

GAHC020001972022



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

Case No. : WP(C)/74/2022

SHRI. RABEMO LOTHIA
S/O LT. PINIMO LOTHIA,
DRIVER, UNDER THE DEPARTMENT OF HIGHER EDUCATION,
NAGALAND, KOHIMA,
R/O KENEZUO COLONY, KOHIMA, NAGALAND.

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND.

2: THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND, HIGHER EDUCATION DEPARTMENT, NAGALAND
KOHIMA

3: THE DIRECTOR, HIGHER EDUCATION, NAGALAND, KOHIMA

Advocate for the Petitioner : I. APOK PONGENER

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (ORAL)

Date : 22-05-2023

Heard Mr. I. Apok Pongener, learned counsel for the petitioner and Ms. S. Chang, learned Government Advocate for the State respondents.

2. The present writ petition has been filed seeking for a direction to the State respondents to cancel and/or revoke the order dated 13/04/2022 (Annexure-12 to the writ petition) issued by the Director, Directorate of Higher Education cancelling the regularization of service of the petitioner.

3. The case of the petitioner in brief is that by the order dated 06/08/2004 issued by the Director, Directorate of Higher & Technical Education, Nagaland, Kohima, the petitioner was temporarily appointed on casual basis as driver under the establishment of Khelhoshe Polytechnic, Atoizu, in the scale of pay of Rs. 900-25-1025-30-1445-1670/- p.m. plus all other allowances as are admissible under the rules from time to time. The petitioner accordingly submitted his joining report on 08/08/2004.

4. That in the year 2019 a regular vacancy occurred in the post of driver in the Directorate of Higher Education department on account of the death of Imtiluen Ao, the incumbent. The petitioner being the senior most employee amongst the casual drivers submitted the application dated 22/10/2019 to the department for regularization of his service against the resultant vacancy.

5. That consequent to the receipt of the application from the petitioner for regularization of service, the department constituted a screening committee and by the Meeting Minutes dated 21/03/2020 recommended the petitioner for regularization in service, subject to the administrative approval of the Government. Pursuant thereto, the Government of Nagaland, in the Higher & Technical Education department, Nagaland, Kohima, by letter dated 10/12/2020 conveyed the administrative approval for regularization of the service of the petitioner as driver under the establishment of the Directorate of Higher Education, Nagaland, Kohima, against the resultant vacancy. Consequent thereto, the Director, Directorate of Higher Education, Nagaland, Kohima, issued the order dated 18/12/2020 regularizing the service of the petitioner with immediate effect.

6. That however the department while submitting the Incumbent-Wise Salary statement of the employees in the department as on 30/01/2021, inadvertently entered the date of appointment of the petitioner as 18/12/2020. On receiving the

salary statement of the employees of the department, the Finance department, Budget & Monitoring Cell wrote the letter dated 26/08/2021 to the Commissioner & Secretary to the Government of Nagaland, Higher Education department, Nagaland, Kohima, seeking clarification as to how the appointment of the petitioner was made when there was total ban imposed by the Government on appointments. By the said letter, it was also conveyed that pending satisfactory clarification, there will be no further allocation of 'Salaries'. Thereafter, by the letter dated 11/10/2021, the Government of Nagaland in the Higher & Technical Education department cancelled the order regularizing the service of the petitioner and reverting back the petitioner to his casual status with immediate effect.

7. That thereafter, the Director, Higher Education, Nagaland, Kohima, wrote the letter dated 30/11/2021 to the Commissioner & Secretary to the Government of Nagaland, department of Higher & Technical Education, clarifying that the actual date of appointment of the petitioner on casual basis was 06/08/2004 and the petitioner's date of regularization in service as a driver was 18/12/2020. The letter also conveyed that the petitioner's date of entry in service recorded as 18/12/2020 was purely due to clerical error. The Commissioner & Secretary, Higher & Technical Education, Nagaland, Kohima, was therefore requested to take up the matter with the Finance Department and to recall the letter dated 11/10/2021 cancelling the regularization in service of the petitioner.

8. That however by the impugned order dated 13/04/2022 issued by the Director, Higher Education, Nagaland, Kohima, the order dated 18/12/2020 issued by the department regularizing the service of the petitioner was cancelled and the petitioner reverted back as a casual driver.

9. Mr. Apok Pongener, learned counsel for the petitioner submits that the petitioner's service as a casual driver was regularized by the Government against resultant vacancy on the recommendation of the screening committee of the department. The learned counsel accordingly submits that the petitioner's could not have been reverted to his casual status in the manner sought to be done without following the due process of law and in complete violation of the principles of natural

justice. The learned counsel further submits that the present issue in regard to the service of the petitioner arose only when the Incumbent-Wise Salary statement of the employees in the department was submitted to the Government inadvertently showing the date of appointment of the petitioner as 18/12/2020 when in fact the petitioner was appointed in the service of the department as a driver on casual basis on 06/08/2004 and therefore, the appointment of the petitioner did not violate of the O.M dated 22/04/2022 issued by the Government freezing all fresh appointments. It is the case of the petitioner that the department realizing its mistake has submitted the letter dated 30/11/2021 to the Government clarifying that the petitioner's date of appointment as a driver on casual basis is 06/08/2004 and his date of regularization is 18/12/2020 and therefore to re-examine the matter cancelling the regularization of the petitioner's service. However, despite the clarification submitted to the Government, the department has issued the impugned order dated 13/04/2022 cancelling the regularization of the petitioner's service and reverting him back to the casual status. In the additional affidavit, the petitioner has annexed the letter dated 02/05/2022 written by the Director, Higher Education, Nagaland, Kohima, to the Secretary, Government of Nagaland, Department of Higher Education, Nagaland, Kohima, and the letter dated 02/06/2022 written by the Director, Higher Education, Nagaland, Kohima, to the learned Government Advocate, Gauhati High Court, Kohima Bench. In both the letters, it has been clearly admitted by the department that no justification can be offered for cancelling the regularization of the petitioner's service and the department is in the process of rectifying the same.

10. Ms. S. Chang, learned Government Advocate for the State respondents fairly submits that the issue with regard to the cancellation of the petitioner's regularization in service arose due to the inadvertent error committed by the department showing the petitioner's date of entry in service as 18/12/2020 in the Incumbent-Wise Salary statement of the employees of the department, when in fact, the actual date of the petitioner's appointment in service is 06/08/2004. The learned counsel accordingly submits that steps have been taken with the Government to rectify the mistake. The learned Government Advocate refers to paragraph-3 of the affidavit-in-opposition filed

by the State respondents which reads as follows;

“3. That with regard to the statements made in paragraph 1-22 of the writ petition, the answering deponent begs to state that it is pertinent to mention herein that the department cannot offer any justification but has to admit the fact that the order dated 03/03/2022 was not supposed to cancel the regularization order of Shri. Rabemo Lotha, Driver, but was to rectify the Incumbent-Wise Salary statement as on 31/03/2021 and the matter was forwarded to the P&AR department along with the supporting information. Therefore, the cancellation order dated 13/04/2022 was issued, by which the petitioner and his co-incumbent who were appointed on casual basis under the Directorate of Higher Education and whose service were regularized w.e.f. 03/03/2020 and 18/12/2020 respectively are hereby cancelled and reverted back to their casual status vide letter No. HTE/HE/8-16/2020/550 Dt. 11/10/2021.”

11. Heard the learned counsel and perused the pleadings exchange between the parties. From the submissions made by the parties, it can be gathered that the petitioner was first appointed as a driver on casual basis in the department vide order dated 06/08/2004. The petitioner's service was thereafter regularized by the department by order dated 18/12/2020 with the approval of the Government. The issue with regard to the service of the petitioner arose when the department submitted the Incumbent-Wise Salary statement of the employees of the department to the Government inadvertently showing the petitioner's date of appointment as 18/12/2020. A clarification was accordingly sought by the Finance Department by letter dated 26/08/2021 as to how the petitioner's appointment could have been made when there was a ban on fresh appointments by the Government. Consequent to the letter dated 26/08/2021, the Government in the department of Higher & Technical Education department issued the letter dated 11/10/2021 cancelling the petitioner's regularization in service and reverting back the petitioner in the casual status. Subsequently, the impugned order dated 13/04/2022 was issued by the department cancelling the petitioner's regularization in service and reverting back the petitioner as a casual driver. It is seen that the present issue with regard to the petitioner's service

arose from the Incumbent-Wise Salary statement where the petitioner's date of appointment was inadvertently recorded as 18/12/2020. There is however no dispute that the petitioner first entered service as the casual driver in the department on 06/08/2004. The mistake showing the petitioner's date of entry into service as 18/12/2020 has also been brought by the department to the notice of the Government by the letter dated 30/11/2021, however no corrective measures was taken by the Government but surprisingly despite the letter dated 30/11/2021, the department has issued the impugned order dated 13/04/2022 cancelling the regularization of the service of the petitioner. The petitioner's service in the department was regularized by the order dated 18/12/2020 on the approval of the Government and therefore, the department could not have issued the impugned order dated 13/04/2022 cancelling the regularization of the petitioner's service without following the due process of law. Moreover, no notice was issued to the petitioner before issuing the impugned order dated 13/04/2022. Furthermore, the learned counsel for the State has fairly admitted that the issue regarding the cancellation of the petitioner's regularization in service arose due to the inadvertent mistake committed by the department in the Incumbent-Wise Salary statement of the employees of the department showing the petitioner's date of entry as 18/12/2020 when the actual date of entry in service was 06/08/2004. In the affidavit filed by the Government which is signed by the Joint Secretary, Higher & Technical Education, it can be gathered that the department cannot offer any justification to their action but to admit the fact.

12. From the submissions made by the learned counsel for the parties and the pleadings exchanged, it is clearly discernible that the fault/mistake leading to the cancellation of the petitioner's regularization in service lies with the department and no fault or foul play can be attributed to the petitioner. This Court is therefore of the view that the petitioner cannot be made to suffer in service due to the mistake committed by the department and deserves to be re-instated in the regular service of the department.

13. In the light of the discussions made above, this Court is of the considered view that the letter dated 11/10/2021 (Annexure-10 to the writ petition) and the impugned

order dated 13/04/2022 (Annexure-12 to the writ petition) cancelling the regularization of the petitioner's service cannot stand the scrutiny of law and is therefore liable to be quash and set aside. The letter dated 11/10/2021 and the impugned order dated 13/04/2022 is accordingly quash and set aside.

14. The State respondents more particularly, the respondent No. 2 & 3 shall reinstate the petitioner as a regular driver in the department within a period of 60(sixty) days from the date of passing of this judgment & order. The petitioner shall be deemed to be in the continuous service of the department as a regular driver w.e.f. 18/12/2020 i.e. the date of the order regularizing the service of the petitioner.

15. Writ petition allowed. No cost.

JUDGE

Comparing Assistant