department. It is also not disputed that engagement of the Aganwadi Worker subsequently came within the purview of the Opposite Party No.1 and the said Opposite Party No.1 while issuing Annexure-2 on 07.10.1998 prescribed the minimum qualification for engagement of Aganwadi Workers as matriculate and above. In the subsequent guideline issued on 02.05.2007 under Annexure-3, the minimum qualification for engagement of Aganwadi Worker was prescribed as Matriculate. But in Annexure-2 three extra mark was given to candidates with having higher qualification. Therefore, there is no bar on the part of any candidate with having higher qualification over and above matriculate for their engagement as Aganwadi Worker as indicated under Annexures-3 & 4. Since all these petitioners were engaged as Aganwadi Workers with having qualification of Graduation, the action of the

Opposite Party No.1 in not providing necessary provision in the aforesaid 1989 rules for their absorption in the regular cadre of Supervisors while issuing Annexure-9 is not in consonance with the service jurisprudence. Since the Petitioners possessed higher qualification, the action of the Opposite Party No.1 to fill up 40% of the sanctioned strength in the cadre of Supervisor from amongst matriculate Aganwadi Workers having 10 years of service is not legal and proper. There is no dispute that all the petitioners have rendered more than 20 years of service and they are continuing as contractual Supervisor w.e.f. 25.8.2009. Their claim for absorption in the said cadre is also coming within the parameters issued by the Government in the G.A. Department in its resolution dated 17.09.2013 and 16.01.2014. The claim of the Petitioners for their absorption is also covered by the decision of this Court dated 09.09.2021 passed in W.P.(C) No.19951 of 2020 (***Patitapaban Dutta Dash and Others vs. State of Odisha & Others***).

21. Therefore, in any view of the matter, the action of the Opposite Party No.1 in not absorbing the Petitioners in the regular establishment as against 40% of the total sanctioned strength in the cadre of Supervisor is held to be illegal. While holding so, this Court directs the Opposite Party No.1 to make necessary provision in the aforesaid 1998 rules for absorption of Graduate Aganwadi Workers having 5 years of service experience as Supervisor or in the alternate the Petitioners be absorbed in the said post basing on the G.A Department resolution dated 17.09.2013 and the decision of this Court as cited above. This Court

directs the Opposite Party No.1 to take a decision as directed hereinabove within a period of three months from the date of receipt of this order.

22. With the aforesaid observations and directions, these Writ Petitions are disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 13th of July, 2022/Subrat

