

GAHC020002652019



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

Case No. : WP(C)/90/2019

TOLI K. ASSUMI
D/O LT. KAKIHO H.ASSUMI,
PERMANENT R/O DC HILL(EAST), ZUNHEBOTO, N/L, AND PRESENTLY
RESIDING AT H/NO.60, LIRIE COLONY BELOW CRPF CAMP, KOHIMA, N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF N/L, DEPT. OF SOCIAL
WELFARE, KOHIMA, N/L 2:THE DIRECTOR

3:THE NAGALAND STATE SOCIAL WELFARE BOARD

4:THE MISSION DIRECTOR

5:THE UNION OF INDIA

Advocate for the Petitioner : IMTI LONGJEM

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/89/2019

REPABENLA LONGKUMER
D/O YARMANEN LONGKUMER

PERMANENT R/O NAHARBARI
DIMAPUR
N/L

PRESENTLY RESIDING AT SAKHI-ONE STOP CENTRE BUILDING(TOP FLOOR)
NEAR DIRECTORATE OF SOCIAL WELFARE
OPP. LAW COLLEGE
KOHIMA
N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF N/L
DEPT. OF SOCIAL WELFARE
KOHIMA
N/L

2:THE DIRECTOR

DIRECTORATE OF SOCIAL WELFARE
GOVT. OF N/L
KOHIMA
N/L

3:THE NAGALAND STATE SOCIAL WELFARE BOARD

REPRESENTED BY ITS SECRETARY
NEW SECRETARIAT COMPLEX
BELOW DIPR OFFICE
KOHIMA
N/L

4:THE MISSION DIRECTOR

STATE RESOURCE CENTRE FOR WOMEN
NEW SECRETARIAT COMPLEX
BELOW DIPR OFFICE
KOHIMA
N/L

5:THE UNION OF INDIA

REPRESENTED BY THE SECRETARY

MINISTRY OF WOMEN AND CHILD DEVELOPMENT
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI - 01123381611

Advocate for : IMTI LONGJEM
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 4
ORS

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

27.03.2023

Heard Mr. Imti Longjem, learned counsel for the petitioner, Mr. E. Thiba Phom, learned State Counsel appearing for the respondent Nos. 1 to 4 and Mr. Z. Kulnu, learned counsel who appears on behalf of Mr. Yangerwati, learned CGC appearing for the respondent No. 5.

[2.] This Order will dispose of both the writ petitions. The petitioner in WP(C) No. 90/2019 has challenged the Release Order dated 01.07.2019 by which she has been released from the post of Centre Administrator of Sakhi, One Stop Centre, Kohima with effect from 01.08.2019. Similarly, the petitioner in WP(C) No. 89/2019 has challenged the Release Order dated 01.07.2019 by which she has been released from her engagement as Case Worker of Saakhi, One Stop Centre, Kohima with effect from 01.08.2019.

[3.] The petitioners came across the Advertisement dated

25.10.2016 issued by the Office of the Nagaland State Social Welfare Board, Nagaland, Kohima (Annexure - A) by which the post of Centre Administrator, Case Worker, Counselor and IT Staff were advertised and which was intended to be filled up on contract basis. The petitioners responded to the Advertisement by submitting their applications. The petitioner in WP(C) No. 90/2019 applied for the post of Counselor while the petitioner in the other case applied for the post of Case Worker. Both the petitioners went through the rigours of selection by participating in the interview and written/practical test conducted by the Secretary, Nagaland State Social Welfare Board and Mission Director, State Resource Centre for Women (SRCW) on 16.11.2016. After going through the selection process, the petitioner in WP(C) No. 90/2019 got selected to the post of Counselor and she came to be given offer of appointment vide letter dated 21.11.2016. Similarly, the petitioner in WP(C) No. 89/2019 was selected for the post of Case Worker and was also given similar offer of appointment. Both the petitioners accepted the offer and joined their respective posts. As per the offer of appointment to the post in question, it was indicated that the appointment was on temporary basis for a period of 1 (one) year with further extension from time to time, provided the performance of the incumbent was found to be satisfactory and as deemed fit by the competent authority. Both the petitioners

joined their respective post and were working as such. Meanwhile, the post of Centre Administrator due to the resignation of the incumbent became vacant and the petitioner in WP(C) No. 90/2019 was offered an engagement to the said post. She accordingly joined to the said post. While the petitioners were working in terms of their engagement, they were served with a release order dated 01.07.2019 by which it was indicated that their engagement as Centre Administrator of Sakhi and as Case Worker of Sakhi for One Stop Centre, Kohima would end on being release from the said post with effect from 01.08.2019. Aggrieved with their release, the petitioners are before this Court.

[4.] This Court while issuing notice of motion on 16.07.2019 passed an interim order directing the impugned release orders dated 01.07.2019. The petitioners since then are working on the strength of the interim order passed by this Court.

[5.] Mr. Imti Longjem, learned counsel for the petitioners submits that although the petitioners are well aware that it is a temporary appointment and they cannot claim regularization but their appointment could not have been stopped abruptly in the manner it was done. He submits that the reason behind the issuance of the release order admittedly is due to the representation submitted by the Angami Student Union dated NIL and also the ultimatum dated

20.06.2019 (Annexure – H & I respectively). According to the said Association, the post occupied by the petitioners should be filled up by indigenous tribes of the Association and not by any other tribes. The learned counsel however submits that there was no such prescription in the Advertisement that was floated on 25.10.2016. All that is stated was that interested applications applying for the post should be a resident of the local community. However, that cannot in any event mean that the applicant should be only indigenous inhabitant of the district. It is further clearly stated that the State respondents have succumb to the pressure of the local Association. Under the circumstance, the learned counsel submits that the impugned release orders cannot be sustained and should be set aside.

[6.] The learned counsel further submits that the State respondents in their affidavit has taken the stand that persons who have been appointed to the post in question ought to have submitted an application for their extension in service. Even after the expiry of the term of appointment, the petitioners failed to submit any application for extending their service and according to the respondents, they do not have any right to continue in their post. The learned counsel submits that such a stand taken by the State respondents after the filing of the writ petition cannot be accepted in view of the fact that by issuing instruction for filing of

application for extension of service after the filing of the writ petition, they have only sought to improve their case. It is a well settled law that case of the parties cannot be improved by filing affidavit unless the same can be traced back to events that occurred. Under the circumstance, the learned counsel submits that the impugned action of the State respondents should be set aside and the petitioners should be allowed to continue in their respective post.

[7.] Mr. E. Thiba Phom, learned State Counsel by referring to the affidavit-in-opposition filed by the respondent Nos. 1 to 4 on 12.12.2019 submits that the petitioners knowing fully well the terms and conditions of their engagement accepted the engagement. Referring to the engagement, the learned counsel submits that the engagement can be discontinued by either of the parties on giving 1 (one) month's notice. From the Release Order impugned by the petitioners, it can be very well seen that the same was issued on 01.07.2019 and that the petitioners were to be discontinued with their engagement from 01.10.2019. It is therefore clearly seen that their Release Order is in terms of their initial engagement. Besides this, the learned counsel submits that the petitioners even after the expiry of 1 (one) year of their initial engagement failed to ask for extension of their service by filing appropriate application. Therefore, they have no right to continue

as such beyond their term of appointment. Under the circumstance, the learned counsel submits that the petitioners cannot be said to have any grievance against the impugned Release Orders and the writ petition should be dismissed.

[8.] Mr. Z. Kulnu, learned counsel submits that although the learned CGC had time and again written to the respondent No. 5 to provide instructions in the matter on being impleaded as respondent No. 5, but the respondent No. 5 has failed to give them any instructions and as such, they are unable to take any stand in the matter. Under the circumstance, the learned counsel submits that Court may consider passing appropriate order as it deems fit and proper.

[9.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[10.] It may be seen that the engagement of the petitioners was preceded by a selection process which was an interview as well as written/practical test pursuant to the Advertisement that was floated on 25.10.2016. Out of the applicants, the petitioners were shortlisted and selected to be engaged as Counselor and Case Worker. Later on, the petitioner in WP(C) No. 90/2019 was offered appointment as Centre Administrator when the post fell vacant on

account of vacation of the post by the earlier incumbent. The petitioners do not claim for regularization to the said post and in fact the same cannot be claimed in view of the fact that their appointment is only a contract appointment. It is also not disputed that the scheme of the appointment is being funded by Ministry of Women & Child Development, Govt. of India in order to ensure that the women who are in difficulty of any kind of violence or who require assistance can avail the services of the Counselor or the Case Worker. It is also seen that there is no stipulation in the Advertisement that persons applying for the post advertised should be persons who belong to the indigenous tribe of the district concerned. It therefore appears that the State respondents in view of the 2 (two) Communications received by an Association had taken the decision to discontinue with the services of the petitioners. Although the petitioners do not have the right to continue beyond their terms of engagement but the manner in which their engagement has been discontinued considering the facts and circumstances which can be readily appreciated from the documents on record, appears to be stigmatic. Such being the case, I find that the impugned order of disengagement/release order to be not sustainable in law. Accordingly, the same is set aside. The interim order passed earlier is made absolute. It however made clear that by interfering with the release order of

the petitioners it does not in any manner mean that the petitioners can be regularized against their respective post. They will be governed by the relevant provision which is stipulated by the scheme and as per the Advertisement that was issued on 25.10.2016 and their offer of appointment.

[11.] The learned counsel for the petitioners submits that pursuant to the Notification issued after filing of the writ petition for requiring the appointees to submit an application for extension of contract service, the petitioners have submitted their respective application for extension but the same has not been considered till date. Considering the same, it is provided herein that the applications for extension of service submitted by the petitioners shall be considered by the respondent authority concerned as per its own merit.

[12.] With the above observations and directions, the 2 (two) Writ petitions are disposed of.

Sd/-

JUDGE

Comparing Assistant