

(2008) 06 GAU CK 0002

In the Gauhati High Court

Case No : Writ Appeal No's. 6 and 7 of 2007

Wahengbam Uttarani Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2009) 1 GLT 331

Hon'ble Judges : U.B. Saha, J; Mutum B.K. Singh, J

Bench : Division Bench

Advocate : N.P.C. Singh and Babloo, for the Appellant; H.N.K. Singh, Kh. Babulindro and N. Kumarjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—These two writ appeals are directed against the common judgment and order dated 10.07.2006 passed by the learned single Judge in W.P. (C) Nos. 324 of 2004 and 568 of 2005 whereby and whereunder the learned single Judge, while allowing the writ petitions, set aside the impugned orders dated 17.2.2004 and 5.5.2005 on the ground that those orders are not sustainable in the eye of law inasmuch as those had the effect of making the post of Supervisors (ICDS) inferior to the post of ACDPOs (ICDS) contrary to the decision of the judgment and order of this Court dated 28.08.2000 in C.R. No. 554 of 1995 and also contrary to the existing Recruitment Rules of the Supervisors, ACDPOs (ICDS) and CDPOs (ICDS). Since these sets of appeals involve common questions of facts and law, they are being disposed of by this common judgment.

2. We have heard Mr. N.P.C. Singh, learned senior Counsel assisted by Mr. Bablu, learned Counsel for the Appellants, Mr. N. Kumarjit, learned State counsel for Respondent Nos. 1 and 2 as well as Mr. H.N.K. Singh, learned senior Counsel assisted by Mr. Kh. Babulindro, learned Counsel for private Respondents.

3. The facts/materials, in brief, for the purpose of decision involved in these appeals, are stated hereunder:

The private Respondents/writ Petitioners were appointed as Supervisors (ICDS) (for short Supervisors) prior to the Appellants herein who were appointed as Assistant Child Development Project Officers (ICDS) (for short ACDPOs) in the Social Welfare Department in the State of Manipur and both the posts of Supervisors and ACDPOs having the same scale of pay, are inter-transferable and they hold the same status, in rank and in position and both are also feeder posts for promotion to the post of Child Development Project Officers, ICDS (CDPOs for short). The three Appellants in Writ Appeal No. 6 of 2006 were appointed by an order dated 28.6.1994 as ACDPOs, in which year the post of ACDPOs were created in the Social Welfare Department, on the recommendation of a DPC as per the terms and conditions, whereas the three private Respondents/writ Petitioners in the said Writ Appeal were appointed on 11.3.1986 as Supervisors in the same Department on regular basis. The Appellants, ACDPOs in the year 1995, challenged the Government order being No. 29/51/89-SC (SW) Pt/iii, dated 14.2.1994 by filing a Writ Petition being C.R. No. 554 of 1995 before this Court wherein it was stated that the Supervisors and ACDPOs, which carry same scale of pay are inter-transferable and they shall hold the same status in rank and position. The learned single Judge of this Court after due hearing of the parties and having regards to the materials before the Court, dismissed the case vide order dated 28.8.2000.

The final inter-se seniority list of Supervisors/ACDPOs in the Social Welfare Department was prepared and published on 21.12.1996 and the Respondent Nos. 3 to 5 in W.A. No. 6 of 2007 were shown senior to the Appellants and names of those Respondents/writ Petitioners were shown in the said seniority list at serial Nos. 8, 9 and 10 and the Appellants in the said writ appeal were shown at Sl. Nos. 88, 89 and 90 respectively and the said seniority list was challenged by the present Appellants before this Court by a separate writ petition being Civil Rule No. 481 of 1998, which is at present pending and no order of stay was granted by the Court and the Respondent/writ Petitioners were admittedly appointed as in-charge CDPOs by way of promotion from the post of Supervisors and in their appointment letters it is specifically stated that the State Government decided to fill up the posts of CDPOs on in-charge basis in order of seniority amongst the Supervisors to function the ICDS Project with immediate effect and until further order without any extra remuneration and they also cannot claim seniority as well as for regular appointment without DPC. While the Respondents/writ Petitioners, namely Smt. Memcha Devi, Smt. T. Lukamani Devi and Smt. Kh. Maipakpi Devi, were working as in-charge CDPOs at Tengnoupal, Churachandpur and Parbung ICDS Projects respectively, the State Government issued the impugned order dated 17.2.2004 whereby and whereunder the Department order dated 14.2.1994 (supra) was cancelled with immediate effect after detailed examination and thereafter by Anr. order dated 5.5.2005 the Appellants were appointed as CDPO in-charge without extra remuneration in

place of the Respondents/writ Petitioners and they were directed to join in the Directorate Headquarters after handing over their charges to the CDPO in-charge i.e. the Appellants. Being aggrieved by the aforesaid orders dated 17.2.2004 and 5.5.2005, the Respondents/writ Petitioners filed the aforesaid two writ petitions (supra), for setting aside those orders on the ground that; firstly, they are senior to the Appellant/Respondents and secondly, cancellation of order dated 14.2.1994, which was upheld by the High Court in C.R. No. 554 of 1995, as arbitrary, unreasonable and contrary to the Recruitment Rules. After hearing the parties, the learned single Judge allowed the prayer of the Respondent/writ Petitioners and set aside the aforesaid impugned orders dated 17.02.2004 and 05.05.2005. Being aggrieved by the judgment and order of the learned single Judge the Appellants prefer the instant writ appeals.

4. In W.P. (C) No. 324 of 2004 the writ Petitioners, who are the Respondents in W.A. No. 7 of 2006, prayed for quashing the said order dated 17.2.2004 issued by the State Government canceling the earlier order dated 14.2.1994 and in W.P. (C) No. 568 of 2005 the writ Petitioners, who are the Respondents in W.A. No. 6 of 2006 prayed for quashing the order dated 17.2.2004 as well as the order dated 5.5.2005 by which the present Appellants were appointed as in-charge CDPOs in place of the Respondent/writ Petitioners though they were junior to the Respondent/writ Petitioners.

5. The stand of the State Respondents in C.R. No. 554 of 1994, inter alia, was that the post of Supervisors and post of ACDPOs are inter-transferable and they shall hold the same status, in rank and position and both the posts are feeder posts of CDPOs as per the existing Recruitment Rules for promotion to the said post and in W.P. (C) No. 324 of 2004 and 568 of 2005 the Government after issuance of order dated 17.2.2004 the Government, changed its stand and stated that both the posts cannot be treated as equal in respect of status and same are also not inter-transferable and their nature of jobs are also not similar. According to the Respondent/writ Petitioners, the newly changed stand of the Government vide order dated 17.2.2004 has no other effect except to create an impression in the mind of the Supervisors that they are inferior to the post of ACDPOs as the Government has not changed the Recruitment Rules for both the two posts, despite the fact that both the posts of Supervisors and ACDPOs are feeder posts for promotion to the post of CDPOs under the relevant Recruitment Rules.

6. Mr. N.P.C. Singh, learned senior Counsel for the Appellants submits that appointment in a given project is prerogative of the Government and the Government has the power to modify/alter the staffing pattern according to the needs of the project and in the interest of the project and public, the employee has no right to challenge the said policy of alteration of staffing pattern. He also contends that the Respondent/writ Petitioners did not challenge the revision of staff pattern and circular/guidelines of the Central Government dated 22.8.2003, which were approved and adopted by the State Government vide order dated 17.6.2004. The learned single Judge misinterpreted the ratio of the judgment of

this Court in C.R. No. 554 of 1995 particularly, para 6 of that judgment. He further argues that the Central Government in its guidelines/instructions specifically stated that in one project there cannot be two CDPOs and even if in one project there are one CDPO and one ACDPO then also one has to be sent to the project where the post of CDPO is lying vacant. In the absence of CDPO, it is the ACDPO who are entitled to hold the post of CDPOs under the changed staff pattern i.e. as circular/instruction of Central Government dated 22.8.2003. He also contends that the aforesaid circular of the Central Government is entirely concerned with the deployment of the staff in the ICDS Project, it has nothing to do with pay scale or status of the staff or their recruitment in the project service. He finally argues that the in-charge arrangement without extra remuneration does not amount to promotion and a promotee on in-charge basis has no right to the post, it can be changed at any time by the Government and there is no question of arbitrariness/malafide on the part of the State Government. In support of his aforesaid contention he placed reliance on a decision of the Apex Court in Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, and Gopalji Khanna Vs. Allahabad Bank and others, The learned single Judge, according to him, failed to consider the facts involved in the case, rather, misinterpreted the change of staffing pattern and findings of the learned single Judge to the effect that without changing the relevant Recruitment Rules the Government has no power to change the staffing pattern as well as to appoint the present Appellants as in-charge in place of the Respondent/writ Petitioners who were also acting as in-charge CDPOs.

7. Mr. N. Kumarjit, learned State counsel submits that in view of the order dated 14.2.2004 both the posts of Supervisors and ACDPOs were identical, equal and transferable having the same status. In the State of Manipur no post of Addl. CDPO in the Social Welfare Department has been created at any time and according to him the Central Government has the power to revise its scheme relating to the ICDS from time to time and pursuant to the direction of the Apex Court schemes have been revised by the Central Government, resultantly number of centrally sponsored schemes have been increased and ultimately, the staffing pattern has been changed vide letter dated 20.08.2003 and the State Government has to follow all the instructions of the Central Government as the entire expenditure is borne by the Central Government. He fairly submits that admittedly in the earlier C.R. No. 554 of 1995 the Government, by way of filing counter affidavit, has stated that both the post of Supervisors and CDPOs are identical, similar and transferable but the said stand of the Government was changed and the order dated 14.2.2004 had been cancelled vide order dated 17.2.2004 as impugned in view of the instructions of the Central Government and the order dated 5.5.2005 was only an arrangement made on in-charge basis, that does not confer any right to any of the incumbents and State Government nowhere stated that Supervisors are junior to the ACDPOs and admitted position is that the combined seniority list is still in force.

8. Mr. H.N.K., learned senior Counsel appearing for the private Respondents

contends that the learned single Judge did not commit any wrong by way of allowing the writ petitions as the subject matter relating to the pay scale and status of the Supervisors vis-a-vis the ACDPOs have already been settled by an earlier decision of this Court in C.R. No. 554 of 1995 wherein this Court upheld the order of the State Government dated 14.2.1994 and dismissed the writ petition filed by the ACDPOs, the Appellants herein. Against the said judgment no appeal is preferred by any of the parties and as a result the same attained finality long back and the same subject matter cannot be reopened by way of issuing the impugned order dated 17.2.2004. He also contends that once the aforesaid order is upheld by a court the settled rights and status of the parties cannot be unsettled/cannot be cancelled by subsequent orders dated 17.2.2004 and 5.5.2005 affecting the accrued rights of the Supervisors/writ Petitioners as they are fully protected by the provisions of Recruitment Rules of CDPO and entitled to be considered for promotion to the said post of CDPO being the post of Supervisors as well as the ACDPOs are feeder posts for promotion to the said post. According to him the present Appellants are disentitled from raising any question regarding the validity of the impugned decision of this Court by which the earlier order dated 14.2.1994 was upheld. It is only the State Respondents who can question the impugned judgment wherein the learned single Judge set aside the orders dated 17.2.2004 and 5.5.2005 upholding the order dated 14.2.1994. He further contends that the Recruitment Rules of CDPOs are framed under Article 309 of the Constitution of India has legal force but the letter of the Central Government dated 22.8.2003 has no legal force, rather by the aforesaid letter the State Government was only requested to reduce 20% of the staff strength in a project of ICDS and asked the State Government for change of staff pattern so that both the CDPOs and ACDPOs cannot act in a project at a time. The project should be headed only by either of them and in the said letter nowhere stated that the Supervisors cannot be appointed as in-charge CDPOs while they are entitled to be considered for promotion being holding the feeder post of CDPO as per Recruitment Rules for CDPOs. By referring the decision of the Apex Court in the case of Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, he tries to convince this Court relying the principles laid down in that case that an in-charge employee cannot be replaced by Anr. incharge employee, an in-charge employee can only be replaced by a regularly appointed candidates/employees. He particularly refers to the order of the case of Dr. A.K. Jain and Ors. (supra) where their Lordships restrained the replacement of newly appointed ad-hoc Assistant Medical Officers/Assistant Divisional Medical Officers in place of earlier ad-hoc Assistant Medical Officers/Assistant Divisional Medical Officers.

9. Mr. H.N.K., learned senior Counsel while attacking the impugned orders dated 17.2.2004 and 5.5.2005 and supports the judgment of the learned single Judge, contends that the impugned order dated 17.2.2004 is an executive order and by an executive order the Government has no power to frustrate the object of the Recruitment Rules framed under Article 309 of the Constitution which gives

certain rights to an employee for consideration to be promoted in higher post. He also contends that the letter/circular/guidelines cannot over ride the occupied fields of the rules framed under Article 309. In support of his aforesaid contention he placed reliance on the case of Dilip Kumar Ghosh and Others Vs. Chairman and Others,

He also contends that in the letter/guideline of the Central Government, it is nowhere stated that the post of CDPO is to be filled up only by the Additional Child Development Project Officer/Assistant Child Development Project Officer and also does not prohibit the Government from filling up the post of CDPOs by Supervisors. But in the instant case, according to him, the right to be considered for promotion to the post of CDPOs from the post of Supervisors/ACDPOs/Statistical Officers is the fundamental right of the eligible persons as those posts are feeder post of CDPOs as per the Recruitment Rules.

He finally contends that vide impugned order dated 5.5.2005 the Appellants were asked to hold the post of in-charge CDPOs in place of the writ Petitioners though the Appellants were juniors to them without considering the fact that the writ Petitioners were promoted as in-charge CDPOs considering their seniority position till the posts are filled up by regular appointees. According to him, it cannot be said that the post of CDPOs were filled up for a limited period in the project, rather those posts were filled up till the regular arrangement is made. Therefore, by issuing the impugned order the State Government tried to discriminate between the Supervisors and ACDPOs though both are equal in status, pay scale and working in ICDS under the Department and also are feeder post of CDPOs for the purpose of promotion. And being the impugned orders are unfair, unreasonable, arbitrary and violative of Articles 14 and 16 and contrary to the Court's order dated 20.08.2000 passed in C.R. No. 554 of 1995 and in contrary to the existing Recruitment Rules of CDPOs the learned single Judge rightly set aside those orders, he contended.

10. We have gone through the submissions of learned Counsel for the parties as well as relevant materials available before us and law reports cited. Going by what has been stated above, questions arise for decision are; (a) whether the post of CDPOs should be filled up either on in-charge or regular basis only by ACDPOs or by both Supervisors and ACDPOs and; (b) whether the order dated 14.2.1994 cancelled by order dated 17.2.2004 ignoring the decision of the Court and contrary to the relevant Recruitment Rules is legal or valid and; (c) whether replacement of the in-charge CDPOs vide order dated 5.5.2005 by Anr. set of in-charge CDPOs, i.e. Appellants herein who are admittedly junior to the former are permissible under the law.

11. For proper adjudication of the writ appeals it would be necessary to reproduce the order dated 14.2.1994 and relevant portion of the Recruitment Rules of CDPOs wherein both the Supervisors and ACDPOs are shown as feeder post as under:

ORDERS BY THE GOVERNOR: MANIPUR

Imphal, the 14th February, 1994

No. 29/51/89-SE (SW) Pt. iii: The Governor of Manipur is pleased to order that the Supervisor and the Assistant (sic) Development Project Officer which carry same scale of pay are inter-transferable and they shall hold same status in rank and in position.

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Recruitment Rules for the post of Child Development Project Officer (ICDS) in the Social Welfare Department.

----- Designation No. of Classification Scale of pay Whether Age for
direct Educational of post (s) post (s) selection recruits and other post of
qualification non- required for selection direct recruits post -----

(1) (2) (3) (4) (5) (6) (7) -----
----- Child 32 (thirty G.C.S. Class-II Rs.
1600-50 Selection 35 years and ESSENTIAL Development two) (Gazetted) 2300-
EB-60- below (upper Master's Project 2660/- (ROP age limit is Degree in Officer
1990) relaxable for Sociology/Soc (ICDS) Govt. al Work/Home Servants Science
from a appointed recognized under the University Govt. of Manipur to the
extent of the period of DESIRABLE continuous 1. Knowledge service put in of
Manipuri & the Hindi, post/service 2. Experience and by 5 in Field work years
for related to SC/ST Women and candidates child and a Govt. Development
servant who belongs to SC/ST will get the facility admissible to a Govt.
servant in addition to the relaxation admissible to SC/ST candidates) -----

----- Whether age period of Method of In case of If a D.P.C. Circumstances
and probation rectt. Whether rectt. By exists, in which educational if any. by
direct rectt. promotion/ what is MPSC is to be qualificatio Or by deputation/ its
consulted in prescribed for promotion or transfer, compositi- making rectt. the
direct by grades ons. recruits will deputation/tra from which apply in the nsfer
and promotion/ case of percentage of deputation/ promotees the vacancies
transfer to be to be filed by made. various methods. -----

----- (8) (9)
(10) (11) (12) (13) -----

----- N.A. 2 (two) 75% by PROMOTION Class-II
As required years promotion 80% of the D.P.C. under MPSC and 25% by
promotion (Exemption direct quota from from recruitment Supervisor
Consultation) (ICDS) Asstt. Regulations CDPO (ICDS) 1972. with 5 (five) years
regular service in the grade and; 20% of the promotion quota from
Statistical Assistant of the Social Welfare Department with 5 (five) years
regular -----

12. From the aforesaid order dated 14.2.1994 and Recruitment Rules for the post of CDPOs, it appears that both the Supervisors and ACDPOs are equal in rank, pay and in status and also feeder post of CDPOs for the purpose of promotion. Now let us see the impugned orders dated 17.2.2004 and order dated 5.5.2005 by which the order dated 14.2.1994 has been cancelled and the writ Petitioners/ Supervisors were ousted from the post of in-charge CDPOs by ACDPOs though they were appointed as in-charge CDPOs on promotion prior to the impugned orders dated 17.2.2004 as well as 5.5.2005 by which their accrued right has been taken away by the State Respondents as per contention of the writ Petitioners. Therefore, it is necessary to reproduce the relevant portion of the order dated 17.2.2004 by which the earlier order dated 14.2.1994 was cancelled even after upholding by a decision of the learned single Judge of this Court and the writ Petitioners were sent back to the Directorate of Social Welfare Department as Supervisors from the post of in-charge CDPOs. For providing justice it is necessary to reach to the injustice as allegedly caused by the aforesaid orders dated 17.2.2004 and 5.5.2005 which are quoted hereunder:

ORDERS BY THE GOVERNOR OF MANIPUR

Imphal, the 17th February, 2004

No. 6/1/2002-S (SW) Pt: After detailed examination of job chart of the posts of Assistant Child Development Officer and Supervisor (ICDS) the Governor of Manipur is pleased to cancel this Department Order No. 29/51/89-SE (SW) Pt-III dated 14.2.1994 with immediate effect.

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ORDERS BY THE GOVERNOR: MANIPUR

Imphal, the 5th May, 2005

No. 6/1/2002-S(SW) Pt: In pursuance of Government of India's letter No. 1-3/2002-CD-1 (Vol. 11) dated 22/8/2003, the Governor of Manipur is pleased to appoint the following 4 (four) ACDPOs as CDPOs in charge without extra remuneration with immediate effect and until further orders and they are posted at the following 4 (four) ICDS Projects as detailed below:

-----	Sl. No.	Name of ACDPO	Name of ICDS Project
-----	1.	Smt. W. Uttarani Devi	in-charge CDPO, Henglep
-----	2.	Km. N. Usharani Devi	in-charge CDPO, Chandel
-----	3.	R.K. Malasana Devi	in-charge CDPO, Nungba
-----	4.	Shri M. Ibo Singh	in-charge CDPO, Tamenglong.

It is further ordered that the 3 (three) Supervisors in-charge of CDPO viz. (1) Sh. Memcha Devi, (2) Kh. Maipakpi Devi and (3) T. Lukamani Devi shall join to the Directorate Head Quarter, Social Welfare Department after handing over their charges to the CDPOs in-charge for arrangement of their posting.

No joining time is allowed.

From the aforesaid impugned orders as well as the provisions of Recruitment Rules of CDPOs it can be easily presumed by a reasonable person that both the holders of the posts are entitled to be considered for promotion to the post of CDPOs being those posts are feeder posts. There is also no doubt that the State has the power to make the post equal, superior or inferior to Anr. post as that being the policy matter of the Government. But at the same time Government cannot arbitrarily, unfairly and in violation of the provisions of the existing law & rules governing particular field only to provide benefit to a particular group of employees on the plea of implementation of a letter of the Central Government which has no force of law ignoring the other group though they are in the same status as per Recruitment Rules of CDPOs.

13. In the instant case it is admitted position that both the Supervisors and ACDPOs are feeder posts of CDPOs and learned single Judge of this Court also held vide its order dated 20.8.2000 in CR No. 554 of 1995 while upholding the order dated 14.2.1994 though the aforesaid two posts are equal in status, pay and responsibility the claim of the Appellants herein were rejected. There is no quarrel with the proposition that Government being the custodian of public interest has the power to replace one CDPO by Anr. CDPO. But the Executive Government being a model employer cannot act arbitrarily over the interest of the individual. Action of the Government must be in conformity with fairness and reasonableness being fairness and reasonableness and transparency are the touch stone of the Executive and Administrative functions. The Apex Court in the case of *Netai Bag and Others Vs. The State of West Bengal and Others*, discussed what should be the function of the Executive Government or its officers and rule of the administrative law. The said paragraph is quoted hereunder:

17. It has been consistently held by this Court that in a democracy governed by the rule of law, the executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the recipient for its largesse. Dealing with the limits on the exercise of executive authority in relation to rule of administrative justice, Mr. Justice Frankfurter in *Vitarelli v. Seaton* 359 US 535 said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

In the case of *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, the

Apex Court discussed regarding the cardinal principles of governance in a civilized society. We think it fit to reproduce para 36 of the said report for better appreciation as under:

36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters of fact, the reasons are not based on values but to achieve popular accolade that decision cannot be allowed to operate.

Now we have to answer the question formulated by us, inter alia, whether the post of CDPO should be filled up either in in-charge basis or on regular basis only by ACDPOs or by both the Supervisors & ACDPOs. According to us, both the Supervisors and ACDPOs are entitled to be considered for promotion to the post of CDPOs in a project as per the Recruitment Rules of CDPO and none of them can be deprived of their right for consideration as the right to be considered for promotion to a post is a fundamental right guaranteed under Article 16. It is not mere "consideration for promotion"; the said "consideration" should be "fair" and "reasonable" according to the established principles governing the field of service jurisprudence. Now, the question is how and in what manner the post of in-charge CDPOs can be filled up by whom, answer is no longer res-integra as in *Nani Bhusan Roy v. State of Assam and Ors.* (2003) 3 GLR 446, this Court considering the facts and circumstance of that case held that length of service in a particular school should be the sole consideration for allowing a person to hold the charge of Principal or Vice Principal as the case may be, provided he is otherwise eligible. In *Satya Charan Biswas v. State of Assam and Ors.* 2004 (Supp.) GLT 808 : (2005) 3 GLR 275 the Petitioner of that case had challenged the order relating to re-fixation of seniority of the Respondent No. 4 of that case over him and consequently allowing the said Respondent to hold the charge of Principal of the School in question who was junior to him, wherein this Court considering the rival submission of the parties of that case held that "there cannot be two sets of principle on the basis of the same very set of rule relating to the regular and temporary appointment as Principal of a School. There is no manner of doubt that the Principal of a School is appointed from amongst the teachers in the Graduate and Post Graduate cadre. Such an appointment cannot be made from amongst the teachers working in the intermediate cadre. In case of any temporary appointment or current duty charge of the post of Principal as in the instant case, rules of prudence, practice and the convention being followed, the seniormost teacher in the Graduate/Post Graduate cadre should be

appointed and cannot be ignored unless there is something adverse against him." Thereafter, again this Court in Jagannath Pegu Vs. State of Assam and Others, after considering the relevant fact of that case observed that "it is too fundamental to hold that a candidate eligible for promotion to a post on regular basis cannot be overlooked even for the purpose of any temporary arrangement concerning to that post." It is also held that being the Petitioner was senior to the Respondent, eligible in terms of the rule for being promoted to the post of headmaster and set aside the impugned order being repugnant to the rules governing the field. The Apex Court of the country also considered the matter relating to interim arrangement of posting on in-charge basis in the case of Government of A.P. and Another Vs. A.V. Venugopala Rao, wherein the Apex Court, while setting aside the order of the A.P. Administrative Tribunal held that pending finalization of seniority list, seniormost eligible employee in the provisional list made in-charge of the promotional post to avoid administrative hardship or heart-burning among rival claimants is valid as such interim arrangement made by the Government, had a rational and reasonable basis.

In view of the aforesaid decisions of the Apex Court and this Court we have no hesitation to hold that Government being the custodian of public interest has the power to replace one in-charge officer by Anr. in-charge, but, Government cannot make such in-charge arrangement by way of filling up the post by a junior officer depriving the senior. As such, in case of filling up the post of in-charge CDPO on in-charge basis, Government is bound to consider all the eligible persons and the seniormost should be appointed till the regular appointment is made after recommendation of appropriate DPC. In the instant case the writ Petitioners of WP (C) No. 568 of 2005 are admittedly senior to the Respondents, hence they are entitled to hold the post of CDPOs unless they otherwise ineligible for holding the said post.

14. It appears from the letter dated 22.08.2003 issued by the Central Government addressed to the Secretaries, in-charge of ICDS Schemes, Government of India, Ministry of Human Resource Development, that the said letter was issued only to revise the staffing pattern of ICDS Project, mainly for down sizing the staff strength of a project up to 20% and more so, in one project there should not be CDPOs and ACDPOs at a time either of them should be allowed to work in a particular project. But in the said letter nowhere it is stated that Supervisors or ACDPOs cannot be appointed by the State either as CDPO or in-charge CDPO in the ICDS Project as per the Recruitment Rules. It is also admitted position that the relevant Recruitment Rules for the post of Supervisors and ACDPOs and CDPOs have not been altered by the Government though it has the power to alter such Recruitment Rules unilaterally and without altering such Recruitment Rules the Government has no power to deprive of its employees who are eligible for consideration from getting the fruits of a valid Recruitment Rules with the help of Administrative/Executive orders. In the instant case, the Government issued order dated 17.2.2004 allegedly with the aid of the aforesaid letter dated 22.8.2003 to take away the right of the Petitioners, which they

acquired from the earlier order dated 14.2.1994 as well as from the Recruitment Rules of CDPOs. By this time, it is settled that the provisions of Recruitment Rules cannot be override by an Executive order and not only that when a particular field is occupied by a rule, that field cannot be encroached by an executive order, particularly when the same is disadvantageous to the employees" accrued right and we are in agreement with the submission of learned Counsel for the private Respondents, Mr. H.N.K. Singh, learned senior Counsel that circulars cannot override the rules occupying the field with the rules prescribed a particular mode for consideration for promotion to a post in view of the decision of Dilip Kumar Ghosh and Ors. (supra). There is no quarrel with the proposition laid down in the case of Ramakant Shirpad Sinai Advalkar (supra) and Gopalji Khanna (supra), as by this time it is settled that when an officer who substantially holds a lower post merely appointed to discharge the duties of higher post cannot be treated as promotion as in such case, he does not get the salary of higher post, but only gets the other service benefits like charged allowance, but that does not mean that without any sound reasoning the Government, a model employer, will deprive a senior officer and allow a junior officer to hold the higher post on in-charge basis. A junior officer can obviously hold the higher post superceding the senior in a selection post like the present one only when he is selected by the appropriate DPC. But in the instant case in the appointment letter of the writ Petitioners it is specifically mentioned that they were promoted as in-charge CDPO till the post is filled up on regular basis and admittedly they are senior to the Appellants and their accrued rights have been taken away with the help of the impugned order allegedly backed by a letter, which is even not an executive order. Hence the facts of those cases and the case in hand are different. Therefore, we are unable to accept the submission of Mr. N.P.C. Singh, learned senior Counsel appearing for the Appellants. Hence, according to us, the learned single Judge very rightly held that the order dated 17.2.2004 is not sustainable in the eye of law being contrary to the decision of the learned single Judge of this Court dated 28.8.2000 passed in C.R. No. 554 of 1995 and contrary to the existing Recruitment Rules of Supervisors, ACDPOs and CDPOs. Therefore, we also hold that the order dated 17.2.2004 is not sustainable in the eye of law and liable to be set aside, which the learned single Judge, very rightly did. In the instant case, the Supervisors/writ Petitioners/Respondents in W.A. No. 6 of 2006 are when admittedly seniors than the Appellants and they were also holding the post of in-charge CDPOs prior to the orders dated 17.2.2004 as well as 5.5.2005, according to us, the appointment of the Appellants for replacing the Respondents/writ Petitioners are bad in law, hence, call for interference and rightly the learned single Judge interfered with such orders and set aside.

For the foregoing reasons, we are of the opinion that the order of the learned single Judge does not call for any interference by us. Accordingly, the Writ Appeals are dismissed. No order as to costs.