

GAHC020003902020



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

Case No. : WP(C)/139/2020

RAYILE POIRENG
LEGAL OFFICER,
DEPARTMENT OF PRISONS,
KOHIMA, NAGALAND

VERSUS

STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2) PRINCIPAL SECRETARY
HOME DEPARTMENT, NAGALAND, KOHIMA

3) THE DIRECTOR GENERAL OF PRISON
NAGALAND, KOHIMA

Advocate for the Petitioner : YANGER WATI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 25-09-2023

Heard Mr. Yanerwati, learned counsel for the petitioner and
Mr. Moa Imchen, learned Senior Government Advocate for the State

respondents.

2. By filing this petition the petitioner has prayed for a direction to the respondent authorities for regularization of her service as Legal Officer which has been created by the State, considering her length of service as well as recommendation of the Department of Prisons as she has attained eligibility criteria as per the Model Prisons Manual.

3. The brief facts of the case is that the petitioner being BA (Sociology) and LLB degree was appointed as Legal Consultant on 27.08.2009 under the Department of Prisons, Government of Nagaland. The said engagement as Legal Consultant was on retainer basis essentially to serve reserve or book the legal practitioner's service to be made available at a future date for a fee being paid in advance.

4. While the petitioner was serving as Legal Consultant, a proposal was mooted vide Memorandum dated 10.01.2013, for creation of one post of Legal Officer since the rate of litigation has been on the increase with increasing crimes in the State. With the growing concern for Human Rights, the National Human Rights Commission has issued directives for having a Legal Officer in the Prisons' Organization set up. As per the Model Prison Manual and the Prison Management Bill, 1998, a Legal Officer is mandatory.

5. Vide Office Memorandum dated 30.09.2014 the State Cabinet has approved the proposal of the Home Department for Legal officer under the Prison Department on the condition that the appointment be made on contract basis. Vide Notification No. HOME/JL-2/ESTT/1/12/241 dated 11.11.2014 one post of Legal Officer, Class-I (Gazetted) was created in the scale of pay under the Prisons Department. Vide Notification No. HOME/JL-2/ESTT/1/12/242 dated 12.11.2014 the petitioner was appointed as Legal Officer, Class-I (Gazetted) under the Prisons Department in pursuance to the creation of the post on contract basis for initial period of six (6) months. It is noted that the service of the petitioner has been extended from time to time till date which she is serving as a Legal Officer on contract basis.

6. The Home Commissioner, vide Cabinet Memorandum

No. HOME/JL-2/1/12 dated 25.10.2017 has placed a proposal for decision of the Cabinet for regularization of contract service in respect of the petitioner as a Legal Officer under Directorate of Prison. The State Cabinet vide Office Memorandum No. CAB-2/2013(Pt) dated 19.10.2019 has considered the case of the petitioner for regularization of her service as Legal Officer under DG Prison and had decided and directed the Home Department to first seek the comments and views of the Justice & Law and P&AR Department.

7. The Law Department as well as the P&AR Department (OM Branch) have opined that in view of the Order of the Hon'ble Gauhati High Court in WP(C)/145(K)/2017 as well as in WA/16(K)/2019 the case of the petitioner would not be possible to consider which may invite contempt proceeding. Moreover, the appointment of the petitioner is on contract basis which cannot be regularized in view of the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi (3)** reported in **(2006) 4 SCC 1**.

8. Having not been considered for regularization despite approaching the respondent authority, the petitioner has approached this Court for a direction to the respondent authority for regularization of her service as a Legal Officer as the post has already been created and is a sanctioned post.

9. Mr. Yangerwati, learned counsel for the petitioner fairly submits that though the prayer of the petitioner is for regularization of her service as a Legal Office as she has been working since 2009 as Legal Consultant, and thereafter, as Legal Officer since 2014, in view of the law laid down by the Hon'ble Apex Court the prayer may not be in tune with the constitutional scheme of public employment. However, he submits that since there is a clear sanctioned post of Legal Officer available and the facts of the case clearly reveals that the State requires the service of the petitioner in the post of Legal Officer in terms of the Central Government and Human Rights Commission Guidelines as well as Model Prison Manual, 1998 the State respondent may be directed to fill up the post in accordance with law.

10. Per contra, Mr. Moa Imchen, learned Senior Government Advocate for the State respondents submits that though the post was created but as per the Cabinet decision it is to be filled up on contract basis. Accordingly, the petitioner was appointed on contract basis. He submits that unless the Cabinet decision is put to challenge she does not have any right to claim for regularization as it is evident from the Cabinet decision that the post has to be filled up on contract basis.

11. Mr. Moa Imchen, learned Senior Government Advocate submits that the petitioner has not shown any violation of enforceable fundamental or legal rights to approach this Court. He submits that the post has been created but the appointment is on contract basis which the petitioner has no right to claim for regularization. That apart, it is a settled position of law that contract appointee cannot claim for any regularization which will be in the teeth of the various pronouncements of this Court as well as the Hon'ble Supreme Court.

12. I have considered the rival submissions of the learned counsel for the parties and the materials available on record.

13. It is noticed that the State Government has created a post for Legal Officer which shows that the post is required for the State in terms of the various directions and guidelines of the Ministry of Home Affairs, Government of India, as well as Human Rights Commission. The materials on record also reveals that the post is required for the State, particularly Prison Department, as the petitioner has been engaged and been allowed to continue since 2009, firstly as a Legal Consultant and thereafter, as a Legal Officer on the post created by the State, though on contract basis.

14. On consideration of the various law laid down by the Hon'ble Apex Court as well as this Court, this Court cannot issue a direction to Respondents to fill up the post though it may appear to be required to be filled up, as the Court cannot direct the State respondents to fill up the post if the State has not decided to fill up the same. In other words, the Court cannot compel the State to fill up the post even if there exists a vacancy which is sanctioned one. At the same time, this

Court is constraint to hold that the prayer of the petitioner to regularize her service as Legal Officer cannot be accepted, therefore, there cannot be any direction for regularization of the service of the writ petitioner.

15. However, in the attending facts and circumstances, the State respondents are at liberty to fill up the post in accordance with law allowing all the eligible candidates to participate in the selection process.

16. With the above observations, this petition stands closed.

No order as to cost.

Sd/-
JUDGE

Comparing Assistant