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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgement reserved on: 02.02.2022*

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*Judgement pronounced on: 22.09.2022*+ **W.P (C) 6526/2021 & CM APPL. 20512/2021**

GOVT OF NCT OF DELHI &amp; ANR.

..... Petitioners

Through: Mrs Avnish Ahlawat, SC, GNCTD  
with Mr Neeraj Pal and Mrs Palak  
Rohmetra, Advs.

versus

PRIYANKA

..... Respondent

Through: Mr Sahib Gurdeep Singh and Mr S.  
Rai Sethi, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH****TALWANT SINGH, J.:**

1. By way of this writ petition, the Government of NCT of Delhi has challenged an order dated 17.02.2021 passed by the Central Administrative Tribunal (in short 'the Tribunal'), Principal Bench, New Delhi in O.A. 4228/2018.

2. The brief facts as narrated by the petitioners are that on 28.05.2010, Department of Social Welfare, Government of NCT of Delhi had engaged Welfare Officer/Protection Officers on contract basis from the list provided by an outsourcing agency, namely Intelligent Communication Systems India Limited (ICSIL) and these contractual engagements were made from time to time. Later on when the relevant records were examined, discrepancies in initial engagement order in respect of the present respondent were noticed and her case



was not submitted for ex-post facto approval to be obtained from the Hon'ble Lt. Governor.

2.1 As per the petitioners, the respondent's name did not figure in the sponsored list but her engagement order was issued separately on 12.08.2010 and renewed on 12.09.2011 onwards. Her order of engagement states that her candidature was sponsored by ICSIL vide letter dated 25.05.2010; which resulted in her being appointed as a Welfare Officer. However, in fact, name of one Ms Priyanka, daughter of Shri Anil Kumar was sponsored by ICSIL and was shown at serial no. 12 of the list forwarded by ICSIL and who had been working in the Welfare Department since the date of her initial engagement.

2.2 It is submitted that, the present respondent was appointed fraudulently against the name of the said Priyanka, although her name was not there in the list of candidates sponsored by ICSIL. Sufficient opportunities were given to the respondent vide letters dated 14.03.2018 and 02.05.2018 to prove and provide documentary evidence to the effect that she was registered with the manpower agency M/s ICSIL and that her name was sponsored for engagement to the post of Welfare Officer by M/s ICSIL. The respondent failed to provide any such document in proof.

2.3 The initial engagement of the respondent was not made as per the procedure adopted by the Government, which was to offer contractual employment to the candidates sponsored by ICSIL; no ex-post facto approval of the Lt. Governor concerning her initial engagement and subsequent continuation was sought. Consequently, vide order dated 23.10.2017 her contractual engagement was discontinued.



2.4 The respondent filed O.A bearing no. 3101/2018 before the Tribunal. Vide order dated 17.08.2018, the Tribunal directed the present petitioners to decide the representation submitted by the respondent by passing a speaking order. In compliance thereto, a detailed speaking order dated 17.09.2018 was passed, reiterating the above-mentioned facts and after stating that the respondent had illegally taken advantage of having common first name with another person, who was actually and originally sponsored by ICSIL and, who had joined the department and has been continuously working.

2.5 Thereafter, the respondent filed O.A. no. 4228/2018 before the Tribunal challenging the rejection order dated 17.09.2018 on the ground that she is fully qualified and eligible for appointment as Welfare Officer on contractual basis and she cannot be replaced with another contractual employee. Vide interim order dated 15.11.2018 petitioners were directed to engage the services of respondent on contract basis, provided work is available and in preference to her juniors/freshers/outsourced employees. A detailed counter affidavit was filed by the petitioners before the Tribunal, specifically taking the ground that the present respondent was not sponsored by ICSIL, and therefore, the petitioners sought dismissal of the O.A. filed in the Tribunal.

2.6 The respondent filed Contempt Petition no. 356/2019 seeking implementation of interim order dated 15.11.2018. This contempt petition was closed vide order dated 19.01.2021 on the ground that the direction was to avail the services of respondent on contractual basis, provided there was any work and since it was difficult to come to a conclusion as to existence of any work, it could not be carried further. Consequently, O.A. was listed for hearing on 02.02.2021.



2.7 Arguments were heard by the Tribunal and vide impugned order dated 17.02.2021, the O.A. was allowed; petitioners were directed to renew the contract of the respondent within four weeks from the date of receipt of the certified copy of the order. This order has been challenged by filing the present writ petition on the grounds that the learned Tribunal did not appreciate that the respondent is not the same candidate, who was sponsored by the outsourcing agency and she has taken undue advantage of having common first name with another person, who is still working with the petitioners; the respondent had misled the Tribunal by posing as another Priyanka, whose name was sponsored by ICSIL vide letter dated 25.05.2010 and the present respondent had never applied to the outsourcing agency or to the petitioners for such contractual appointment; the respondent obtained the job through deceitful means and her contract was ordered to be renewed by the Tribunal only on the ground that although she could not furnish any record but she had been engaged for the last seven years and her work had been found to be satisfactory, so the matter of sponsorship no longer was to be relevant; the Tribunal failed to appreciate that in compliance of earlier directions in O.A. No. 3101/2018, a detailed speaking order was passed, mentioning the reasons for discontinuance of the service of the respondent; it is settled position of law that illegality makes an act or transaction null and void and an illegal appointment made contrary to Article 14 of the Constitution is void *ab-initio*; where appointment of the petitioner is *ex facie* illegal, the issuance of appointment letter conferred no legal right; allowing an ineligible candidate to continue amounts to giving premium to dishonesty and manipulation and nobody can be allowed to continue in service merely because some time has been taken in litigation or on the ground of misplaced sympathy.



3. This writ petition was first taken up for hearing on 14.07.2021. Mrs. Avnish Ahlawat, learned standing counsel for the petitioners, filed an additional affidavit which came on record after 23.07.2021. The respondent was given liberty to file affidavit in reply to the said additional affidavit. On 23.09.2021, it was observed that the petitioners do not wish to file a rejoinder to the affidavit-in-reply. Written submissions were also filed by the respondent. Both the parties also filed copies of judgments in support of the respective stands. Arguments were heard on 02.02.2022. No formal notice was issued in the present writ petition but since the petition, additional affidavit and reply affidavit are on record, we deem it proper to issue a formal notice and since the pleadings are complete, we proceed further to decide the writ petition on merit. In response to certain queries, another additional affidavit was filed by petitioners on 22.03.2022 clarifying the present status of three persons with the same first name 'Priyanka'.

4. In the counter reply on behalf of the respondent, it is mentioned that the learned Tribunal has appreciated the facts that the respondent has provided seven long years of satisfactory service, good performance reviews and the department is attempting to shift blame on the respondent for not being able to trace her service file. It has been denied that the respondent has taken any advantage for having a similar name with that of any other candidate, who was sponsored by ICSIL. Respondent has supported the decision of CAT and has prayed that the petition be dismissed.

5. Learned counsel for the petitioners, during arguments, has reiterated the stand of the department as enumerated above.



6. On behalf of the respondent, it has been reiterated that the Tribunal dismissed the contentions of the petitioner department on the ground that respondent admittedly possessed all the requisite qualifications and she had been working for seven years in the department as Welfare Officer. All original documents of the respondent were lying with the department in her service file and she cannot be asked to furnish fresh records only on the ground that the said file has been misplaced.

6.1 Further, the ICSIL has admitted, in its own order dated 09.04.2018, that the respondent was sponsored by ICSIL, on objective examination of the relevant documents. The other Priyanka, daughter of Anil Kumar is an active employee of the department, so there is no question of impersonating her by the respondent.

6.2 The question of identical names came into light in 2011, when the first renewal of the employment was due and the name of the respondent was added in the renewal list dated 25.05.2011. So, original appointment of the respondent was ratified by Superintendent (Admin). Even if it is assumed that the name of the respondent was not sponsored by ICSIL, it does not make the appointment of the respondent illegal as the candidate should lack requisite qualification to make her ineligible for the job. The department is under no obligation to only appoint the candidates sponsored by the employment exchange. The Government undertakings are under the mandate of Article 16 of the Constitution to call for names of the candidates, not just from employment exchange but from the open market also.

6.3 The allegation of fraud and misrepresentation has no speck of truth or logic as the other Priyanka is still working with the petitioners and the department is well aware since 2011 of the existence of two Priyankas on its employment rolls.



The respondent has good service record for the last seven years and as per law, where appointment was made long back, the selection should not be disturbed.

7. To appreciate the right context in which the events happened, it is necessary to have the relevant communications/note sheets on record. The first such instance was the forwarding of a list by ICSIL vide its letter dated 25.05.2010 to the petitioner Department. The said letter dated 25.05.2010 along with Page 1 of Annexure R-1, which deals with Welfare Officers, is reproduced here under:

“ICSIL/Manpower/Dept of Women & Child/2010

Sh. K.K Bhalla  
Sr. Superintendent  
Department of Women & Child Development  
Govt, of N.C.T OF Delhi,  
Canning Lane, K.G.Marg,  
New Delhi-1 10001.

Sub: Recruitment of Child Welfare Officer, Protection Officer & Counsellor on contract basis.

Dear Sir,

This is in reference to your letter No. F.No. 9(31) WCD/Admn/10/42063, 42014 & F42(74)06/Estt/DWCD/10/539-541 dated 22.03.2010 & 12 April 2010.

We are enclosing herewith the list of selected candidates selected by the interview committee, 17 Child Welfare Officers, 2 Protection Officer & 13 Counsellor.

All the supporting documents related to the candidates selected have already been submitted to your office for record. The record of other candidates in waiting list is available in our office.

Thanking you,

Your Sincerely  
For Intelligent Comm. Systems India Limited.”



| S. No | NAME             | FATHER'S NAME       | DOB         | ADDRESS                                                                    | CONTACT NO. | QUALIFICATION |
|-------|------------------|---------------------|-------------|----------------------------------------------------------------------------|-------------|---------------|
| 1     | ASHA RANI        | S.S. BALHARA        | 2-Aug-1979  | H.No.K-14A, AMAR COLONY, OPP. RAJDHANI PARK NANGLOI - DELHI-41             | 9210686497  | M.S.W         |
| 2     | EVA SEATANTRA    | KUSUM LATA          | 16-19-1985  | C-747, DELHI ADMINISTRATION FLATS TIMAR PUR, DELHI-54                      | 9250239777  | M.S.W         |
| 3     | HEMANGINI        | PANKAJ VERMA        | 21-Dec-1981 | 402, 3 <sup>rd</sup> FLR, 1043-5, WARD No. 8, MEHRAULI, N.D.-30            | 9868023867  | M.S.W         |
| 4     | JAYPRAKASH G     | GOPALAKRISHNAN NAIR | 17-Jan-1984 | WZ-170/C, NEW RANJIT NGR, WEST PATEL NGR, DELHI                            | 9560278424  | M.S.W         |
| 5     | KAVITA GUPTA     | ANAND GUPTA         | 19-Mar-1981 | 14/421 D.D.A. FLAT, KALKAJI, N.D.-19                                       | 9868010944  | M.S.W         |
| 6     | LATA RANI        | RAVI SEHRAWAT       | 17-Oct-1978 | H.No-A, BLK-41, V.NANGAL DEWAT, VASANT KUNJ, NEAR SPINAL INJURIES HOSPITAL | 9278816406  | M.S.W         |
| 7     | LOV KUMAR DHAWAN | RAM KUMAR DHAWAN    | 20-Sep-1986 | F.No-811, REGENT BLK. SUPERTECH ESTATE, VAISHALI, SEC-9, GHAZIABAD         | 9990062649  | M.S.W         |



|    |                      |                       |             |                                                                                   |            |       |
|----|----------------------|-----------------------|-------------|-----------------------------------------------------------------------------------|------------|-------|
| 8  | MOHASIM AKHTER       | MD SHAFIQUE ANSARI    | 2-Oct-1981  | MISTRY TOLA MADHUBANI PURNEA, BIHAR-854307                                        | 8802439978 | M.S.W |
| 9  | NEERA                | DHARAM CHAND          | 28-Sep-1979 | H.No-9, GALI No-1, SAKET BLK, MANDAWALI, DELHI-92                                 | 9868622914 | M.S.W |
| 10 | POONAM SINGH         | DR. RP SINGH          | 27-Jul-1982 | RZ-52/3 SOUTH EXTENSION PART-3 NEAR ADARSH MODEL SCHOOL, UTTAM NAGAR NEW DELHI-59 | 9990076953 | M.S.W |
| 11 | PRADEEP KUMAR        | SURENDER KUMAR        | 19-Jul-1984 | E-74, SIDDARTHA NGR, NEAR ASHRAM, N.D.-14                                         | 9968061137 | M.S.W |
| 12 | PRIYANKA             | ANIL KUMAR            | 16-Jul-1986 | H.No-RB3/55, LEKHU NGR TRI NGR DELHI-35                                           | 9990393702 | M.S.W |
| 13 | PUSHPLATA GHOKINDA   | ASHOK SEHRAWAT        | 22-Feb-1979 | H.No-551 B, VALMIKI MOHALLA, V-NANGLOI, DELHI-41                                  | 9891428872 | M.S.W |
| 14 | RENU GUPTA           | SH. HARI SAWROOP      | 10-Jul-89   | GH/E/258, PASCHIM VIHAR, NEW DELHI 87                                             | 9250831330 | M.S.W |
| 15 | SHASHANK SINGH TOMAR | VIRENDRA SINGH        | 15-Oct-1982 | E-93, NEHRU VIHAR, TIMARPUR, N.D.-54                                              | 9450900013 | M.S.W |
| 16 | SHWETA SINGH         | HARENDRA PRATAP SINGH | 19/07/1986  | FLAT No-G2, PLOT No-86, RAMPRASTH A GREEN,                                        | 9971220803 | M.S.W |



|    |                           |             |                     |                                                           |            |       |
|----|---------------------------|-------------|---------------------|-----------------------------------------------------------|------------|-------|
|    |                           |             |                     | VAISHALI,<br>SEC-5,<br>GHAZIABAD                          |            |       |
| 17 | YOGESH<br>KUMAR<br>SHARMA | A.L. SHARMA | 17-<br>Aug-<br>1979 | F-32<br>ERSAROOP<br>COLONY,<br>FATEHPURI<br>BERI, N.D. 74 | 9868925423 | M.S.W |

7.1 It is pertinent to note that Item No. 12 in this list is a candidate named Priyanka, daughter of Shri Anil Kumar, having Mobile No. 9990398702.

8. The second aspect to be noted here is a note sheet dated 05.08.2010, which deals with resignation of one Priyanka and proposal was mooted to engage the present respondent in her place. The said note sheet bearing Page No. 3/N is reproduced here under:

“Contd-

the contractual welfare officer Smt. Priyanka posted as CHD-I has resigned on 03.08.2010 replacement may be given from panel pl.

Sr. Supdt. (Admn)

5/8/2010

In place of who has resigned, the dept. may hire contract a candidate who was interviewed in ECSI by ULS. Her name is Priyanka and is M.A.(SW) and was by far best candidate. She did not join as she couldn't be contacted earlier. If agreed she may be called for an interview.

Ms. Priyanak has been telephonically informed (9811365575) to attend interview on 11/8/2010 at 12:00 afternoon.

Di (WCD)

She met me today. We may hire her on contract.

Please put up for further orders.”

8.1 The above note sheet projects that this Priyanka/respondent did not join as she could not be contacted earlier and she was later interviewed. The contact No. on which she was telephonically informed to attend the interview is 9811365575,



which is apparently a different telephone No. from the telephone No. of Priyanka, who was selected in the panel of Welfare Officers forwarded by ICSIL.

9. The Director (WCD) had put a note that the respondent had met him and he directed for hiring her on contract and accordingly, she was engaged on contract and was posted as Welfare Officer vide order dated 12.08.2010. The office order dated 12.08.2010 regarding appointment of the present respondent is reproduced here under:

**“DEPARTMENT OF WOMEN & CHILD DEVELOPMENT**  
**GOVT. OF N.C.T. OF DELHI**  
**1 CANNING LANE; K.G. MARG**  
**NEW DELHI- 110001**

F. No. 9 (40)/Admn/WCD/Misc/09 11134-139

**OFFICE ORDER**

Consequent upon her name sponsored for the post of Welfare Officer on contract basis (on a fixed salary of Rs. 15000/- per month) by ICSIL vide their letter No. ICSIL/Manpower/Dept of Women & Child Development/2010 dated 25.05.2010 and after being reported for duty on 12.08.2010 in the Department, Ms. Priyanka is posted in CHG-I, Nirmal Chhaya Complex, Jail Road, New Delhi-64.

The above placement is subject to the production/verification of original certificates, residential proof, ID proof and medical fitness certificate from any medical attendant.

This issues with the prior approval of Competent Authority.”

9.1 It is to be noted here that this office order specifically refers to the name of the present respondent being sponsored by ICSIL vide letter dated 25.05.2010, whereas copy of the letter reproduced herein above in para 12 shows that it was Ms Priyanka, daughter of Shri Anil Kumar, whose name was sponsored by letter dated 25.05.2010 and it was not the present respondent being Priyanka, daughter of Shri Sant Lal, whose name was sponsored. So, the basis of issuance of this



initial appointment letter is wrong and misconceived as the name of the present respondent was never sponsored by ICSIL.

10. The next important document is note sheet at Page 6/N, which was generated on 01.09.2011, i.e., at the time of grant of extension to the present respondent. The same is reproduced here under:

“May kindly see the application Welfare of Ms Priyanka Aggarwal, Welfare (on-contract) vide placed Opposite. vide which she has requested that she (Priyanka) posted at Children Home for Girls-II, Jail Road has completed the duration of her contract on 12.08.2011 and accordingly her contract may be renewed,

In this connection, it is submitted that vide Office order No. F.9(40)/Admn./WCD/Misc./09/11134-139 dated 12.08.2010 {6/C}. Ms. Priyanka was posted at CHG-I mentioning “consequent upon her sponsored for the post of Welfare Officer on contract (on a fixed salary of Rs. 15000/- P.M.) by ICSIL vide their letter No. ICSIL/Manpower/Deptt, of Women & Child Development Department/2010 dated 25.05.2010 and after being reported for duty on 12.08.2010 in the Department Ms. Priyanka is posted in CHG-I subject to production/verification of original certificate, residential proof, 1D proof and medical certificate from any medical attendant”

On perusal of the aforesaid letter dated 25.05.2010 of ICSIL the name of one Priyanka D/o Sh. Anil Kumar exists at Sr. No. 12 (Flag ‘A’) and the Priyanka in question whose representation is under consideration is different from that Priyanka because the father’s names of both are different as mentioned. In list of ICSIL as Anil Kumar and 2 other is on agreement filed by one i.e. Shri Sant Lal

Ms. Priyanka whose name was sponsored by ICSIL resigned on 03-08-2010 as per note 3/N ante and then Ms. Priyanka D/O Sh. Sant Lal was appointed as per the approval of worthy Director, DWCD after having been got the interview in ECSIL by the then Sr, Supdt. { Admn, } and Smt. Renu Love.

The Finance Department has concurred the extension of services of 17 Welfare Officers for further one year for consolidated salary of Rs.15000/- on Contract basis vide UO No.36 dated 13.05.2011 and out of these 17 posts, the services of 16 Welfare Officers has been extended for a further period of one year vide this office letter NO, F9(3 1)/DWCD/Misc./09/4774-813 dated 25.08.2011 and services of another Welfare Officer is still to be extended.

Keeping in view of the above facts, if agreed, we may extend the services of Ms. Priyanka, Welfare Officer (On Contract basis) by adding her name in the earlier letter dated 25.05.2011.

Submitted please.”



10.1 Para No. 4 of this note is quite important in which it has been stated that Ms Priyanka, whose name was sponsored by ICSIL, i.e., Ms Priyanka, daughter of Shri Anil Kumar had resigned on 03.08.2010 and then Ms Priyanka, daughter of Shri Sant Lal was appointed, after having been got interviewed in ICSIL by the then Senior Superintendent (Admin) and Smt. Renu. This note is factually not correct as Ms Priyanka, daughter of Shri Anil Kumar, whose name was sponsored by ICSIL had not resigned and she is still working as contractual employee. Rather, it was Priyanka Yadav, who was in service since 2008, who had resigned on 03.08.2010 after being selected in regular employment as Welfare Officer through DSSSB.

10.2 Another mischief played in this note sheet is in the last paragraph, is that it was proposed to extend the services of the present respondent by adding her name in the earlier letter dated 25.05.2011, which was issued in respect of the candidates duly sponsored by ICSIL and who had completed one year's term. Somehow, this note was approved and from that date onwards, the terms of both the Priyankas were extended on year-to-year basis by the common orders, till it came to the notice of the relevant authorities in the year 2017 that the present respondent was not duly selected at the initial stage and vide letter dated 23.10.2017, her illegal service contract was discontinued.

11. Another interesting thing to be noted here is the appeal/representation submitted by the present respondent, which is dated 13.12.2017. The first 5 numbered paragraphs of the said representation are reproduced here under:

“1. I came to know about this job in 2010. It was conducted as a walk in interview by Department through ICSIL.

2. I was not provided any interview attendance slip by the selection committee/ICSIL, I asked about the selection process after the interview. The committee advised me to



accept a call from the department (Social Welfare Department Govt. of Delhi) if successful in the interview.

3. As it was a walk in interview, I was never issued an interview letter. The interview was conducted on 04.5.2010 at ICSIL.

4. The appointment letter/ engagement letter was issued by the department on 12.8.2010.

5. I joined my duty on 12<sup>th</sup> Aug, 2010 and my service contact has been renewed each year.”

11.1 The claim of the respondent is that she was interviewed on 04.05.2010 at ICSIL and she was selected through a walk-in interview by Department through ICSIL. In Para No.2, she submits that she was not provided with any interview attendance slip by ICSIL and when she asked about the selection process, she was advised that she may expect a call from the petitioner Department, if she would be successful in the interview.

11.2 Thereafter, in Para No. 4, she directly jumps to an appointment letter being issued on 12.08.2010. The implied meaning of the above 5 paragraphs is that the present respondent had attended for a walk-in interview at the office of ICSIL on 04.05.2010 and she was declared successful and her name was sponsored by ICSIL to the petitioner department and when she was telephonically called, she visited the department and she was issued the appointment letter.

12. The documents on record show that on 25.05.2010, ICSIL had forwarded a list of 17 candidates for being appointed as Welfare Officers with the petitioner Department. The said list did contain name of Priyanka, but father's name of the said Priyanka is Shri Anil Kumar. There is no other Priyanka in the said list. It means that even if it is presumed that the present respondent was interviewed at ICSIL but her name was never sponsored for being appointed as Welfare Officer with the petitioner department.



13. The note sheet bearing No. 3/N generated on 11.08.2010 refers to the present respondent being the best candidate and she was not able to join as she could not be contacted earlier. The mischief played by the officials of the petitioner department is clear from this note sheet itself, which implied that the name of the present respondent was duly forwarded by ICSIL and when the officials from the Department tried to contact her telephonically, she could not be contacted at that time. So, in place of the Welfare Officer who had resigned, permission was sought to call the present respondent. She was accordingly called for interview on 11.08.2010 itself at 12 noon and was immediately offered employment on 12.08.2010.

14. Again referring back to the selection list of 25.05.2010, the name of the present respondent did not figure in the list forwarded by ICSIL on 25.05.2010.

15. The sum and substance of the above discussion is that initial employment of the present respondent is through back-door and it is not on the basis of any recommendation being made by ICSIL, after duly conducting interview of the candidates, who had the requisite qualifications.

16. Learned counsel for the respondent has relied upon the following judgments in support of his contentions:

(i) '*Buddhi Nath Chaudhary & Ors. Vs Abahi Kumar & Ors., AIR 2001 SC 1176*'. Appointments made long back pursuant to a selection need not be disturbed.

(ii) '*State of Gujarat & Ors. Vs Arvind Kumar T. Tiwari & Ors., AIR 2012 SC 3281*'. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for



the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

(iii) '*Siraj Ahmed Vs State of U.P. & Ors., 2019 (17) SCALE 626*'. Where the appointment are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

(iv) '*State of Orissa and Ors. Vs. Bhikari Charan Khuntia and Ors., AIR 2003 SC 4588*'. Mere sending of name by the employment exchange could not have and in fact has not conferred any right.

(v) '*UOI & Ors. Vs Pritilata Nanda, AIR 2010 SC 2821*'. Even though the employer is required to notify the vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges.

(vi) '*Excise Superintendent Malkapatnam Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Ors., (1996) 6 SCC 216*'. It is common knowledge that many candidates are unable to have their names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment



to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

17. In my view, none of the above judgments help the present respondent as her employment with the petitioner department is the result of a fraud committed upon the Department by few complicit officials, who had intentionally created false and fabricated documents being Note sheet Nos. 3/N and 6/N and who tried to help the present respondent through unlawful means for gaining employment in the petitioner Department and none of these judgements deal with such a situation, where officials of the employer itself had gone out of the way to appoint a candidate, whose name was never sponsored by the recruitment agency, which had conducted interview of all the eligible candidates, and thereafter, selected the best candidates from amongst them.

18. The case of the respondent was given a colour as if she was duly selected and her name was part of the selection list dated 25.05.2010, which was forwarded by ICSIL, but she was not able to join because she could not be contacted at the right time and hence, when the next vacancy arose, she was called from the panel and she was appointed. These are not the true facts because name of the present respondent never appeared in the list of short-listed candidates,



which was forwarded by the ICSIL to the petitioner/Department and the claim of the present respondent that her name was part of the said list is not substantiated. Although the said list contained the name of Priyanka, but her father's name is different from the present respondent and the said Priyanka is still working in the department. Moreover, no panel was notified to fill future vacancies.

19. On the other hand, learned counsel for the petitioners has relied upon the judgement in the matter of '*Renu & Ors. Vs. District and Sessions Judge, Tis Hazari, (2014) 15 SCC 731*', wherein Hon'ble the Supreme Court has held that petitioners' appointment being *ex facie* illegal, the issuance of appointment letter conferred no right on them. An aggrieved party must have an enforceable right under a statute or rule for a mandamus to be issued.

19.1 Learned counsel for the petitioners has further relied upon a judgement of this Court in the matter of '*Shiv Kumar Vyas Vs. IGNOU & Others*' reported as 2000 (53) DRJ 781, where it was held that to permit to continuation in employment of an ineligible candidate in the employment amounts to giving premium to dishonesty and manipulation. It is the settled position of law that persons who have been selected without having requisite qualification or experience or through irregular process, cannot be allowed to continue merely because some time has been taken in litigation or on the ground of misplaced sympathy. Both these judgments squarely apply to the facts of the present case.

20. The respondent has been able to continue in employment for a long time, although her selection was illegal and mere continuation in service for a long time, where the basis of her selection is illegal, does not confer any right on her to continue in service although she may be having the requisite qualifications. This case calls for a detailed departmental enquiry as to the circumstances under



which this fraud was played upon the Department, especially how the note sheets bearing No. 3/N and 6/N were generated, which resulted in issuance of office order dated 12.08.2010, based upon wrong facts, and thereafter, extension was recommended on 01.09.2011 and it was carried on thereafter, on a year-to-year basis. It is for the petitioner/Department to take a call on this aspect as to whether any departmental enquiry is to be conducted or not.

21. In view of the above facts and circumstances, the writ petition is allowed and the impugned order dated 17.02.2021 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 4228/2018 is hereby quashed. Pending applications are also closed.

**TALWANT SINGH  
(JUDGE)**

**RAJIV SHAKDHER  
(JUDGE)**

**SEPTEMBER 22, 2022/pa**