

GAHC020001612019



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

Case No. : WP(C)/61/2019

S. CHONGJI PHOM
W/O LT. KONGPA PHOM,
PONGCHING VILLAGE, LONGLENG, N/L

VERSUS

THE STATE OF NAGALAND AND 9 ORS
THROUGH THE CHIEF SECRETARY, GOVT. OF N/L, N/L, KOHIMA

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF N/L
P AND AR DEPT. NAGALAND KOHIMA

3:THE HOME COMMISSIONER TO THE GOVT. OF N/L
DEPT. OF HOME, NAGALAND

4:THE COMMISSIONER AND SECRETARY
JUSTICE AND LAW DEPT. NAGALAND KOHIMA

5:THE FINANCIAL COMMISSIONER TO THE GOVT. OF N/L
NAGALAND KOHIMA

6:THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

7:THE SUPERINTENDENT OF POLICE
TUENSANG
NAGALAND

8:THE SUPERINTENDENT OF POLICE
LONGLENG
NAGALAND

9:THE ACCOUNTANT GENERAL

NAGALAND

10:THE TREASURY OFFICER
LONGLENG NAGALAND

Advocate for the Petitioner : I. IMTI LONGCHAR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 28-04-2023

Heard Mr. Imti Longchar, learned counsel for the petitioner along with Mr. N Angami, learned Government Advocate for the State respondents and Mr. N Mozhui, learned counsel for the private respondent No. 9.

2. This petition has been filed by the petitioner under Article 226 of the Constitution for issuance of the appropriate writ against the State respondents for grant of Extra Ordinary Pension on the death of her late husband Khongpa Phom, who died in a vehicular accident while on duty.

3. The case of the petitioner is that she is the wife of Late Kongpa Phom. The petitioner's husband Late Kongpa Phom was

appointed as constable/driver on contingency basis for a period of 6 (six) months w.e.f. 10.05.2001 to 09.11.2001 by an order dated 10.05.2001. Thereafter, the service of the petitioner's Late husband was extended for another 3 (three) months w.e.f. 10.11.2001 to 09.12.2001 by an Order dated 05.11.2001. At the time of the initial appointment of the petitioner's Late husband, he was found to be physically fit for the job. Unfortunately, the petitioner's Late husband died in an accident while driving the vehicle carrying police personnel detailed for VIP security for the visit of Shri. S C Jamir, the then Chief Minister, Nagaland. He was rushed to the District Civil Hospital, Longleng, Nagaland and succumbed to his injuries on the same day. The petitioner had then submitted a representation to the Director General of Police, Nagaland, Kohima praying for grant of family pension and other service benefits for the service rendered by her husband Late Kongpa Phom, Ex-constable-driver. Since she did not receive the relief prayed for, she had approached this Court on 31.08.2015 by filing WP(C) No. 170(K)/2015 and this Court vide its Order dated 07.09.2015 had disposed of the writ petition by directing the petitioner to file a fresh representation, which was to be disposed by the State respondents within a week. The State respondents had then disposed of the fresh representation submitted by the petitioner by granting the petitioner ex-gratia to a sum of Rs. 2 lakhs. However,

extra ordinary family pension was denied to the petitioner, on the ground that the Late husband of the petitioner was appointed on fixed pay on contingency basis for a period of 6 (six) months and he was not holding any substantive post at the time of his death. Aggrieved by this, the petitioner had again filed a second writ petition registered as WP(C) No. 202(K)/2015 on 03.11.2015 for payment of extra ordinary pension. This Court vide its Judgment & Order dated 25.05.2017 had disposed of the writ petition with the following observation;

"5.....if ex-gratia grant can be given to the petitioner due to the death of her husband while performing bonafide Government duty under the Office Memorandum dated 06.06.1995, it would also be appropriate, if the State respondents can consider the case of the petitioner under the Office Memorandum dated 06.06.1995 for payment of extra ordinary pension to the petitioner.

6. The learned counsel for the petitioner as well as the learned Government Advocate has no objection for reconsideration of the matter by the State respondents. Accordingly, this writ petition is disposed of with a direction to the Respondent Nos. 2 & 3 to consider and pass appropriate order in regard to payment of extra ordinary pension as per the entitlement of the petitioner and also as per the provision under

the Central Civil Service (Extraordinary Pension) Rules as well as the Office Memorandum dated 06.06.1995 within a period of 6 (six) months from the date of a receipt of a copy of the order of this Court by respondent Nos. 2 & 3."

4. In response to the Judgment & Order passed by this Court in WP(C) 202(K)/2015, the respondents had informed the petitioner vide the Letter dated 12.11.2018 *"that the instant deceased person was a contingency worker and not even entitled to normal pension under the Rules. Therefore, grant of extra ordinary pension to the next of kin does not arise"*. Aggrieved, the petitioner had filed a Civil Contempt Petition No. 14(K)/2018 before this Court wherein, this Court had closed the Contempt Petition on 13.11.2018 observing that *"In view of the order dated 12.11.2018 issued by the Home Commissioner, Nagaland disposing the prayer of the petitioner in pursuance to this Court's Order dated 25.05.2017 in WP(C) No. 202(K)/2015, this Contempt Petition is closed."* Thus being aggrieved that no extra ordinary pension has been granted to her, the petitioner has approached this Court again for the third time.

5. Mr. Imti Longchar, learned counsel for the petitioner submits that the Letter dated 12.11.2018 issued by the Home Commissioner, Nagaland regretting the grant of extra ordinary

pension to the next kin of the deceased Khongpa Phom is liable to be set aside considering the fact that this Court in its Judgment & Order dated 25.05.2017 in WP(C) No. 202(K)/2015 had clearly observed that if ex-gratia grant can be given to the petitioner under the O.M dated 06.06.1995, it would be also be appropriate, if the State respondents can consider the case of the petitioner under the O.M dated 06.06.1995 for payment of extra ordinary pension to the petitioner. That the scheme formulated by the Government of Nagaland vide Office Memorandum No. PAR-A/62/89, dated 06.06.1995 issued by the Office of Personnel & Administrative Reforms (Pension & Pensionary Welfare Cell) clearly lays down that all Government servants who have been killed while performing bonafide Government duty shall be entitled to ex-gratia grant, and accordingly, since the Late husband of the petitioner was a Government servant, she has been granted the lumpsum grant of Rs. 2 lakhs, thus, under the said Notification dated 06.06.1995, the family of the Late Khongpa Phom is also entitled to the last pay allowance drawn by him as extra ordinary pension.

6. The learned counsel for the petitioner further submits that under Rule 2(c) of the Central Civil Service (Pension) Rules, 1972, it categorically provides that in the event of death in harness temporary/quasi permanent Government servant and their families

shall be entitled to family pension and that gratitude on the same scale at admissible to the families permanent Government servant under the CCS (Pension) Rules, 1972. Further, under Rule 2 & 3(A) of the Central Civil Service (Extra Ordinary Pension) Rules, 1939, extra ordinary pension can be claimed whether their appointment is permanent or temporary on the scale or fixed pay or piece-work rates who are under the rule making control of the Governor-General.

7. In view of the above provision of law, the learned counsel submits that the State respondents cannot refuse the grant extra ordinary pension to the wife of the deceased. It is clear from the reports that he Late husband Khongpa Phom had died while performing his duty as a driver and that the impugned Order dated 12.11.2018 regretting extra ordinary pension to the next to kin of the deceased Late Khongpa Phom should be quashed and set aside. The learned counsel, in support of his submission, has also brought to the notice of this Court the earlier decision of this Court in a similar situation in *State of Nagaland vs. Smt. Tekanukshilla*, *W.A No. 3/2012* dated 08.10.2015 wherein, this Court had allowed payment of extra ordinary pension to the petitioner under the O.M dated 06.06.1995.

8. Mr. N Angami, learned Government Advocate, on the other hand, has strongly objected to the grant of extra ordinary pension to the petitioner, stating that the mentioned O.M dated 06.06.1995 is with regards to only those Government servants including IAS/IPS/IFS Officers killed in action encounter. He has emphasized that the term "killed in action encounter" is not the case of the Late husband of the petitioner who as per the Police report shows that he had met with a fatal accident on 30.11.2001 while driving the vehicle carrying police personnel detailed for VIP security for the visit of Shri. S C Jamir, the then Chief Minister, Nagaland and thereafter, shortly succumbed to his injuries at District Civil Hospital, Longleng on 30.11.2001. That "succumbed to his injuries" is different from being killed in an encounter. Therefore, the O.M dated 06.06.1995 is not to be applied while considering the case of the petitioner for grant of ex-gratia grant and extra ordinary pension. The learned Government Advocate had brought to the notice of this Court that the petitioner was given Rs. 2 lakhs as ex-gratia not under the said O.M dated 06.06.1995 but in a decision of the State Government to give ex-gratia to various persons who had died due to different causes.

9. The learned Government Advocate has submitted the list which was made a part of the record, wherein, it shows that the

Late husband of the petitioner was at Serial No. 8 amongst various persons who had given ex-gratia. The learned Government Advocate has also led this Court to the Notification dated 22.10.2013 issued by the Governor of Nagaland, Department of Relief Rehabilitation Branch, where all Government officials/Police Officers and men killed on bonafide duties were to be given an ex-gratia a sum of Rs. 2 lakhs and where members of public killed due to uncalled for action on the part of Government officials on their duty were to be given Rs. 1 lakh. He points out that the petitioner was thus given the ex-gratia of 2 lakhs vide this Notification 22.10.2013.

10. The learned Government also submits that Rule 2(3) of the CCS (Pension) Rules, 1972 clearly provides that the rules will not apply to a Government servant who is appointed on contingency basis. There is no dispute in the instant case, that the Late husband of the petitioner was appointed on contingency basis. The learned Government Advocate also submits that the Central Civil Service (Extra Ordinary Pension) Rules, 1939 is not applicable to the State of Nagaland and in lieu of which the State has notified the O.M dated 06.06.1995, which is also not applicable in the instant case.

11. The learned Government Advocate further submits that the impugned Order dated 12.11.2018 issued by the Home Commissioner, Nagaland is as per the direction of this Court in its Judgment & Order dated 25.05.2017 in WP(C) No. 202(K)/2015. This Court had only directed the State respondents to 'consider' the case of the petitioner under the O.M dated 06.06.1995 for payment of extra ordinary pension to the petitioner. There is no direction from the Court that the extra ordinary pension should be paid to the petitioner. In compliance of the order of this Court dated 25.05.2007 the impugned notification has accordingly been issued by the Commissioner, Home Department.

12. The learned Government Advocate also submits that the instant writ petition is barred by the principles of *res judicata* under Section 11 of the Code of Civil Procedure since the relief prayed for by the petitioner is for the grant of extra ordinary pension which has also been considered and disposed of by this Court in WP(C) No. 202(K)/2015. The instant petitioner has again approached this Court praying for the same relief, that is, to be granted extra ordinary pension. For this reason, the instant petition is liable to be dismissed straight forth.

13. Having considered the submissions made by both the rival

parties, this Court on careful perusal of the O.M dated 06.06.1995 issued by Govt. of Nagaland, Department of Personnel & Administrative Reforms (Pension & Pensionary Welfare Cell) observed that the subject of the memorandum is "*Liberisation of Pensionary Award to the Government Servants Including IAS/IPS/IFS Officers Killed In Action Encounter*". From the plain reading of the subject matter, this Court finds that this memorandum is for those officers who were killed in action encounter. On perusal of the police report with regard to the reason for the death of the deceased Late Khongpa Phom, which is reproduced verbatim that "*Lt. Khongpa Phom D/C who was serving in Police outpost Longleng under D.E.F Tuensang met a fatal accident on 30.11.2001 while driving the vehicle carrying police personnel detailed for security for the visit of Shri. S.C Jamir, Chief Minister, Nagaland in outpost Tamlu under D.E.F Longleng. Reference: Tamlu outpost G.D.E No. 03.*

Shortly afterwards Lt. Khongpa Phom D/C succumbed to his injuries at District Hospital, Longleng on 30.11.2001.

Lt. Khongpa Phom D/C died while performing his bonafide duty."

Thus, though the deceased Late Khongpa Phom had died while performing his bonafide duty, the nature in which he had died

cannot be said to be killed "in action encounter".

14. It is also noted that the Rs. 2 lakhs as ex-gratia grant which was paid the petitioner in the month of December, 2016 was not paid under the O.M dated 06.06.1995 but was paid on the strength of the notification of the Home Department, Relief & Rehabilitation Branch dated 22.10.2013, which was communicated to the Government Advocate on 07.02.2020. The view of this Court does not differ from the observation of a co-ordinate Bench of this Court in its Judgment & Order dated 25.05.2017 in WP(C) No. 202(K)/2015, that the Central Civil Service (Extra Ordinary Pension) Rules, 1939 is not applicable in the State of Nagaland. Further, on reading of Rule 2(c) of the Central Civil Service (Pension) Rules, 1972, it specifically states that the rules shall not apply to 'persons paid from contingencies', whereas the appointment order of the deceased Sh. Khongpa Phom dated 10.05.2001 specified that he was appointed on contingency basis for a period of 6 months from 10.05.2001 to 09.11.2011 in fixed pay of Rs. 450/- which was later extended for another 3 months vide the Order dated 05.11.2001. Thus, the instant petitioner cannot claim the pension benefits under the Central Civil Service (Pension) Rules, 1972. It is also observed that the facts of the case in the cited *State of Nagaland vs. Smt. Tekanukshilla (supra)* are different from the instant case

wherein in the cited case the deceased had died while he was undergoing Basic Training at PTS Chumukedima and died at the hands of unidentified gunmen on 09.06.2002 being caught in cross firing between two extremists factors.

15. In view of the above observations, This Court is constrained to hold that the Writ Petition is found devoid of merit and is accordingly dismissed and stands disposed of.

**Sd/-
JUDGE**

Comparing Assistant