

# ORISSA HIGH COURT: CUTTACK

## W.P.(C) NO. 7021 OF 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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**AFR** Smt. Kaberi Behera ..... Petitioner

-Versus -

State of Orissa and others ..... Opp. Parties

For Petitioner : M/s. Srikanta Ku. Sahoo,  
A.K. Sahoo, B.B. Biswal, &  
M. Mahapatra, Advocates

For Opp. Parties : Mr. B.P. Tripathy,  
Addl. Government Advocate.  
[O.Ps. No. 1 to 4]

M/s. P.K. Samantaray &  
R.N. Parija, Advocates  
[O.P. No. 5]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

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**DECIDED ON : 09 .03.2021**

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**DR. B.R. SARANGI, J.** Kaberi Behera, who was a candidate for selection of Anganwadi Helper, has filed this writ petition to quash the order dated 21.09.2010 passed by the Additional District Magistrate, Puri in Anganwadi Misc.

Case No. 2 of 2010, as well as the engagement order issued in favour of opposite party no.5-Mitanjali Swain, and further seeks for a direction to opposite parties no. 1 to 4 to give her engagement in the post of Anganwadi Helper of Torabanga Anganwadi Centre.

2. The factual matrix of the case, in hand, is that opposite party no.4, Child Development Project Officer (CDPO), Nimapara issued an advertisement on 18.01.2010 under Annexure-2 regarding selection of Anganwadi Helper in different Anganwadi Centers of Nimapara Gram Panchayat. In the said advertisement, it was indicated to hold Mahila Sabha in all the centers, where intending women candidates were to remain present. It was also indicated therein that the candidate, who intends to apply for the post of Anganwadi Helper, should be a permanent resident of the Anganwadi Centre area, her age should not be less than 18 years as on 01.01.2020, she should have competency to manage the center, she should be liked by the villagers, should be able

to read and write and should have shown her interest to work for the women and children of the locality. So far as Torabanga Anganwadi Centre is concerned, the date, time and place were fixed for Mahila Sabha as 25.01.2010 at 10.00 a.m. in the premises of Torabanga Nilakantheswar Temple of Badasiribula G.P.

2.1 In compliance of notice dated 18.01.2010 under Annexure-2, the petitioner, along with three other candidates, participated in the process of selection for the post of Anganwadi Helper of Torabanga Anganwadi Centre. Out of four candidates, educational qualification of the petitioner being highest, majority of women selected the petitioner to be engaged as Anganwadi Helper. On the scheduled date, time and place though Mahila Sabha was held, result of such meeting was published later on selecting opposite party no.5-Mitanjali Swain and engaging her Anganwadi Worker. Her selection was objected to by local women, who submitted application on 08.03.2010 to the CDPO requesting to stick to the

decision arrived at in the meeting. Since the petitioner was selected, she submitted an independent representation on 10.03.2010 before the Collector & District Magistrate, Puri requesting to look into the matter, which was marked to the CDPO for doing the needful, but no action was taken.

2.2 Due to non-consideration of the grievance made by the petitioner, she approached this Court by filing W.P.(C) No. 6970 of 2010, which was disposed of vide order dated 19.04.2010 with a direction that if the petitioner filed a fresh representation along with a copy of the order within two weeks from that day before the Addl. District Magistrate, Puri, the same would be disposed of by the ADM in accordance with law within a period of four weeks from the date of filing of the representation by giving opportunity of personal hearing to the petitioner and the affected parties. In compliance of the same, the petitioner filed a representation before the ADM, Puri, which was registered as Anganwadi Misc. Case No. 2 of 2010. Therein, the ADM issued notice to opposite party

no.5 and, by affording opportunity of hearing, passed order impugned dated 21.09.2010 by holding that the petitioner was not diligent enough to find out the real candidate in whose favour appointment order was issued. On the contrary, she moved the High Court impleading Gitanjali Swain as opposite party no.6 in W.P.(C) No. 6970 of 2010, who was not the real candidate. As such, the petitioner was not sincere to implead Mitanjali Swain as an opposite party, after the fact came to her notice to adduce evidence in support of her appointment as Anganwadi Helper in Torabanga Anganwadi Centre under ICDS Project, Nimapara. Thus the appeal filed by the petitioner, having no merit, was rejected. Hence this application.

3. Mr. B.B. Biswal, learned counsel for the petitioner argued with vehemence that the petitioner, who sought for engagement as Anganwadi Helper, has got higher qualification in comparison to other candidates whosoever were in the field and also belonged to SC

community and, therefore, non-selection of the petitioner as Anganwadi Helper is arbitrary unreasonable and contrary to the provisions of law. It is further contended that a pre planned and well prepared resolution was passed on 25.01.2010 to show favour to Smt. Gitanjali Swain, who has been selected as Anganwadi Helper in respect to Torabanga Ananwadi Centre. Thereby, the entire selection process has to be quashed. Consequentially, rejection of the representation of the petitioner vide impugned order dated 21.09.2010 passed in Anganwadi Misc. Case No. 2 of 2010, which has been passed in pursuance of order dated 19.04.2010 passed by this Court in W.P.(C) No.6970 of 2010, cannot sustain in the eye of law and also engagement order issued in favour of opposite party no.5 should be quashed.

4. Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State opposite parties contended that no candidate named Gitanjali Swain had ever participated in the Mahila Sabha held for

selection of Anganwadi Helper in respect to Torabanga Ananwadi Centre. But, due to mishearing by the supervisor, the name of Mintanjali Swain was wrongly written as Gitanjali Swain and, accordingly, the appointment order was issued in the name of Gitanjali Swain. But, when the said mistake was realized, it was rectified subsequently. As such, said supervisor has also filed an affidavit stating that due to her heard of hearing, the name of Mitanjali Swai was written by her as Gitanjali Swain in the proceeding meeting, and that as soon as this fact came to her knowledge she rectified the same giving correct name as Mitanjali Swain in place of Gitanjali Swain. Thereby, no illegality or irregularity has been committed by indicating correct name of the opposite party no.5. Consequentially, the grievance made by the petitioner cannot sustain in the eye of law and, as such, the ADM has rightly rejected the representation of the petitioner in due application of mind. Therefore, the writ petition should be dismissed.

5. Mr. R.N. Parija, learned counsel appearing for opposite party no.5 contended that no candidate named Gitanjali Swain had ever participated in the process of selection. Rather, opposite party no.5-Mitanjali Swain participated in the process of selection and she, having been supported by a large number of women in the Mahila Sabha, was declared to be engaged as Anganwadi Helper of Torabanga Ananwadi Centre. If a wrong was committed by the supervisor in recording the name of “Gitanjali Swain” in place of “Mitanjali Swain”, that itself cannot disentitle her to continue as Anganwadi Helper and the petitioner cannot take advantage of such mistake and claim that she should be engaged as Anganwadi Helper in place of opposite party no.5. More so, the petitioner had not impleaded Mitanjali Swain as a party in her earlier writ petition, rather she had impleaded therein Gitanjali Swain as opposite party no.6, even though she knew that a mistake was committed on the part of the supervisor, who had heard of hearing, and when the same was brought to her notice, she rectified the same

indicating Mitanjali Swain in place of Gitanjali Swain. Thereby, no illegality or irregularity was committed in the process of selection of Anganwadi Helper in respect of Torabanga Ananwadi Centre. More so, there is no such allegation made in the writ petition with regard to illegality or irregularity committed in the process of selection of Anganwadi Helper of the Torabanga Ananwadi Centre. Thereby, he seeks for dismissal of the writ petition.

6. This Court heard Mr. B.B. Biswal, learned counsel for the petitioner; Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for opposite parties no.1 to 4; and Mr. R.N. Parija, learned counsel for opposite party no.5. The opposite parties have not filed their counter affidavit in this case. It is contended that since it is a certiorari proceeding, on the basis of the pleadings available, it can be heard and disposed of at the stage of admission. Therefore, with the consent of the parties, the matter is being disposed of finally at the stage of admission.

7. The factual matrix, as delineated above, as well as the contentions raised by learned counsel appearing for the respective parties, as recorded hereinbefore, if summed up, would emerge that challenging the selection of opposite party no.5, the petitioner raised an objection before the authority, but the same having not been acceded to, she approached this Court by filing W.P.(C) No. 6970 of 2010, which was disposed of vide order dated 19.04.2010 directing the petitioner to file a fresh representation to be considered by the ADM in accordance with law by affording opportunity of hearing to the affected parties. In compliance of the same, the ADM passed the impugned order dated 21.09.2010. As is evident from the said order, the ADM, on receipt of the application filed by the petitioner, registered the same as Anganwadi Misc. Case No.2 of 2010 and issued notice to all the parties to adduce evidence. But, notice as against Gitanjali Swain, who was opposite party no.6 in the said writ petition, could not be made sufficient and on the other hand a report was received

from the police station that there was no such person in the village as Gitanjali Swain. Therefore, Mitanjali Swain, opposite party no.5 appeared and submitted that there was no such person as Gitanjali Swain in the village and she herself is Mitanjali Swain, who had been engaged as Anganwadi Helper of Torabanga Anganwadi Centre under Nimapara Block. The CDPO, Nimapara, on being called for, also submitted a report indicating therein that on verification of bio-data of the candidates and obtaining the majority views of the village Mahila Sabha, one Mitanjali Swain was selected as Anganwadi Helper of Torabanga Ananwadi Centre, but, while recording by the supervisor, the name of Mitanjali Swain had been wrongly written as Gitanjali Swain, as the said supervisor was suffering from heard of hearing. But consequentially, when this fact was brought to her notice, she rectified her mistake and corrected the name of Gitanjali Swain as Mitanjali Swain, opposite party no.5 herein. Though it is urged that the petitioner was selected in the proceeding held on 25.01.2010 for engagement as Anganwadi Helper of

Torabanga Ananwadi Centre, but nothing has been placed on record to justify the same and prove that Mahila Sabha had selected her to be engaged as Anganwadi Helper. In the above premises, one thing is clear that wrong mentioning of the name of opposite party no.5 as Gitanjali Swain in place of Mitanjali Swain by the supervisor concerned, which was subsequently corrected on being noticed, has created such a confusing situation. Be that as it may, it is well settled in law that if a mistake is committed by the authority, the same can be corrected when it is brought to the notice.

8.                   **“MISTAKE”** is not mere forgetfulness; it is a slip “made, not by design but, by mischance”. Otherwise also the “mistake” includes an error in conduct consisting of an unintended failure to perform correctly and effectively a task intended to be duly performed.

9.                   In ***West Bengal Electricity Board v. Patel Engg. Co. Ltd.*** AIR 2001 SC 682 : (2001) 2 SCC 451, the apex Court held that a mistake may be unilateral or

mutual but it is always unintentional. If it is intentional it ceases to be a mistake.

10. In ***Deva Metal Powders (P) Ltd. v. Commr. Trade Tax, U.P.***, (2008) 2 SCC 439, the word mistake means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception.

11. Taking into consideration the meaning attached to the word “mistake”, as mentioned above, that it is a misconception or error, which is unilateral or mutual, but it is always unintentional, and when it has been candidly stated that due to heard of hearing it is the supervisor who inadvertently mentioned the name of Gitanjali Swain in place of Mitanjali Swain and, as such, there is no such person Gitanjali Swain available in the village, consequentially, correct name has been indicated as Mitanjali Swain, thereby, no illegality or irregularity can be said to have been committed by the authority by issuing engagement order in favour of Mitanjali Swain,

who had secured highest support in the Mahila Sabha to be engaged as Anganwadi Helper in respect of Torabanga Anganwadi Centre.

12. In view of such position, this Court does not find any illegality or irregularity in the impugned order dated 21.09.2010 passed by the ADM, Puri in Anganwadi Misc. Case No. 2 of 2010 vide Annexure-9 series, particularly when the selection and engagement of opposite party no.5 has been done in consonance with the guidelines issued by the government.

13. The writ petition thus merits no consideration and the same stands dismissed. There shall be no order as to costs.

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**DR. B.R.SARANGI,**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 9<sup>th</sup> March, 2021, Ajaya/GDS**