

GAHC020000742020



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

Case No. : WP(C)/33/2020

1:Smt. Chubamongla Ao
Sweeper (Contingency Basis),
Under the Establishment of Senior Estate Officer,
PWD(H), Mokokchung,
Nagaland

VERSUS

1:The State of Nagaland
Through The Chief Secretary to the Govt. of Nagaland, Kohima

2:The Commissioner and Secretary
To the Govt. of Nagaland Personnel and Administrative Reforms Dept.
Nagaland Kohima

3:The Commissioner and Secretary
To the Govt. of Nagaland Works and Housing Dept. Nagaland Kohima

4:The Engineer-In-Chief
Nagaland Public Works Dept.
Nagaland Kohima

5:The Chief Engineer
PWD(Housing) Nagaland Kohima

6:The Estate Officer,
PWD (Housing) Mokokchung Nagaland

Advocate for the Petitioner : Mr. Moa Jamir, Advocate

Advocate for the Respondent : Mr. Moa Imchen, learned Senior Government Advocate

Date of Judgment : 16.10.2023

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT

Date : 16-10-2023

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. Moa Jamir, learned counsel for the petitioner. Also heard Mr. Moa Imchen, learned Senior Government Advocate appearing for the State of Nagaland.
- 2.** This writ petition under Article 226 of Constitution of India has been filed by the petitioner, namely, Smt. Chubamongla Ao praying for issuance of directions for regularization the service of the petitioner in the post of Sweeper.
- 3.** The case of the petitioner, in brief, is as follows:
 - (i)** That the petitioner was initially appointed as Grade-IV Sweeper, on contingency post, in the scale of pay of Rs. 375-7-445-490-10-590/- per month under the Office of Estate Officer PWD (Housing), Mokokchung, Nagaland by order bearing No. MKG/EO/EI-2/90-91/146/48 dated 29.06.1990 issued by the respondent no.6, i.e., the Estate Officer PWD (Housing), Mokokchung, Nagaland.
 - (ii)** That on completion of fifteen (15) years of continuous service, the petitioner was granted revised pay of scale of Rs.850-

20-950-25-1300-30-1630/- per month by Office Order No. CE(H)EA-4/08-09 dated 30.10.2009 issued by the respondent no.5, i.e., The Chief Engineer, PWD (Housing), Nagaland, Kohima.

(iii) That after completion of more than twenty nine (29) years of service of being the senior most in the contingency Department, the petitioner submitted a representation dated 15.10.2019 to the respondent Nos. 4, 5 and 6 praying for regularization of her service in the post of sweeper, however, till date no action has been taken by the respondent authorities on the representation filed by the petitioner.

4. Mr. Moa Jamir, learned counsel for the petitioner has submitted that the present petitioner has already rendered thirty three (33) years of continuous service as Sweeper on contingency basis and is on the verge of retirement. It is also submitted that during this period some of the contingent workers who were junior to her were regularized, however, the representation of the present petitioner is yet to be considered by the State respondents.

5. It is further submitted by the learned counsel for the petitioner that the fact of present petitioner having rendered continuous long service in the same capacity has not been disputed by the respondent authorities. The Senior Assistant Estate Officer, PWD (Housing) has also issued a certificate which is annexed as Annexure-4 to the writ petition whereby it has been certified that, as on 03.02.2020, the petitioner has rendered service as Sweeper on contingency basis since last twenty nine (29) years and she is the senior most sweeper on contingency basis with an unblemished record.

6. Learned counsel for the petitioner has referred to an Office Memorandum bearing No. AR-3/GEN-67/2009 dated 17.03.2015 which is regarding the "Scheme of Regularization and Absorption of Work-Charged and Casual Employees and Revision of Pay/Wages". It is submitted that Clause 1 (ii) of the said memorandum provides as follows:

“(ii) In respect of those work-charged and casual employees in scale pay and who have completed or will complete 30 (thirty) years of continuous service after 01.01.2015, their cases for regularization will be taken up subsequently in two batches as on 1st July and 1st January every year. The procedures and terms and conditions will be the same as laid down in this O.M.”

7. It is also submitted that as per Clause 1 (g) of the said Scheme, the applicability of the scheme is exempted in case of part time sweeper and it is submitted that the present petitioner has been working fulltime continuously on a scale of pay since last thirty three (33) years, she is not a part time worker and the applicability of the Officer Memorandum dated 17.03.2015 is not exempted in her case.

8. Learned counsel for the petitioner has further submitted that the petitioner has obtained information by filing a RTI application whereby she came to know that in between June 1990 to September 2019, the State respondents have regularized the services of almost forty two (42) sweepers and out of whom ten (10) sweepers, whose services were regularized, were initially appointed on a date later than the date of

appointment of the present petitioner and therefore, it is submitted by learned counsel for the petitioner that the petitioner has been unduly discriminated though services of ten (10) of his juniors have already been regularized.

9. In support of his submissions, Mr. Moa Jamir, learned counsel for the petitioner, has cited a ruling of Hon'ble Apex Court in the “**State of Gujarat and Others Vs. Talsibhai Dhanjibhai Patel**”, wherein Hon'ble Supreme Court of India has observed as follows:

“It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.”

10. Mr. Moa Jamir, learned counsel for the petitioner has also submitted that though the Office Memorandum dated 17.03.2015 specifically mentions about its applicability to the persons employed on contingent basis who have completed continuous service for thirty (30) years, mere use of phrase "*appointed on contingent basis*" in respect of the present petitioner would not disentitle her from being treated similar to that of those casual employees and worked charged employees who were given benefit of the Office Memorandum dated 17.03.2015, wherein, it is provided that case of such employees for regularization will be taken up in case they have completed thirty (30) years of continuous service after 01.01.2015.

11. Learned counsel for the petitioner has submitted that after taking services of the present petitioner as a sweeper continuously for long thirty three (33) years, it would be unjust and arbitrary to deny her the benefit of regularization like that of similarly placed worked charged and casual employees merely on the ground that the Office Memorandum dated 17.03.2015 is not applicable in case of contingent workers.

12. Learned counsel for the petitioner has also cited a ruling of Division Bench of this Court in "***Zhovi Tsuzuh and Another Vs. State of Nagaland and 7 Others***", reported in **2023 (1) NLJ 368**, wherein it was observed that the petitioners/writ appellants of that case who were also contingent employees would be entitled for consideration of regularization of their services after they complete thirty (30) years of regular service.

13. Learned counsel has also cited a ruling of Division Bench of this Court in "***Pihoto Sema and Another Vs. State of Nagaland and 2 Others***"

[Judgment dated 16.09.2020 passed in WP (C)112/2019], wherein the State respondents were directed to regularize the services of the petitioners, of that case, who had completed more than thirty (30) years of continuous services on contingent basis on the ground that discriminating them merely on the basis of their being appointed on contingent basis would be discriminatory and violative of fundamental rights of the petitioners.

14. On the other hand, Mr. Moa Imchen, learned Senior Government Advocate has submitted that the present petitioners are not covered under the Office Memorandum dated 17.03.2015, as same is applicable only to worked charged employees and casual employees. He has submitted that though the present petitioner has rendered more than thirty (30) years of service as contingent sweeper, however on account of her being a contingent employee, her services may not be regularized, as there is no laid down provision or any policy of the Government for regularization of contingent employees.

15. It is also submitted that Office Memorandum dated 17.03.2015 and 22.09.2004 issued by the Government of Nagaland have categorically mentioned therein regarding their applicability in case of worked charged and casual employees only and as the petitioner is a contingent employee, she cannot avail the benefit of those Office Memorandums.

16. It is further stated by Mr. Moa Imchen, learned Senior Government Advocate that it is a matter of policy of the Government not to regularize the services of the contingent workers and in respect of matters of policy it may not be appropriate for Courts to give directions to the State Executive as regularizing the services of the contingent employees would

open flood gates of such cases burdening the state with huge financial liability.

17. I have considered the submissions made by the learned counsel for both sides and have gone through the materials on record.

18. There is no dispute that the present petitioner has rendered, as on today, more than thirty three (33) years of continuous service as sweeper though, she was initially appointed on contingency basis only on scale of pay.

19. It also appears from record that in between June 1990 to September 2019, the State respondent have regularized the services of almost forty two (42) Sweepers out of whom ten (10) were junior to the present petitioner i.e., they were appointed on a later date than that of the present petitioner.

20. Learned counsel for the petitioner has also submitted that the dictionary meaning of the contingent worker is those workers, who did not have an explicit and implicit contract for long term employment and those who hold jobs that are expected to last only for a limited period of time. However, the State has used the services of the present petitioner continuously since last thirty three (33) years and therefore, her services were utilized similar to that of a regular worker, though, the tag of contingent worker remained on her for this entire period of thirty three (33) years.

21. Section 2(c) of the Nagaland Worked Charged and Casual Employees Regulation Act, 2001 defines a casual employee to mean an employee engaged without sanctioned post whereas a work charged employee is defined in Section 2(d) of the Act to mean an employee engaged without

sanctioned post under work charge establishment. Further, Section 2(e) of the Act defines a work charged establishment to mean and includes such establishment in any department under which a person is employed upon the actual execution as distinct from general supervision, office, specific work or of sub-works of specific period or upon subordinate supervision of department labour, stores and machineries in connection with such work or sub works. It also appears that though the term contingent worker has not been defined in the aforesaid Act or any other rules/regulations, however, the dictionary meaning of the term contingent workers is a worker who does not have an explicit or implicit contract for long term employment and who holds the job that are expected last only for a limited period of time. However, in the instant case, though the present petitioner rendered her services as a sweeper for a continuous period of thirty three (33) years, she carried a tag of being a contingent worker throughout her service tenure only because her initial appointment was on contingency basis and apart from renewing her scale of pay on completion of fifteen (15) years of her services she continued to carry the tag of being a contingent worker.

22. As the Office Memorandum dated 17.03.2015 has categorically mentioned therein that the same is applicable only in case of a worked charged and casual employee, therefore, this Court is of considered opinion that said Office Memorandum may not be made applicable to a person appointed on contingency basis until and unless State adopts a policy of regularization of the services of contingent workers.

23. However, this Court is also of the considered opinion that merely because State is not having a policy regarding regularization of contingent

workers, the present petitioner may not be deprived of the benefits of being considered for regularization after having been rendered thirty three (33) years of continuous service when similarly situated casual and worked charged employees were being considered for regularization under the Office Memorandum of 17.03.2015.

24. It is not disputed by the State respondents that the state has utilized the services of the present petitioner continuously for last thirty three (33) years, which is a sufficiently long period, during which she had an unblemished record as a sweeper. Hence, depriving her benefit of regularization of service under such circumstances, only on the ground that her initial appointment was on contingency basis, would be exploitative, arbitrary, unreasonable and violative of her fundamental rights guaranteed by the Constitution of India.

25. Though, directions for regularization of employees should not ordinarily be issued in absence of any Office Memorandum, Rules, Regulations or a Government Policy to that effect, however, in the instant case for the reasons discussed in foregoing paragraphs, depriving the present petitioner the benefit of regularization of service similar to that of those temporary workers who are covered under the Office Memorandum of 17.03.2015 would be exploitative, arbitrary, unreasonable and violative of her fundamental rights guaranteed by the Constitution of India as State cannot be permitted to take benefit of its wrong after having utilized the services of the petitioner continuously for thirty three (33) long years.

26. In view of what has been discussed above, the respondent authorities (Respondent Nos. 1 to 6) are hereby directed to regularize the services of the petitioner, namely, Smt. Chubamongla Ao within a period

of three (3) months from the date of this order.

27. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant