



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

Case No. : WP(C)/68/2021

SMTI. ANITOLI ASSUMI
SWEEPER(FIXED PAY), OFFICE OF THE DISTRICT AGRI OFFICER,
KOHIMA, NAGALAND

VERSUS

- 1) THE STATE OF NAGALAND AND 3 ORS
Address - THROUGH THE CHIEF SECRETARY TO
THE GOVT. OF NAGALAND, NAGALAND, KOHIMA
Advocate - GOVT ADV NL
- 2) THE COMMISSIONER AND SECRETARY TO
THE GOVT. OF NAGALAND,
AGRICULTURE DEPARTMENT,
NAGALAND, KOHIMA
- 3) THE DIRECTOR,
DIRECTORATE OF AGRICULTURE,
NAGALAND, KOHIMIA
- 4) THE DISTRICT AGRICULTURE OFFICER,
KOHIMA, NAGALAND

Advocate for the Petitioner : J. RENGMA

Advocate for the Respondent : GOVT ADV NL

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER
18.04.2023

Heard Ms. V Therie learned counsel for the petitioner, who has filed this writ petition under Article 226 of the Constitution of India for issuing the appropriate writ against the State respondents.

2. The case of the petitioner is that she was appointed as a Sweeper on casual basis under the establishment of the DAO, Kohima for a period of 5 years and with a fixed pay of Rs. 2,000/- (Two Thousand) only per month, which was extended again on 24.05.2007 from 01.04.2007 to 30.09.2007, and further extended from time to time. Thereafter, she had written to the Director, Directorate of Agriculture, Nagaland, Kohima on 03.03.2021 stating that since she was appointed as a Sweeper on casual basis for a period of 5 months and thereafter her service has been extended from time to time wherein, her salary was increased to Rs. 5,280/- vide Notification dated 13.11.2019, she had prayed for grant of scale of pay. However, since she did not receive any reply to her Letter dated 03.03.2021, after a lapse of 30 days, she has approached this Court by way of the instant writ petition.

3. The learned counsel for the petitioner submits that the petitioner had received information through RTI that persons who were appointed as Grade-IV and appointed later than her, have been regularized. The learned counsel led this Court to the list at Annexure-9 of her affidavit-in-reply. The learned counsel for the petitioner also submits that the petitioner is entitled to be

regularized as per the Office Memorandum dated 17.03.2015 issued by the Personnel & Administrative Reforms Department, Govt. of Nagaland.

4. In support of her submissions, the learned counsel for the petitioner has also cited the decision of the Division Bench of this Court in *State of Nagaland & Ors. Vs. Smt. Heshemi Sumi*, dated 14.09.2022 in W.A 25/2022 wherein, the Court on the basis of equal pay for equal work held that privilege Sweepers are entitled to equal pay as that received by regular Sweepers. She has also cited the decision of the Apex Court in *State of Punjab vs. Jagjit Singh & Ors*, reported in (2017) 1 SCC 148.

5. Mr. N Angami, learned Government Advocate, on the other hand, submits that on perusal of the appointment order of the petitioner, it is clear that she has been appointed with a fixed pay on casual basis and the Office Memorandum dated 17.03.2015 provides for regularization in service with regards to work-charge and casual employees, who are enjoying scale pay while the instant petitioner was employed on a fixed pay. He further mentions that with regards to Revision of Pay/Wages of fixed pay work-charge and casual/contingency employees, the pay of the instant petitioner has been revised and she is now enjoying the pay of Rs. 5,280/- as per the O.M dated 17.03.2015.

6. The learned Government Advocate further submits that with regards to the regularization of work-charge employees, it has to go as per the seniority and has led this Court to the list provided in Annexure-A of the counter affidavit, which is the tentative seniority list of Grade-IV (casual employees) appointed as sweepers as on

04.02.2021, showing that the instant petitioner is listed at Serial No. 21. The learned Government Advocate mentions that the petitioner will be regularized as and when her turn comes as per the tentative seniority list and that she cannot supersede as many as 16 other similarly situated employees, which will be against the interest of justice.

7. The learned Government Advocate also mentions that the counsel for the petitioner has in her submission prayed for minimum scale of pay and has not made any such prayer in the writ petition and therefore, she cannot take that stand for minimum scale of pay, and rely on the judgments cited by the counsel for the petitioner.

8. Having heard the submissions made by both the parties, this Court finds that the petitioner had made an application dated 03.03.2021, to the Director, Directorate of Agriculture, Nagaland, Kohima praying for grant of scale of pay and that before she had received any response from the State Government with regards to her Letter dated 03.03.2021, she had approached this Court praying for a direction to be issued to regularize the petitioner against the lowest scale of pay permissible for Grade-IV employees. Thus, this Court, having considered the nature of submissions made by both the parties, is of the considered view that it is premature of the petitioner to file the writ petition at this stage, since her Letter dated 03.03.2021, praying for grant of scale of pay has not been addressed by the State respondents yet.

9. In view of the above, this Court finds it fit to direct the concerned Department to consider the application of the petitioner

dated 03.03.2021 and reply accordingly within 6 (six) weeks from the date of this order. Thereafter, if aggrieved the petitioner may approach the appropriate forum.

10. This writ petition accordingly stands disposed with the above directions.

Sd/-

JUDGE

Comparing Assistant