



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

Case No. : WP(C)/139/2021

MRS. BERIAONG CHANG
SWEEPER,
POSTED AT SDO (HYDEL),
SUB DIVISION, TUENSANG,
UNDER THE ESTABLISHMENT OF EXECUTIVE ENGINEER,
HYDRO ELECTRIC DIVISION,
KOHIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, KOHIMA.

2: THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND.

3) THE ENGINEER-IN-CHIEF, DEPARTMENT OF POWER, NAGALAND,
KOHIMA.

4) THE CHIEF ENGINEER, DEPARTMENT OF POWER, NAGALAND,
KOHIMA.

5) THE EXECUTIVE ENGINEER, HYDRO ELECTRIC DIVISION,
KOHIMA, NAGALAND

Advocate for the Petitioner : S. TEMJEN

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 28-04-2023

Heard Mr. Mr. S. Temjen, learned counsel for the petitioner along with Mr. Thiba Phom, learned Government Advocate for the State respondents.

2. This is a petition filed under section 226 of the Constitution of India for directing the State respondents to consider the representation of the petitioner for scale of pay and regularization of her service as per the Office memorandums dated 9/11/2016 and 17/3/2015 issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative reforms Branch).

3. The case of the petitioner is that the petitioner was temporarily appointed as Sweeper and posted at S.D.O. (Hydel) Sub-Division, Tuensang under the establishment of Executive Engineer, Hydro Electric Division Kohima vide order dated 9/7/1990 with a consolidated pay of Rs.450/- PM as contingent personal. Thereafter her pay was increased from time to time and the petitioner's salary at present is enhanced to Rs.5000/- PM. That the petitioner has now completed 31 years of continuous service, however her

earlier request for granting scale of pay and regularization of her service fell to deaf ears. The petitioner was then compelled to apply for information through RTI on 18.03.2020 to ascertain the number of sweeper(s) post in the department and from the reply received from the APIO, Office of Engineer-in-Chief, Department of Power dated 17th September, 2020, some of the sweeper employees who were appointed much later were given Scale of Pay and regularized in service. Thus, the petitioners submitted a representation dated 01.10.2020 for scale of pay and regularization of service which has not been considered till date.

4. Mr. S. Temjen, learned counsel for the petitioner submits that as per the Government Notification i.e. Office Memorandum dated 9/11/2016 and 17/3/2015 issued by the Government of Nagaland, Personnel & Administrative Reforms Department, the instant petitioner is clearly eligible for scale of pay and regularization since she has completed 31 years of service. Further, she had requested for information under RTI Act 2005 with regard to details of the total number of Grade-IV Sweepers employees who were regularized and as per their reply that she received, 5 (Five) numbers of employees had been regularized while their date of joining service was after she had been appointed. Therefore, the petitioner is entitled to be given scale of pay and be regularized as per the

mentioned Office Memorandums, since her nature of works is the same as the other sweeper and she is entitled to get equal pay for equal works, denial of which would be highly discriminatory and unjustified. The learned counsel for the petitioner in support of his submissions has cited the decision of this Court in *Zhovi Tsuzuh & Anr. vs State of Nagaland and 7 Ors.* in W.A.6/2022 dated 17/2/2023 and *Smt. Lobeni vs State of Nagaland and Ors.* in W.P. (C) 29/2022 dated 05/05/2022.

5. Mr. Thiba Phom, learned Government Advocate on the other hand submits that in terms of the Office Memorandum dated 17/3/2015, the case of the instant petitioner is not applicable since it is the work charged and casual employees enjoying scale of pay and who have completed 30 years or more of continuous service as on 01/01/2015 that are eligible for regularization. In the instant case the petitioner is not enjoying any scale of pay. He further submits that the appointment of the instant petitioner is as contingent employee with a fixed pay and not as work charged employee with a scale pay and therefore, cannot enjoy the benefits as per para 1(i) of the Office Memorandum dated 17/3/2015 for regularization of her service. The learned Government Advocate also mentions that with regard to granting scale of pay so far, there is no Office Memorandum regulating the method of granting scale of pay and it

is left to the discretion of the concerned Department for granting scale of pay to the employees.

6. The learned Government Advocate submits that the case of the petitioner has been considered under para 2(ii) of the Office Memorandum dated 17.03.2015 for Revision of Rates of Wages of Fixed Paid Work-Charged and casual/contingency employees, wherein her initial fixed pay of Rs. 450 per month has now been enhanced to fixed pay of Rs. 5000/-P.M. That information received by her through RTI are Work-Charged employees who are having scale of pay and subsequently regularized as per the Office Memorandum 2015 and they are not in the same footing as the petitioner.

7. Having heard the submissions of both the rival parties, the office Memorandums issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch) dated 09.11.2006 and 17.03.2015 are scrutinized. The Office Memorandum dated 17.03.2015 shows that the work Charged-employees who are enjoying scale of pay and who have completed 30 years or more of continuous service as on 01.01.2015 are eligible for regularization. As noted earlier, the instant petitioner is however, appointed as contingent employee with a consolidated pay of Rs. 450/- per month which was later in-

creased to Rs.5000/- per month as per the provisions provided in the same Office memorandum dated 17.03.2015 albeit she was not grant scale of pay.

8. A scrutiny of the Office Memorandum dated 09.11.2016 relates to 'Verification of Work-Charged and Casual Employees– Follow up Action.' It was observed that "*in a number of cases Casual/ Contingent Employees were given scale of pay, some under ROP 1993 and some under 1999. Casual/ Contingent Employees were not covered by ROP Rules 1999 and 2010. Their services were to be guided by the Nagaland Work Charge and Casual Employees Regulation Act, 2001. As per provision under the scheme for regularization and absorption of work-charged and casual employees dated 17.03.2015, all work-charged and casual employees shall get the revised pay as prescribed by the Government.*

(iii) The Department concerned may move a proposal to the Government for those employees who have completed 30 years or more as on 01.01.2015 for regularization by conversion of their posts into regular ones personal to them as per O.M dated 17.03.2015."

Thus since the Office Memorandum dated 09.11.2016 relates to the verification of those Worked charged and employees who can be regularised as per the Office Memorandum dated

17.03.2015, the petitioner at this junction unless she is enjoying scale of pay is not eligible for consideration of regularization under the Office Memorandum dated 17.03.2015.

9. It is seen that the cases relied upon by the learned counsel for the petition in *Zhovi Tsuzuh & Anr. Vs. State of Nagaland and 7 Ors. (supra)* and *Smt. Lobeni vs State of Nagaland and Ors. (supra)* are not applicable in the instant case since the Work charged employees in the cited case were having scale of pay.

10. However, it is noted by this Court that the services of the petitioner as a sweeper has been utilized since 09.07.1990 as a contingent personal with a fixed pay while, as per the information received through RTI dated 18.03.2020, some employees appointed at a later date as sweepers in the same Department were given pay scale and regularized. It is observed that the petitioner has submitted representations to the department to consider her case for granting her scale of pay and regularization to which she has not received any response, her most recent representation being dated 01.10.2020. Such unresponsiveness on the part of the state respondents is found unacceptable. A representation made by an employee who has been serving the State Government since 09.07.1990 deserves to be acknowledged with due respect.

11. The nature of works of the petitioner cannot be any different from the other sweepers working in the same department who were appointed at a later date and have been granted scale of pay. It has been mentioned that there is no rule or regulation as to how or when scale of pay is given to the Govt. employees. Due consideration should be given to the established principle of equal pay for equal work. Under such circumstances, this court find it fit to direct the State respondents to promptly consider the representation of the petitioner dated 01.10.2020, by applying similar yardstick applied to other employees appointed as sweepers at a later date and who have been given scale of pay, so that the principles of justice and equity is maintained. The representation of the petitioner is to be disposed of with a speaking order, within three weeks from the date of receiving the certified copy of this order.

12. The petitioner has the liberty to approach this court afresh thereafter, if she so desires.

13. The Writ petition is accordingly disposed of with the above directions

**Sd/-
JUDGE**

Comparing Assistant