

(2025) 04 OHC CK 1396

In the Orissa High Court

Case No : Writ Petition (C) No. 12483 Of 2024

Naliniprava Mohanty

APPELLANT

Vs

State Of Odisha & Others Vs

RESPONDENT

Date of Decision : 11-04-2025

Acts Referred:

Citation : (2025) 04 OHC CK 1396

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Manoj Kumar Mohanty, T. Pradhan, A. Mohanty, S.N. Pattnaik

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. The petitioner in the present writ application seeks a direction to the opposite parties to regularize her service as Lady Supervisor from 20.10.2020 with all consequential financial and service benefits.

2. The petitioner was initially engaged as Anganwadi Worker w.e.f. 05.01.1993 in Tangarpalsa Anganwadi Center in the district of Keonjhar. She belongs to the unreserved category with B.A. qualification.

3. Though Orissa Children's Women's Welfare Service Rules, 1989 (in short, '1989 Rules') had come into force on 24. 04.1989 with its amendment on 08.02.2007, the Government in the Department of Women and Child Development Department, vide letter dated 04.04.2008 created 237 posts of Supervisor on contractual basis on abolition of equal posts carrying scale of pay of Rs.4750-7500/- to be filled up through direct recruitment. It was also decided that only graduate Anganwadi Workers having minimum five years of service would be eligible for such appointment.

4. By clarification issued on 29.07.2009, the Government reiterated that the posts so created shall be filled up from amongst graduate Anganwadi Workers

having experience of more than five years and giving option for the same. It was specifically clarified that the filling up of the posts was not as per the provisions of the 1989 Rules.

5. Pursuant to such direction, 22 Anganwadi Workers were engaged as Supervisors on contractual basis on consolidated pay of Rs.4750/- per month on 25.08.2009. The petitioner and three others were appointed as Lady Supervisors vide order dated 20.10.2010 of the Collector, Keonjhar on contractual basis on consolidated pay of Rs.9,300/- per month. The petitioner was posted in Keonjhar ICDS project.

6. It is stated that even though the Anganwadi Workers belonged to the same cadre, two different gradation lists were prepared on the basis of qualification, i.e., one for matriculation and the other, for graduation. Some Anganwadi Workers having matriculation qualification were promoted in the year 2010 on regular basis in terms of 1989 Rules but the graduate Anganwadi Workers were not considered against the 30% vacancies despite having 10 years' experience.

7. By office order dated 22.12.2014 the Government in W & CD Department wrote to all the Collectors laying down the conditions of service of 557 graduate Anganwadi Workers engaged as Supervisor on contractual basis. It was stated that the engagement of these Supervisors could be terminated at any time. It was also provided that those who are under 45 years of age and have completed at least one year of continuous contractual service, shall be allowed relaxation of upper age limit for entry into Government service in case they take part in any future recruitment for ICDS Supervisors or any other Group-C posts subject to satisfaction of all other eligibility criteria. Further weightage of marks was also to be granted to each year completed service subject to maximum of 15%.

8. Said office order was challenged by some contractual supervisors initially before the erstwhile Odisha Administrative Tribunal, which was subsequently transferred to this Court and registered as WPC(OAC) No. 286 of 2015 (Ratnamani Mahanta vs. State of Odisha & Ors) and batch. A Coordinate Bench of this Court, by judgment dated 13.07.2022 disapproved the action of the authorities in not absorbing the petitioners therein in regular establishment as against 40% of the total sanctioned strength and directed the authorities to make necessary provision in the 1989 Rules for absorption of graduate Anganwadi Workers having five years of experience as Supervisor or alternatively to absorb the petitioners in the said post on the basis of G.A. Department resolution dated 17.09.2013.

9. The petitioner claims to be standing exactly on the same footing as the petitioners in the aforesaid cases. It is further contended that the petitioner having B.A. qualification had completed 10 of service as on 05.03.2003 as Anganwadi Worker but in view of the provisions of the Rules confining promotion to the post of Supervisor from amongst Anganwadi Workers having matriculation qualification, her case for regular promotion has not been considered. In the

meantime, the petitioner has completed more than 17 years of service as Anganwadi Worker and Supervisor taken together.

10. The stand of the State is that the engagement of the petitioner was not as per the provisions of the 1989 Rules but as per executive instructions to meet administrative exigencies. The judgment passed by the Coordinate Bench (referred above) has been challenged in an intra-Court appeal being W.A. No.366 of 2024, which is pending. In the meantime, another Bench of this Court in W.P. (C) No. 3321 of 2011 (Smt. Kausalya Pradhan vs. State of Odisha) categorically held that when the post itself is created on contractual basis, the persons cannot be engaged on regular basis. The order has since been confirmed by a Division Bench of this Court in W.A. No. 559 of 2016 vide order dated 13.10.2022. Therefore, the petitioner having been appointed purely on contractual basis cannot claim to be regularized.

11. The petitioner has filed a rejoinder refuting the averments made in the counter affidavit. It is stated that the judgment passed in Kausalya Pradhan's (supra) case is not applicable to the facts of the case inasmuch as the petitioner therein had prayed for promotion to the post of Supervisor and not regularization. Moreover, the Government order dated 22. 12.2014 has not been challenged therein. On the contrary, the judgment passed in Ratnamani Mahanta's (supra) case has been implemented by the Government by regularizing the services of contractual Supervisors as per resolution dated 25. 09.2024. There is therefore, no reason why the petitioner, who stands exactly on the same footing, shall be deprived of the benefit of regularization.

12. Heard Mr. M.K. Mohanty, learned counsel for the petitioner and Mr. S.N. Pattnaik, learned Addl. Government Advocate.

13. Mr. Mohanty would argue that despite existence of specific Rules, the Government's decision to engage Lady Supervisor on contractual basis de hors said Rules is entirely unjustified. Though the petitioner and others were engaged on signing of agreement, the same cannot act as estoppel as they had no other option in the matter. In any event, the judgment passed in Ratnamani Mahanta (supra) having been implemented in the meantime by the Government by deciding to regularize the services of contractual Supervisors, there is nothing left to adjudicate save and except that the said decision ought to operate retrospectively i.e., from the date when these persons were first engaged as Supervisor on contractual basis.

14. Mr. S.N. Pattnaik, learned State Counsel, on the other hand, would argue that notwithstanding the existence of Rules, the State Government was competent to engage Supervisors on contractual basis to meet administrative exigencies. The decision of the Government as per letter dated 04. 02.2008 of the Commissioner-cum-Secretary in W & C.D. department followed by the clarification issued on 29.07.2009 has not been challenged so far. Further, the petitioner and the other similarly placed persons were specifically given option

before accepting the offer of engagement on contractual basis. They cannot now turn around to question such decision. Mr. Pattnaik further argues that notwithstanding the above, the Government as a matter of policy decided to regularize the services of contractual Supervisors, who were selected from amongst Anganwadi Workers having five years of experience with graduate qualification w.e.f. 25.09.2024. Said resolution has not been specifically challenged by the petitioner.

15. Though much has been pleaded and argued with regard to manner of engagement of the petitioner and the persons like her as Lady Supervisor, the same does not require to be gone into in detail as in the meantime the Government has itself taken a decision to regularize the services of persons like the petitioner. The only rider is, same shall be with effect from the date of coming into force of the resolution i.e. 25. 09.2024. As argued by Mr. Pattnaik, learned State Counsel, said resolution has not been challenged by the petitioner. In absence of any challenge there is no gainsaying that the correctness or otherwise of the resolution cannot be gone into by this Court. However, fact remains that this Court in *Ratnamani Mahanta*(supra) has disposed of the writ application by directing the authorities to either make necessary provision in the Rules for absorption of graduate Anganwadi Workers or alternatively to absorb them basing on G.A. Department Resolution dated 17.09.2013 as also taking note of the judgment passed by this Court in an earlier writ application being *Patitapaban Dutta Dash and Others vs. State of Odisha & Others* (Order dated 09.09.2021 in W.P.(C) No.19951 of 2020). In order to appreciate the contention raised in this regard it would be useful to refer to G.A. Department Resolution dated 17.09.2013. The introduction of the Resolution is reproduced below:

"The policy regarding regular appointment of following categories of contractual Group 'C' and Group 'D' employees appointed under the State Government was under active consideration of Government for some time past.

Contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services, following the recruitment procedure prescribed for the corresponding regular posts and the principle of reservation of Posts and services for different categories of persons decided by the state Government from time to time.

Government after careful consideration and in supersession of the Resolutions/ Orders/ Instructions issued by different Departments of Government to that effect; except as respects things done or omitted to be done before such supersession, have been pleased to decide as follows:-"

[Emphasis added]

16. After coming into force of the resolution dated 17. 09.2013, the previous orders dated 04.10.2008 and 29. 07.2009 get automatically superseded. Such being the situation, the other provisions of the scheme which provide for regular appointment of the contractual employees on the date of completion of six years of service or from the date of publication of the resolution, whichever is later, also applies. It is obvious that keeping the provisions of the resolution in mind, the coordinate Bench had directed the State Authorities to consider absorption of the petitioners basing thereon. There is no dispute that the petitioner stands on the same footing as the petitioners of the said case. There is no dispute that the petitioner has rendered 17 years of continuous service. She having been appointed on contractual basis w.e.f. 25.08.2009 can lay a valid claim for being regularized six years thereafter i.e. from 25.08.2015. Even reckoning six years from the date of publication of the resolution dated 17.09.2013, she can lay a valid claim after six years from said date, i.e. 17.09.2019.

17. However, as already stated, in the absence of specific challenge to the resolution dated 25.09.2024, this Court cannot issue a mandamus directing the authorities to regularize the services of the petitioner from the dates mentioned above. Nevertheless, having regard to the fact that as on 17.09.2019 the resolution dated 17.09.2013 was still in operation, the authorities concerned should re-visit the issue of regularization with retrospective effect keeping in view not only this judgment but also the earlier judgments of this Court rendered in *Patitapaban Dutta Dash* (supra) and *Ratnamani Mahanta* (supra). Let a decision be taken by the opposite party authorities in this regard within three months from today.

18. The writ application is disposed of accordingly.

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