



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

Case No. : WA 6/2022

1:SHRI. ZHOVI TSUZUH AND ANR
DRIVER,STATE PLANNING MACHINERY, PLANNING AND COORDINATION
DEPARTMENT, NAGALAND, KOHIMA

2: SHRI. WEKUPE MERO

DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIM

VERSUS

1:THE STATE OF NAGALAND AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, KOHIMA

2:THE ADDITIONAL CHIEF SECRETARY AND DEVELOPMENT COMMISSIONER
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

3:SHRI. ABEMO LOTH @ ABEMO TSOPOE
DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

4:SHRI. IMPOSENBA
DRIVER
DISTRICT PLANNING MACHINERY
PEREN
NAGALAND

5:SHRI. SHUMBEMO @ SHUMBEMO OVUNG
DRIVER
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

6:SHRI. IMTITEMSU
DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

7:SHRI. TONGPANGMEREN
DRIVER
PLANNING OFFICE
LONLENG
NAGALAND

8:SHRI. TIAKABA
DRIVER
DISTRICT PLANNING OFFICE
MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

Linked Case : WA 15/2022

1:SHRI. ABEMO LOTHA @ ABEMO TSOPOE AND 5 ORS
DRIVER
STATE PLANNING MACHINERY

PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

2: SHRI. IMPOSENBA

DRIVER
DISTRICT PLANNING MACHINERY
PEREN
NAGALAND

3: SHRI. SHUMBEMO @ SHUMBEMO OVUNG

DRIVER
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

4: SHRI. IMTITEMSU

DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

5: SHRI. TONGPANGMEREN

DRIVER
DISTRICT PLANNING OFFICE
LONLENG
NAGALAND

6: SHRI. TIAKABA

DRIVER
DISTRICT PLANNING OFFICE
MOKOKCHUNG
NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND
KOHIMA

2:THE ADDITIONAL CHIEF SECRETARY AND DEVELOPMENT COMMISSIONER
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

3:SHRI. ZHOVI TSUZUH
DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

4:SHRI. WEKUPE MERO
DRIVER
STATE PLANNING MACHINERY
PLANNING AND COORDINATION DEPARTMENT
NAGALAND
KOHIMA

Advocate for the Petitioner : TONGPOK PONGENER
Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

Date : 17-02-2023

(HON'BLE MR. JUSTICE DEVASHIS BARUAH, J)

Heard Mr. Moa Jamir, learned counsel appearing for the appellants in
Writ Appeal No.6/2022 and Mr. Tongpok Pongener, learned counsel

appearing for the appellants in Writ Appeal No.15/2022. We have also heard Mr. Moa Imchen, learned Senior Government Advocate appearing for the State respondents in both the writ appeals.

2. As both the writ appeals arise out of the judgment and order dated 03.12.2021 passed in WP(C) No.17/2020, both the writ appeals are taken up for disposal by this common judgment and order.

3. For ascertaining the disputes so raised in both the writ appeals, it would be relevant to take note of the brief facts which led to the passing of the impugned judgment and order. The appellants in Writ Appeal No.15/2022 as writ petitioners filed a writ petition before this Court challenging the order No.PLN/M-156/93(Pt-I) dated 03.07.2019 as well as the Order bearing No.PLN-950/2000(Pt-I) dated 03.07.2019 and further sought for a direction upon the State respondents to consider the case of the petitioners for regularization against 67% of the available 3 (three) vacancies of the post of Driver in terms of the Scheme for regularization and absorption of Work-Charged and Casual Employees promulgated by the Office Memorandums dated 17.03.2015 and 22.09.2004 and the related norms applied by the State Government in filling up the vacancies.

4. The case set out by the writ petitioners who were 6 (six) in numbers was that the Petitioner No.1 was initially appointed as Driver on contingency basis on a monthly wage of Rs.1,500/- and temporarily attached with Sr. Accounts Officer, in the State Planning Machinery, under the Planning and Coordination Department, Nagaland, Kohima vide an order dated 04.07.2002. The Petitioner No.2 was also appointed as the Driver on contingency basis on a monthly wage of Rs.3,000/- and

temporarily attached with Sr. Accounts Officer, in the District Planning Machinery, Peren, Nagaland vide an order dated 07.09.2005. The Petitioner No.3 was also initially appointed as Driver on fixed honorarium basis of Rs.4,500/- in the GIS Cell, Planning and Coordination Department, Nagaland, Kohima vide an order dated 16.05.2006. In similar terms, the Petitioner Nos. 4, 5 and 6 were also appointed as Driver on contingency basis on 01.07.2008, 17.07.2008 and 13.01.2009 respectively. The Petitioner Nos. 1 and 4 were granted the revised pay band of Rs.5,200-20200 with grade pay of Rs.1,800/- per month plus all other allowances as were admissible under Rules from time to time in Nagaland with effect from 01.06.2011 vide an order dated 08.06.2011. Similarly, the Petitioner Nos. 2 and 3 were granted revised pay band with effect from 01.06.2011 vide an order dated 13.06.2011. The Petitioner No.5 was granted the revised pay band with effect from 01.01.2012 vide an order dated 22.12.2011 and the Petitioner No.6 was granted the revised pay band with effect from 02.01.2015 vide an order dated 20.12.2014. All the 6 (six) petitioners were listed at Serial No. 1, 2, 5, 10, 11 and 12 in the seniority list of the fixed/scale pay Driver under the Planning and Coordination Department.

5. It was the case of the petitioners that they were entitled to regularization in terms with the Office Memorandum dated 17.03.2015 along with the Office Memorandum dated 22.09.2004. The petitioners have also mentioned in the writ petition that on 06.06.2016, the P&AR Department had notified a ban on appointment on contractual basis declaring inter alia that any appointment made on contract basis shall be null and void. It is the further case of the petitioners that in spite of the said Office Memorandum dated 06.06.2016, when 2 (two) vacancies arose

in the year 2018 and another additional vacancy arose in the year 2019, the respondent authorities illegally appointed the respondent Nos. 3 and 4 on contract basis for a period of 1 (one) year till the interview is conducted whichever is earlier vide an order bearing No.PLN/M-156/93(Pt-I) dated 03.07.2019. Further to the surprise of the petitioners, on the same date another order was passed i.e. Order No.PLN-950/2000(Pt-I) dated 03.07.2019 whereby the respondent Nos. 3 and 4 were also appointed to the same vacancies on temporary basis subject to regularization by the Departmental Recruitment Board.

6. The petitioners being aggrieved had submitted a representation on 02.09.2019 praying for cancellation of the impugned orders of the appointment to the respondent Nos.3 and 4 and to consider their case for regularization in accordance with the Office Memorandum No.AR-3/GEN-201/2009 dated 17.03.2015. The said representation having not been taken into consideration by the respondent authorities, the writ petition was filed by the petitioners before this Court.

7. The State respondents filed an affidavit-in-opposition wherein it was the categorical stand taken that the Office Memorandum No.AR-3/GEN-201/2009 dated 17.03.2015 pretends to the scheme for regularization and absorption of Work-Charged and Casual Employees and revision of pay/wages. It was further stated that for regularization in service of all existing Work-Charged and Casual Employees of various Departments who are enjoying scale pay and who had completed 30 (thirty) years or more continuous service as on 01.01.2015 by conversion of the posts into regular ones personal to them and subject to fulfillment of conditions provided in

the aforesaid Office Memorandum. It was the specific case of the State respondents that all the petitioners do not fulfill the conditions laid down by the Office Memorandum dated 17.03.2015 inasmuch as the petitioners have not completed 30 (thirty) years or more continuous service. Further to that, it was mentioned that the quota for regularization of Work-Charged employees against normal vacancy stood enhanced from 50% to 67% for the next 5 (five) years effective only for 5 (five) years from 01.02.2015 and the same expired on 01.01.2020. It was further mentioned that the reservations of 50% of the regular vacancy arising in the year for regularization of Work-Charged employees as per the Office Memorandum No.AR-3/Gen-67/2001(Pt) dated 22.09.2004 can be done only against regular vacancy provided the petitioners possessed the requisite qualification and that too, the said exercise can only be on the basis of seniority cum merit. Further it was also mentioned that the contingency services of the petitioners are not applicable as per the Office Memorandum dated 22.09.2004 inasmuch as the said Office Memorandum is applicable only for Work-Charged employees, even otherwise, the regularization would be done only as and when vacancy arose.

8. The respondent Nos. 3 and 4 also had filed a joint affidavit-in-opposition. In the said affidavit-in-opposition it was the categorical stand taken by the respondent Nos. 3 and 4 that as per the P & AR Department Office Memorandum vide No.AR-3/GEN-201/2009 dated 17.03.2015, the quota for regularization of Work-Charged employees which was enhanced from 50% to 67% for 5 (five) years effective from 01.01.2015 expired on 31.12.2019. Therefore, at the time of filing the instant writ petition, the enhancement of 67% was no longer effective and as such the petitioners

cannot claim the enhanced 67% reserved for Work-Charged employees to regularize their services. It was also mentioned that the petitioners are not eligible to be considered for regularization as per the above stated Office Memorandum inasmuch as the petitioners do not qualify the requisite 30 years or more of continuous service as on 01.01.2015 for which the Office Memorandum dated 17.03.2015 cannot be made applicable to the case of the petitioners. It was also the categorical stand that the Office Memorandum dated 22.09.2004 was not applicable to the case of the petitioners inasmuch as the Office Memorandum is a Government policy solely for regularization of Work-Charged employees and as the petitioners in the instant case were all serving as Contingency/Fixed pay employees and not on Work-Charged basis, they cannot claim the benefit of 50% reserved for Work-Charged employees on the basis of seniority. It is however relevant to take note of that the said respondents i.e. the respondent Nos. 3 and 4 in the affidavit-in-opposition merely denied that their appointments were in violation of the Office Memorandum dated 17.03.2015 or 22.09.2004 without however any justification whatsoever.

9. The learned Single Judge upon hearing the learned counsels for the parties vide a judgment and order dated 03.12.2021 (hereinafter referred to as "the impugned judgment and order") disposed of the writ petition. In doing so, the learned Single Judge held as follows:

- (a) The appointments of the respondent Nos. 3 and 4 dated 03.07.2019 were set aside and quashed.
- (b) It was held that the Office Memorandum bearing No.AR-3/GEN-201/2009 dated 17.03.2015 was not applicable after

the year 2020 on the ground that in terms with Article 1(h), the said Office Memorandum dated 17.03.2015 was only extendable for 5 (five) years from 2015 to 2020.

- (c) The petitioners were not covered under the Office Memorandum dated 17.03.2015 considering that they have not completed 30 years of service but the petitioners can be considered under the Office Memorandum dated 22.09.2004 on the ground that all the contesting parties were in agreement that the Office Memorandum dated 22.09.2004 was still alive.
- (d) On the basis of the above findings, the learned Single Judge directed the State respondents to consider the case of the petitioners under the Office Memorandum dated 22.09.2004 and in the circumstance it was found that the petitioners were not qualified, the post falling vacant shall be sent for direct recruitment to the NPSC without any further delay. It was further directed that the exercise be completed within a period of 2 (two) months from the passing of the said order.

10. The respondent Nos. 3 and 4 being aggrieved have filed Writ Appeal No.6/2022 whereas the petitioners being aggrieved have filed the Writ Appeal No.15/2022.

11. Upon perusal of the contents of the writ appeal i.e. Writ Appeal No.6/2022 and also upon hearing the learned counsel for the appellants in the said Writ Appeal, Mr. Moa Jamir, it transpires that the said

appellants/respondent Nos.3 and 4 in the writ petition have not assailed the setting aside as well as the quashing of their appointment orders dated 03.07.2019. However the challenge to the impugned judgment and order has been made on the ground that the learned Single Judge erred in law in holding that the petitioners were covered under the Office Memorandum dated 22.09.2004. During the course of the hearing, we made a specific query upon the learned counsel for the appellants in Writ Appeal No.6/2022, the specific ground on which the impugned judgment and order has been assailed. The learned counsel Mr. Moa Jamir with all fairness submitted that the appellants/respondent Nos. 3 and 4 have not assailed the setting aside as well as the quashing of the order dated 03.07.2019 but are aggrieved by the findings, observations and directions to the effect that the petitioners have been held to be covered under the Office Memorandum dated 22.09.2004 and the direction being given to the effect that the petitioners case be considered in terms with the said Office Memorandum dated 22.09.2004. It is the specific case of the appellants/respondent Nos. 3 and 4 that as the petitioners are not work-charged employees, they are not covered under the Office Memorandum dated 22.09.2004 as such the directions so given by the learned Single Judge would affect their rights to compete in respect to the said post if the said posts are not filled up by the direct recruitment by the NPSC thereby violating their rights to be considered.

12. The Writ Appeal No.15/2022, as already stated hereinabove has been filed by the petitioners being aggrieved by the observations made in the impugned judgment and order that the Office Memorandum dated 17.03.2015 is not applicable in the case of the petitioners and that it is only

the Office Memorandum dated 22.09.2004 which is applicable. It is the specific contentions of the appellants/petitioners that by virtue of Clause 1(iii) of the Office memorandum dated 17.03.2015 wherein it has been stated that the existing scheme for regularization of work-charged employees against normal vacancies (which was the Office Memorandum dated 22.09.2004) was modified and the quota for work-charged employees stood enhanced from 50% to 67% for the next 5 (five) years effective from 01.01.2015 and that the existing scheme will also be applicable for the casual employees appointed on full time basis, therefore Clause 1(iii) of the Office Memorandum dated 17.03.2015 was extended even to casual employees appointed on full time basis. It is therefore the case of the appellants/writ petitioners that the findings of the learned Single Judge that the Office Memorandum dated 17.03.2015 was no longer operational on and from 2020 was upon a misreading of Clause 1(iii) of the Office Memorandum dated 17.03.2015 and as such the findings arrived at by the learned Single Judge in its impugned judgment and order needs interference only to the extent of holding that the petitioners were entitled to regularization on the basis of the Office Memorandum dated 22.09.2004 and not under the Office Memorandum dated 17.03.2015. It is the case of the petitioners that they were entitled under both the Office Memorandums dated 17.03.2015 and 22.09.2004.

13. In the backdrop of the above contentions so raised, the point which arises for consideration is as to whether the learned Single Judge was justified in holding that the Office Memorandum dated 17.03.2015 ceased to exist on and after 2020 and also as to whether the petitioners would be entitled to regularization in terms with Office Memorandum dated

17.03.2015 read with Office Memorandum dated 22.09.2004.

14. At this stage, it may be relevant to take note that on 17.08.2022 when both the Writ Appeals came up for hearing, this Court in order to get more clarity into the issues involved as regards the Office Memorandum dated 17.03.2015 granted the learned Senior Government Advocate 2 (two) weeks time to come back to this Court to inform with clarity the object behind the Office Memorandum dated 17.03.2015, the purpose it sought to achieve and the provisions spelled out therein more particularly Clause 1(i), 1(i)(d), 1(i)(g), 1(iii) and 4 of the said Office Memorandum dated 17.03.2015. Thereupon, in compliance to the order dated 17.08.2022, the Additional Secretary in the Department of P & AR, Government of Nagaland had filed an affidavit on 06.09.2022.

15. From a perusal of the said affidavit, it shows that it was clarified that the provisions of Clause 1(i) of the Office Memorandum dated 17.03.2015 applied to all work-charged and casual employees who were enjoying scale of pay and who have completed 30 (thirty) years of service as on 01.01.2015. It was mentioned that in such cases, the employees are entitled to regularization by conversion of their posts into regular ones personal to them (by creation of Supernumerary post).

With regard to Clause 1(i)(d) of the Office Memorandum dated 17.03.2015, it was mentioned that the post occupied by the work-charged and casual employees who were enjoying scale of pay, who have completed 30 (thirty) years of service and who are regularized in service by conversion of their posts into regular ones personal to them, shall automatically stand abolished as and when they vacate the post on retirement, resignation,

death etc. and the strength of the work-charged and casual employees under various Departments shall stand reduced by equal number concurrently with the regularization of such employees. It was also made clear that no fresh appointment shall be made against these posts.

As regards Clause 1(g) of the Office Memorandum dated 17.03.2015, it was clarified that those employees who were appointed against Centrally sponsored scheme and other categories of contingency employees who were appointed as part time/seasonal workers beyond the ceiling limit fixed by the Work-charged and Casual Employees Commission shall not be eligible for the scheme. In that regard, a reference was made to clause 2(i) of the of the Office Memorandum dated 09.11.2016 which categorically stipulated that that considerable numbers of cases of casual/contingency employees were being given scale pay, some under the ROP 1993 and some under 1999. Casual/Contingency employees are not covered by ROP Rules, 1999 and 2010 and their service conditions were being guided by the Nagaland Work-Charged and Casual Employees Regulation Act, 2001. It is also mentioned that all work-charged and casual employees who have been regularized and absorbed under the Office Memorandum dated 17.03.2015 shall get the revised pay as prescribed by the Government.

With regard to Clause 1(iii) [(Clause 1(i)(h)(iii)(sic)], it was clarified that the same was distinct from Clause 1(i). It was made clear that the said Clause 1(iii) is to be read with the Policy and Scheme for Regularization of Services of Work-Charged Employees vide Office Memorandum dated 22.09.2004. It was also specifically mentioned that the said Clause pertains to Regularization of the Work-Charged Employees against normal vacancies

that may arise from time to time due to retirement, resignation, death etc. It was further mentioned that these substantive post would not be abolished on retirement of the incumbents and when such vacancies arise, work-charged employees are entitled to be considered for regularization on seniority basis against quota fixed for them. It was further clarified that the Office Memorandum dated 17.03.2015 enhanced the quota from 50% to 67% for 5 (five) years with effect from 01.01.2015 and upon expiry of the 5 (five) years i.e. with effect from 01.01.2020, the quota would automatically revert to 50% fixed by the Office Memorandum dated 22.09.2004. It was further explained that the ceiling limit of work-charged and casual employees fixed by the Work-charged and Casual Employees Commission in each respective Department should be reduced by equal number concurrently with the regularization of such employees.

As regards Clause 4 of the Office Memorandum dated 17.03.2015, it was clarified that there was a total ban imposed on appointment of work-charged/casual employees under the State Government with coming into effect of the said Office Memorandum and this aspect of the matter was further reiterated in Clause 2(vi) of the Office Memorandum dated 09.11.2016 wherein it has been mentioned that the work-charged/casual appointments have been banned vide paragraph No.4 of the Office Memorandum dated 17.03.2015 and any appointment made after 17.03.2015 shall be terminated by the Department concerned with immediate effect.

16. In the backdrop of the above, let this Court take into consideration the issue involved herein. The ground of challenge made in Writ Appeal

No.06/2022 is primarily on the question as to whether the petitioners in the writ petition would be covered under the Office Memorandum dated 22.09.2004. The learned counsel for the appellants in the Writ Appeal No.06/2022 made a categorical submission that the Office Memorandum dated 22.09.2004 is only for the purpose of work-charged employees and the petitioners in question being appointed on contingency basis would not come within the ambit of work-charged employee. Referring to the provisions of Nagaland Work-Charged and Casual Employees Regulation Act, 2001, the learned counsel submitted that in the said Act, the Legislature have separately defined "work-charged employee" and "casual employee". In the said Act, "casual employee" has been defined in Section 2(c) to the said Act to mean an employee engaged without a sanctioned post whereas a "work-charged employee" is defined in Section 2(d) to mean an employee engaged without a sanctioned post under work-charged establishment. He further submitted that Section 2(e) defines a "work-charged establishment" to mean and include such establishments in any department under which a person is employed upon the actual execution, as distinct from the general supervision, of a specific work or of sub-works of a specific project or upon the sub-ordinate supervision of the departmental labour, stores and machineries in connection with such work or sub-works. The learned counsel for the appellants in Writ Appeal No.06/2022 therefore submitted that as the Nagaland Work-Charged and Casual Employees Regulation Act, 2001 categorically define "casual employee" and "work-charged employee" separately, the findings of the learned Single Judge that the petitioners can be regarded as work-charged employees and thereby entitled to the benefit vide the Office Memorandum

dated 22.09.2004 is therefore completely erroneous. The learned counsel further had drawn the attention of this Court to a judgment of the Co-ordinate Bench passed in Writ Appeal No.2/2022 wherein the Co-ordinate Bench have categorically held that Office Memorandum dated 22.09.2004 provides the scheme or policy for regularization of service of work-charged employees only and not casual employees or any other. He referred to paragraph No.6 of the said judgment.

17. On the other hand, the learned counsel for the appellants in Writ Appeal No.15/2022 had submitted that admittedly the petitioners have been appointed on contingency basis. He therefore referred to the Office Memorandum dated 09.11.2016 and stated that in the said Office Memorandum appointments made on casual/contingency basis have been interchangeably used by the respondent authorities and thereby a person who has been appointed on contingency basis would come within the ambit of a casual employee. The learned counsel further submitted that in view of Clause 1(iii) of the Office Memorandum dated 17.03.2015, all work-charged employees as well as casual employees which would also include contingency employees would be covered by the Office Memorandum dated 22.09.2004.

18. This Court have perused the Office Memorandum dated 22.09.2004. The heading of the said Office Memorandum is categorical to be a Policy and Scheme for Regularization of Service of Work-Charged Employees although the said Office Memorandum does not define the term "work-charged employees". However Section 2(d) of the Nagaland Work-Charged and Casual Employees Regulation Act, 2001 specifically defines a work-

charged employee to mean an employee engaged without sanctioned post under work-charged establishment. Therefore, the said Office Memorandum dated 22.09.2004 has to be taken to be applicable for regularization of services of work-charged employees and this aspect of the matter has been also held by the Co-ordinate Bench of this Court in Writ Appeal No.02/2022 (***The State of Nagaland and 3 Others VS. Smti. Hongti Konyak and Another***). The relevant portion of paragraph No.6 of the said judgment is quoted hereinbelow:

"The OM starts with the subject "policy and scheme for regularization of service of work-charged employees" and the whole contents of the OM only confirms that the scheme is meant only for "work-charged employees". Therefore, we have no hesitation in concluding that the OM provides the scheme or policy for regularization of service of work-charged employees only and not casual employees or any other. As such, the petitioner's husband who was a casual employee could not have enjoyed the benefit of the OM. Further, since the very judgment and order (judgment passed in WA No.21/2019) based on which the impugned judgment was passed has been quashed and set aside by the Hon'ble Supreme Court in Civil Appeal No.4223/2022, we are of the view that the impugned judgment and order of the learned Single Judge can no longer stand on its own."

19. Now, the next question therefore arises is as to whether the Office Memorandum dated 17.03.2015 has extended the Office Memorandum dated 22.09.2004 even to casual/contingency employees by virtue of Clause 1(iii) of the said Office Memorandum. Clause 1(iii) of the said Office Memorandum is quoted hereinbelow:

"The existing scheme for regularization of work-charged employees against normal vacancy is being modified and the quota for work-charged

employees stands enhanced from 50% to 67% for the next 5 (five) years effective from 01.01.2015. The existing scheme will also be applicable for the casual employees appointed on full time basis."

20. From a perusal of the said Clause 1(iii) as quoted hereinabove, it would clearly show that the first part of the said clause categorically relates to regularization of work-charged employees against normal vacancy to be modified and the quota for work-charged employees would stand enhanced from 50% to 67% for the next 5 (five) years effective from 01.01.2015 meaning thereby that the quota which was 50% earlier which was reserved for regularization was enhanced to 67% for a period of 5 (five) years with effect from 01.01.2015 and thereupon the quota of 50% as has been mandated in the Office Memorandum dated 22.09.2004 shall again be applicable. This aspect of the matter would be further clear from reading of Clause (iii) and (iv) of the Office Memorandum dated 22.09.2004 whereby 50% of the future vacancies were to be filled up by way of regularization. Therefore, by virtue of Clause (iii) and (iv) of the Office Memorandum dated 22.09.2004 read with Clause 1(iii) of the Office Memorandum dated 17.03.2015 would therefore mean that the quota of 50% which was fixed as per the Office Memorandum dated 22.09.2004 would be enhanced to 67% for a period of 5 (five) years with effect from 01.01.2015 and thereupon with effect from 01.01.2020, it would again revert back to 50%.

21. The contention made by the learned counsel for the petitioners/writ appellants in WA No.15/2022 is that in view of the second sentence in Clause 1(iii) of the Office Memorandum dated 17.03.2015 i.e. "This existing scheme will also be applicable for casual employees appointed on full time basis" would mean that irrespective of the petitioners/writ appellants in WA

No.15/2022 having not completed 30 years or more which was a requirement in terms with Clause 1(i) of the Office Memorandum dated 17.03.2015 but by virtue of the Office Memorandum dated 22.09.2004 being made applicable, the requirement of 30 years or more as on 01.01.2015 was dispensed with. This argument though looks attractive at the first blush but in the opinion of this Court the said argument is misconceived for the reasons stated hereinafter.

22. A reading of Office Memorandum dated 17.03.2015 would show the object behind the Office Memorandum dated 17.03.2015 wherein it has been mentioned that upon due consideration to the report of Work-Charged and Casual Employees Commission and in compliance with the judgment and order of this Court, the Governor of Nagaland had introduced a scheme for regularization and absorption of the work-charged and casual employees and revision of pay and wages subject to the conditions therein. Therefore, by the Office Memorandum dated 17.03.2015, all other schemes for regularization including the scheme for regularization of work-charged employees brought into effect by the Office Memorandum dated 22.09.2004 stood affected and modified by the Office Memorandum dated 17.03.2015. Clause 1 of the said Office Memorandum dated 17.03.2015 stipulates how the regularization in service is to be made. A cursory glance to the Clause 1 on the face of it would show that this Clause relates not only to casual employees but also to all work-charged employees meaning thereby that the Office Memorandum dated 22.09.2004 is made subject to the Office Memorandum dated 17.03.2015. Clause 1(i) stipulates the various conditions which needs to be fulfilled for the purpose of being regularized in respect to all existing work-charged and casual employees of

various departments. Clause 1(i) being relevant is therefore quoted hereinbelow:

"1. Regularisation of service:

(i) All existing work-charged and casual employees of various Departments who are enjoying scale pay and who have completed 30 (thirty) years or more continuous service as on 01.01.2015 will be regularized by conversion of their posts into regular ones personal to them and subject to fulfillment of conditions as indicated below:

- (a) The incumbent concerned and his/her service rendered as work-charged employee have been duly verified and found genuine by the District Level Verification Committee constituted by the Government.*
- (b) Availability of service records including appointment order, date of initial appointment, proof of length of service/age etc.*
- (c) Their suitability for continuation in service to be recommended by the Heads of Department concerned.*
- (d) The post occupied by them on regularization shall automatically stand abolished as and when they vacate the post on retirement, resignation, death etc. The strength of the work-charged and casual employees under various Departments shall stand reduced by equal number concurrently with the regularization of such employees. No fresh appointment shall be made against these posts.*
- (e) On regularization in service, the pay of the incumbent shall be fixed at the minimum of the corresponding Pay Band and Grade Pay as admissible under Rule 10 of Nagaland Services ROP Rules, 2010.*
- (f) The past service rendered as work-charged/casual employees shall*

be counted towards length of service for the purpose of Nagaland Retirement from Public Employment Act, 2009 and as qualifying service for the purpose of pension.

(g) This scheme shall, however, not be applicable to the part time Casual employees, Village Guards, Home Guards, ICDS workers, other CSS paid employees whose services are guided by specific terms and conditions laid down by the Government and some other categories of contingency employee like personal peons, part time sweepers/chowkidars/seasonal workers etc.

(h) The period of service rendered as work-charged/casual employees shall not be counted for the purpose of MACP.”

23. The above quoted Clause 1(i) are in respect to all existing work-charged and casual employees of various departments who are enjoying scale pay and who have completed 30 years or more continuous service as on 01.01.2015. These employees would be regularized by conversion of their posts into regular ones personal to them and subject to fulfillment of the conditions as indicated in Clauses (a) to (h) of Clause 1(i). Therefore, the said Clause 1(i) is applicable to all work-charged and casual employees who have completed 30 years or more continuous service as on 01.01.2015. In view of the Clause 1(i), any work-charged employee who was entitled to regularization under the Office Memorandum dated 22.09.2004 have to further fulfill the conditions as stipulated in Clause 1(i) of the Office Memorandum dated 17.03.2015.

24. Clause 1(ii) is in relation to those work-charged and casual employees enjoying the scale pay and who have completed or will complete 30 years of continuous service after 01.01.2015. Clause 1(ii) therefore being relevant

is quoted hereinbelow:

"(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."

25. Therefore, a conjoint reading of Clause 1(i) and 1(ii) would show that while Clause 1(i) is in respect to all work-charged and casual employees who have already completed 30 years or more continuous service as on 01.01.2015 but Clause 1(ii) is in relation to those work-charged and casual employees who have completed or will complete 30 years of continuous service after 01.01.2015.

26. In the backdrop of the above, if this Court takes into consideration Clause 1(iii), it would be seen that the existing scheme of regularization of work-charged employees against normal vacancies was being modified in view of the schemes of things as envisaged under Clause 1(i) and 1(ii) and the quota for the work-charged employees would stand enhanced from 50% to 67% for the next 5 (five) years effective from 01.01.2015. The sentence "This existing scheme will also be applicable for the casual employees appointed on full time basis" would therefore has to be taken to mean that in the case of casual employees also the quota of 50% would be enhanced to 67% for 5 years i.e. upto 31.12.2019 and thereupon shall revert back to 50%.

27. In the backdrop of the above, if this Court takes into consideration

the impugned judgment and order passed by the learned Single Judge, this Court with due respect to the learned Single Judge is of the opinion that the learned Single Judge have passed the impugned judgment and order on a misreading of Clause 1(iii) and has come to a finding that Office Memorandum dated 17.03.2015 ceased to exist on or after 01.01.2020. As already observed hereinabove, the Office Memorandum dated 22.09.2004 stood affected and modified and became the subject to the conditions stipulated in the Office Memorandum dated 17.03.2015. Under such circumstances, the findings of the learned Single Judge in the opinion of this Court calls for interference to the extent of holding that the Office Memorandum dated 17.03.2015 did not exist after 01.01.2020 and the Office Memorandum dated 22.09.2004 was holding the field and was made applicable insofar as the case of the petitioners. Accordingly, the said findings stands interfered with and set aside.

28. It is also relevant herein to take note of that as the petitioners admittedly have not completed 30 years of continuous service as on 01.01.2015, their case would not come within the ambit of Clause 1(i) of the Office Memorandum dated 17.03.2015. However the petitioners case can be duly considered in terms with Clause 1(ii) of the Office Memorandum dated 17.03.2015 subject to fulfillment of the conditions stated herein.

29. At this stage, this Court finds it relevant to take into consideration a contention made by the learned counsel for the appellant in WA No.15/2022 to the effect that the posts in question fell vacant at a time when the Office Memorandum dated 22.09.2004 was holding the field and

as such the Office Memorandum dated 22.09.2004 would be applicable and not the Office Memorandum dated 17.03.2015. The said contention is on the face of it misconceived for two reasons. First, as held by the Co-ordinate Bench of this Court in the case of **Smti. Hongti Konyak and Another (supra)**, this Court had categorically held the Office Memorandum dated 22.09.2004 is only applicable to work charged employees and not to casual employees. Accordingly, the petitioners/appellants in WA No.15/2022 being contingency employees and not work charged employees, the Office Memorandum dated 22.09.2004 cannot be made applicable to them. Secondly, it is well settled by the recent judgment of the Supreme Court in the case of **State of Himachal Pradesh and Others Vs. Raj Kumar and Others reported in (2022) SCC Online SC 680** wherein the Supreme Court held that the statement in **Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others** reported in **(1983) 3 SCC 284** to the effect "the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules" does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution and it was also held that the rights and obligations of persons serving the Union and the States are to be sourced from the Rules governing the services. Paragraph Nos. 73, 74 and 75 of the judgment in the case of **Raj Kumar (supra)** is reproduced hereinbelow:

"73. The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in

Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

- (a) *The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.*
- (b) *The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.*

Application of the principle to the facts of the present case:

74. *Returning to the facts of the present case, we have noticed that the High Court has proceeded on the premise that the vacancies occurring before the amendment of the Rules on 25.11.2006 must be governed by the 1966 Rules. The decision of the High Court took within its sweep even the 7 new posts of Labour Officers that were sanctioned by an inter-departmental letter dated 20.07.2006, which included even the 3 posts allocated for direct recruitment. The direction of the High Court to encompass even the 3 posts allocated for direct recruitment was on the ground that the posts were sanctioned on 20.07.2006, which is prior to the amendment of the Rules on 25.11.2006.*

75. *We have already held that there is no right for an employee outside the rules governing the services. We have also followed and applied the Constitution Bench decisions in Union of India v. Tulsiram Patel (supra) and more particularly the decision in Roshan Lal Tandon v. Union of India*

(supra) that the services under the State are in the nature of a status, a hallmark of which is the need of the State to unilaterally alter the rules to subserve the public interest. The 2006 rules, governing the services of the Respondents came into force immediately after they were notified. There is no provision in the said rules to enable the Respondents to be considered as per the 1966 Rules. The matter must end here. There is no other right that Respondents no. 1 to 3 can claim for such consideration."

Therefore, it is the opinion of this Court that the contention raised to the effect that the petitioners/appellants in WA No.15/2022 would be governed by the Office Memorandum dated 22.09.2004 and not the Office Memorandum dated 17.03.2015 is totally misconceived.

30. On the basis of the above findings, an important issue further arises for consideration as to whether the posts which have fallen vacant in view of the setting aside of the appointments of the respondent Nos. 3 and 4/the appellants in Writ Appeal No.6/2022 are required to be taken into consideration for regularization of the services of the petitioners/the appellants in Writ Appeal No.15/2022 or the said post are required to be filled up in terms with the direct recruitment by the NPSC. Clause 1(ii) of the Office Memorandum dated 17.03.2015 stipulates that it is applicable to those work-charged and casual employees who have completed or will complete 30 years of continuous service after 01.01.2015 meaning thereby the right of the petitioners/writ appellants to be regularized would only arise after they render 30 years of continuous service and at present the petitioners are yet to complete the 30 years of service. Taking into account that the petitioners at present are not eligible, this Court cannot issue a mandamus directing the respondent State to keep the posts vacant till the

petitioners become eligible. The respondent State would be at liberty to take such course of action as deemed fit as per its existing policy.

31. We further make it clear that the Office Memorandum dated 22.09.2004 would also continue to be applicable insofar as the same is not inconsistent with the Office Memorandum dated 17.03.2015.

32. With the above observations and directions, both the Writ Appeals stands disposed of.

33. The Registry of the Principal Seat is directed to forthwith remit the records to the Kohima Bench of this Court.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant