

GAHC010226012023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3023/2023

LANVANO LOTH AND 28 ORS.
W/O LICHONTHUNG,
R/O C KHEL, LONGSA VILLAGE, WOKHA, NAGALAND.

2: RITSANI LOTH
W/O ALBERT MERRY

R/O MOUNT TIYI COLLEGE
WOKHA TOWN
WOKHA
NAGALAND.

3: LUCY LOTH
D/O RAMVUSHUMO

R/O LONGSA VILLAGE
DIST.- WOKHA
NAGALAND.

4: THUNGCHUMI HUMTSOE
W/O TSENSO YANTHAN

R/O UPPER NST COLONY
WOKHA TOWN
NAGALAND.

5: BENCHILO EZUNG
W/O AVUNG EZUNG

R/O A KHEL
SUNGLUP VILLAGE

DIST.- WOKHA
NAGALAND.

6: S. MERIBENI TUNGOE
W/O CHONBEN EZUNG

R/O CHONBEN COLONY
WOKHA TOWN
WOKHA
NAGALAND.

7: LILANPENI EZUNG
W/O PHYOLUMO YANTHAN

R/O A KHEL SUNGLUP VILLAGE
DIST.- WOKHA
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8: LICHANPEMO LOTH
S/O MHONCHAN ODYUO

R/O ORCHID HILL COLONY
DIST.- WOKHA
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9: Y. ABENI EZUNG
W/O RHONTSUTHUNG NGULLIE

R/O ETHUNG COLONY
BHANDARI
DIST.- WOKHA
NAGALAND.

10: M. CHUMBENTHUNG EZUNG
S/O MOA EZUNG

R/O OFFICERS COLONY
WOKHA TOWN
WOKHA
NAGALAND.

11: N. ASAO LOTH
S/O NSE
O TSANGLAO

R/O BAGHTY TOWN
DIST.- WOKHA
NAGALAND.

12: YISANALI T. NGULLIE

W/O TSOPHEMO NGULLIE

R/O A.G. COLONY
DIST.- WOKHA
NAGALAND.

13: ELILO LOTH
W/O CHICHAMO TSANGLO

R/O ORCHID HILL COLONY
DIST.- WOKHA
NAGALAND.

14: MHONYAMO PATTON
S/O K PATTON

R/O PANGTONG VILLAGE
DIST.- WOKHA
NAGALAND.

15: KHONBENO TUNG
W/O AYAMO TUNG

R/O CHANKA COLONY
WOKHA TOWN
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16: GLORIA EZUNG
W/O JONATHAN EZUNG

R/O NEW COLONY
WOKHA TOWN
DIST.- WOKHA
NAGALAND.

17: ADENO TUNG
W/O TSANTHUNGO TUNG

R/O LIPHI VILLAGE
DIST.- WOKHA
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18: LOTHUNGBENI LOTH
D/O NKHYINGO PATTON

R/O ENGLAN VILLAGE
DIST.- WOKHA

NAGALAND.

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S/O EVOTHUNG LOTH

R/O NIRO B-KHEL
DIST.- WOKHA
NAGALAND.

20: ABENTHUNG LOTH
S/O TSUMONGO MURRY

R/O BAGHTY TOWN
DIST.- WOKHA
NAGALAND.

21: A. RENTHUNGLO LOTH
W/O ABENTHUNG LOTH

R/O UPPER NST COLONY
WOKHA TOWN
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22: YANSATHUNG MURRY
S/O TSANBEMO MURRY

R/O A-KHEL
SANIS TOWN
DIST.- WOKHA
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23: RENBEN LOTH
S/O RENCHIO SHITIRI

R/O MERAANI
DIST.- WOKHA
NAGALAND.

24: EIPENI LOTH
W/O MHONSAO HUMTSOE

R/O NST COLONY
WOKHA TOWN
DIST.- WOKHA
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25: T. MARTHA LOTH

W/O BENTHUNGO LOTH

R/O MEDICAL COLONY
BHANDARI
DIST.- WOKHA
NAGALAND.

26: NATHANAL MURRY
S/O RITSEN MURRY

R/O BURMA CAMP
DIST.- DIMAPUR
NAGALAND.

27: L. ABENTHUNG NGULLIE
S/O LITHUNGO MURRY

R/O ORCHID HILL COLONY
WOKHA TOWN
WOKHA
NAGALAND.

28: P. ELIYAMO EZUNG
S/O PETER EZUNG

R/O OLD RALAN VILLAGE
DIST.- WOKHA
NAGALAND.

29: OPONLUMI EZUNG
W/O KHONBEMO LOTH

R/O ZUVOTONG COLONY
WOKHA TOWN
DIST.- WOKHA
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS.
REP. BY THE CHEIF SECRETARY TO THE GOVT. OF NAGALAND,
NAGALAND SECRETARIAT, KOHIMA, NAGALAND.

2:THE COMMISSIONER AND SECREATRY
TO THE GOVT. OF NAGALAND
DEPTT. OF HEALTH AND FAMILY WELFARE
NAGALAND SECRETARIAT
KOHIMA

NAGALAND.

3:THE PRINCIPAL DIRECTOR
DEPTT. OF HEALTH AND FAMILY WELFARE
NAGALAND SECRETARIAT
KOHIMA
NAGALAND.

4:THE CHIEF MEDICAL OFFICER
WOKHA
DEPTT. OF HEALTH AND FAMILY WELFARE
GOVT. OF NAGALAND

Advocate for the Petitioner : MR N Z LOTH

Advocate for the Respondent : GA, NAGALAND

Linked Case : I.A.(Civil)/3024/2023

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WOKHA
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GOVT. OF NAGALAND.

Advocate for : MR N Z LOTHAN
Advocate for : GA
NAGALAND appearing for THE STATE OF NAGALAND AND 3 ORS.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

10.10.2023

(M. Zothankhuma, J)

Heard Mr. S.K. Srivastave, learned counsel for the applicants. Also heard Ms. M. Kechii, learned Addl. AG for the State of Nagaland appearing for all the respondents.

- 2.** I.A.(Civil) No. 3023/2023 is an application under Article 132 & 133 of the Constitution for certifying that the case of the applicants involves substantial questions of law, as to the interpretation of the Constitution of India and other laws made there under.
- 3.** In a nutshell, the applicants are challenging the Order dated 22.11.2017 disposing of writ appeal, i.e., W.A No. 11/2017, wherein this Court had directed the State Government to pay the salary of the writ petitioners/applicants, whose services had been terminated, for the period from 30.04.2012 till 28.04.2015. The challenge to the termination orders of the writ petitioners/applicants was not decided by this Court, as the said prayer was not pressed by the learned senior counsel appearing for the writ petitioners/applicants. The order disposing of W.A. No. 11/2017 was challenged by the State Government in the Supreme Court. However, the same was dismissed vide Order dated 20.09.2018.
- 4.** The applicants thereafter filed Review Petition No. 11/2022 along with I.A. (Civil) No. 146/2022, praying for condoning the delay of 112 days in filing the Review Petition. They were both dismissed by this Court vide Order dated 13.02.2023. Thereafter, these applications, i.e., I.A.(Civil) No. 3024/2023 and I.A.(Civil) No. 3023/2023 have been filed.
- 5.** I.A.(Civil) No. 3024/2023 is an application praying that the applicants may be allowed to file I.A.(Civil) No. 3023/2023 and to condone the delay of 103 days in filing I.A.(Civil) No. 3023/2023. I.A.(Civil) No. 3024/2023 was initially numbered as I.A.(Civil) No. 91/2023 and I.A.(Civil) No. 3023/2023 was initially numbered as I.A.(Civil) No. 79/2023.

6. The genesis of the case started with the termination of the services of the applicants and non-payment of their salary by the State Government, on the ground that the applicants had been appointed against non-sanctioned posts. The further grievance of the applicants was that they had not been paid their salary for the period they were in service w.e.f. 30.04.2012 to 28.04.2015.

7. The applicants, along with some other similarly situated persons had been appointed to Grade-III and Grade-IV posts under the National Rural Health Mission, Nagaland in the year 2000. The services of the applicants and others were suddenly terminated, vide impugned Order dated 29.04.2015, on the ground that their appointments had been made to non-sanctioned posts. Their appointments were declared null and void w.e.f. 30.04.2012. Two writ petitions, i.e., WP(C) No. 105(K)/2015 and WP(C) No. 133(K)/2015 were filed. While WP(C) No. 105(K)/2015 was dismissed by the learned Single Judge, WP(C) No. 133(K)/2015 was allowed to the extent that it directed the release of the salary of those petitioners in WP(C) No. 133(K)/2015 from 30.04.2012 to 28.04.2015. Being aggrieved, the petitioners in WP(C) No. 105(K)/2015 filed writ appeal being W.A. No. 11/2017. W.A. No. 11/2017 was disposed of by this Court, vide Order dated 22.11.2017, by directing the State respondents to pay the salary of the petitioners/applicants' herein for the period from 30.04.2012 till 28.04.2015. However, the learned senior counsel for the applicants, having not pressed the prayer for setting aside the termination order of the applicants in W.A. No. 11/2017, the said issue was not decided by this Court.

8. Being aggrieved by the Order dated 22.11.2017 passed in W.A. No. 11/2017, the State Government made a challenge to the same, vide SLP(C) No. 25618/2018 (State of Nagaland & Others Vs. Smt. LavanoLotha & Others), which

was dismissed by the Supreme Court, vide Order dated 20.09.2018.

9. Subsequent to the above facts, the applicants herein filed Review Petition No. 11/2022, praying for review of the Judgment & Order dated 22.11.2017 passed in W.A.No. 11(K)/2017, on the ground that the applicants did not authorise their senior counsel in W.A. No. 11(K)/2017 to abandon their first prayer for setting aside their termination orders. The applicants also filed I.A. (Civil) No. 146/2022 along with Review Petition No. 11/2022, praying for condoning the delay of 112 days in filing the review petition.

10. This Court disposed of I.A.(Civil) No. 146/2022, vide Order dated 13.02.2023, by holding that as W.A. No. 11(K)/2017 had been disposed of on 22.11.2017, the number of days to be condoned would be beyond 4½ years and not 112 days, inasmuch as, the review petition had been filed only on 21.09.2022.

11. On considering the grounds for review, this Court had also held that no grounds for review had been made out. As such, the application for condonation of delay, made vide I.A.(Civil) No. 146/2022 was dismissed. Consequently, the Review Petition No. 11/2022 was also dismissed, vide Order dated 13.02.2023.

12. As stated in the beginning of this order, I.A.(Civil) No. 3023/2023 has been filed under Article 132 & 133 of the Constitution, praying for certifying that the case of the applicants involves substantial questions of law as to the interpretation of the Constitution of India and the laws made thereunder.

13. I.A.(Civil) No. 3024/2023 has been filed to allow the applicants to file I.A. (Civil) No. 3023/2023 and to condone the delay of 103 days in filing I.A.(Civil)

No. 3023/2023. Article 132 & 133 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of the Constitution. Article 134 provides that an appeal shall lie to the Supreme Court from any judgement, final order or sentence in a criminal proceeding of a High Court.

14. Article 134A provides that a High Court may, if it deems fit so to do, on its own motion or if oral application is made on behalf of the party aggrieved, immediately after passing or making of such judgment, decree, final order or sentence referred to in Clause 1 of Article 132 or Clause 1 of Article 133 or Clause 1 of Article 134, determine, as soon as may be after passing or making the judgment, decree or order, the question whether a certificate with regard to the case involving a substantial question of law may be given. In the present case, we are of the view that no substantial question of law is involved and neither had any oral application been made immediately after the passing of the order rejecting the application for condonation of delay made in I.A.(Civil) No. 146/2022 or the connected Review Petition No. 11/2022. The only issue sought to be raised by the applicants in Review Petition No. 11/2022 and these applications, is to the effect that they did not give any instruction to their senior counsel in W.A. No. 11/2017 to abandon their prayer for setting aside their termination orders. This issue having been raised and rejected alongwith their prayer for condonation of delay in the Order dated 13.02.2023 passed in I.A. (Civil) No. 146/2022, we are of the view that no substantial question of law is involved. As such, we do not find any ground to allow the present applications.

15. The applications are accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant