

GAHC020004092022



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

**Case No. : WP(C)/153/2022**

SHRI. HEVISHE SEMA  
SWEEPER ON CASUAL/CONTINGENCY BASIS,  
OFFICE OF EXTRA ASSISTANT COMMISSIONER,  
SITIMI, KIPHIRE, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS  
THROUGH THE CHIEF SECRETARY,  
GOVERNMENT OF NAGALAND, NAGALAND,  
KOHIMA

2:THE FINANCIAL COMMISSIONER  
GOVERNMENT OF NAGALAND  
NAGALAND  
KOHIMA

3:THE COMMISSIONER  
OFFICE OF THE COMMISSIONER  
NAGALAND  
KOHIMA

4:THE DEPUTY COMMISSIONER  
KIPHIRE  
NAGALAND

**Advocate for the Petitioner(s) : Mr. Moa Jamir, Advocate**

**Advocate for the Respondent(s) : Mr. E. Thiba Phom, Sr. Govt. Advocate,  
Nagaland**

**Date of judgment : 13.10.2023**

**BEFORE  
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA  
JUDGMENT & ORDER**

**1.** Heard Mr. Moa Jamir, learned counsel for the petitioner. Also heard Mr. E. Thiba Phom, learned Senior Government Advocate, Nagaland.

**2.** This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, *Shri Hevishe Sema*, being aggrieved by the Letter No. CNJ/MISC/2021/141 dated 06.05.2022 issued by the Respondent No. 3 of the instant writ petition to the present petitioner whereby the petitioner's prayer for grant of Scale of Pay in terms of latest Revision of Pay i.e. ROP 2017 was rejected. The petitioner has prayed for quashing and setting aside the impugned Letter No. CNJ/MISC/2021/141 dated 06.05.2022 and directing the respondents to pay to him the minimum pay scale in terms of latest Revision of Pay adopted from time to time along with accumulated arrears.

**3.** The facts relevant for consideration of the instant writ petition, in brief, are as follows:-

**(i)** That the petitioner was appointed temporarily to the post of Sweeper by Office Order No. EST-3/2003-04/366-72 dated 05.07.2003, issued by the Additional Deputy Commissioner, Kiphire in the Scale of Pay of Rs. 800-18-890-20-1050-25-1475 per month plus all other allowances as are admissible under rule from time to time w.e.f. 01.07.2003.

**(ii)** Initially, the petitioner was appointed to work in the

residence of Additional Deputy Commissioner, Kiphire. Thereafter, by Office Order No. EST-3/03-04/2006-52 dated 21.01.2004, the petitioner was transferred and posted in the Office of Extra Assistant Commissioner, Sitimi w.e.f. 10.02.2004, wherein the petitioner has been serving for 16 years in the same capacity.

**(iii)** The petitioner submitted an application to the Deputy Commissioner, Kiphire for regularization of his service, however, it was not acted upon.

**(iv)** The petitioner is a Sweeper appointed on temporary/contingency basis and has been paid an amount of Rs.5,280/- only as per ROP 1993. However, the State respondents have revised the pay from time to time and since 1993 the State respondents have adopted the ROP 1999, 2003, 2010 and 2017 and the regular Grade-IV employees including the sweeper at directorate and district level are granted pay scale as per ROP 2017. However, the petitioner claims that as he is discharging duties and responsibilities as a sweeper similar to the duties and responsibilities performed by the sweepers who were appointed on regular basis and, hence, it is submitted that he deserved to be treated similarly with those sweepers who are employed on regular basis. It is also stated in the writ petition by the petitioner that the sweepers who are appointed on regular basis are getting scale of pay in terms of ROP 2017 under the establishment of Additional Deputy Commissioner, Seyochung, Kiphire.

**(v)** The petitioner being aggrieved by denial of equal pay to him similar to those sweepers who are placed similarly and who

performed similar works like the petitioner, he submitted a representation to the respondent No. 4 on 28.10.2021 for granting of scale of pay as per latest ROP, however, the respondent kept the said representation in the cold storage. That, being aggrieved, by the non-consideration of the representation filed by the present petitioner, he approached this Court by filing writ petition which was registered as WP(C) No. 354/2021 and the said writ petition was disposed of by order dated 21.01.2022 whereby the respondents were directed to consider the representation filed by the present petitioner in the light of the principle of law settled by the Hon'ble Apex Court in "***State of Punjab and Others –Vs- Jagjit Singh and Others***" reported in "***(2017) 1 SCC 142***" within a period of three months from the date of receipt of the said order.

(vi) When the respondent failed to comply with the order dated 21.01.2021 passed in WP(C) No. 354/2021, the present petitioner was compelled to file a contempt petition which was registered as COP(C) No. 14/2022 before this Court and during the pendency of the said contempt petition, the respondent communicated the letter dated 06.05.2022 to the petitioner's counsel and thereafter the petitioner withdrew the contempt petition.

4. Mr. Moa Jamir, learned counsel for the petitioner has submitted that though by order dated 21.01.2022 passed in WP(C) No. 354/2021, this Court directed to consider the representation of the petitioner in light of the principle of law settled by the Hon'ble Supreme Court of India in "***State of Punjab and Others –Vs- Jagjit Singh and Others***", whereby the Hon'ble Apex Court has held that the principle of equal pay for equal work

is applicable to the temporary employees also. However, by communication dated 06.05.2022, the petitioner was denied equal pay similar to that of regularly appointed Sweepers only on the ground that he was appointed on temporary basis which implies that he was appointed without any sanctioned post and that the ROP Rules 2017 applies only to regular employees, which as per submissions of learned counsel for the petitioner is violative of the principles of equal pay for equal work as enunciated by the Hon'ble Apex Court in “**State of Punjab and Others –Vs- Jagjit Singh and Others**” (*supra*).

5. Learned counsel for the petitioner relying on the Judgment of Hon'ble Apex Court in “**State of Punjab and Others –Vs- Jagjit Singh and Others**” (*supra*) has also submitted that in view of the provisions of the Constitution of India as well as in view of law declared by Hon'ble Apex Court under Article 141 of the Constitution of India, employer cannot escape from his liability of complying with the principles of equal pay for equal work, irrespective of fact as to whether the said employees are engaged on regular or temporary basis.

6. It is also submitted by learned counsel for the petitioner that in case of a conflict between law laid down by Hon'ble Supreme Court of India under Article 141 of the Constitution of India and the Rules (*in this case ROP 2017*) promulgated under proviso to Article 309 of the Constitution of India, it is the law declared by the Apex Court under Article 141 of the Constitution of India which shall prevail over the Rules.

7. Learned counsel for the petitioner has also submitted that in paragraph Nos. 5, 6 and 7 of the writ petition, the petitioner has

categorically stated that he performs the duties of sweeper which are similar to the duties performed by a regular sweeper and the said averments have not been denied or contradicted by the State respondents in their affidavit-in-opposition. It is submitted that the only plea taken by the State respondents is that the petitioner is a temporary employee and the ROP 2017 is not applicable to a temporary employee.

**8.** Learned counsel for the petitioner has also cited the judgment of the Division Bench of this Court passed on 13.12.2022 in WA No. 29/2022 (***The State of Nagaland and Anr. –Vs- Mr. Heshito Sema***), where the respondent of the said writ appeal who was appointed as Work-Charged Employee was allowed the minimum scale of pay similar to the pay scale which is extended to the regular employees holding the same post.

**9.** The learned counsel for the petitioner also relied on another judgment of this Court in “***The State of Nagaland and Ors. –Vs- Smti Hesheni Sumi***” (Judgment dated 20.01.2023) in Writ Appeal No. 25/2022 wherein the respondent who was serving as a Sweeper on contingency basis was directed to be paid equal pay similar to that which was received by regular Sweepers.

**10.** Learned counsel for the petitioner has submitted that denial of equal pay for equal work to the present petitioner has violated the fundamental rights of the petitioner under Part-III of the Constitution of India and, therefore, he is entitled to the reliefs as prayed for in this writ petition.

**11.** On the other hand, learned Senior Government Advocate, Nagaland representing the State respondents has submitted that the Nagaland Services (Revision of Pay) Rules, 2017 which has been notified on 16<sup>th</sup> December, 2017 categorically provides in Rule 2(a) of the said Rules that the said Rules shall apply to all regular employees only and whereas Rule 2(b) of the said Rule excludes the applicability of said Rules to all categories of Work-charged employees; persons paid out of contingencies; persons employed on contract; persons re-employed in Government service after retirement and any other class or category of persons whom the Governor may, by order, specifically exclude from the operation of all or any provisions contained in the said Rules.

**12.** Learned Senior Government Advocate, Nagaland has submitted that as the present petitioner is a temporary employee, he is excluded from the applicability of the 2017 ROP Rules and, hence, he may not be granted Scale of Pay in accordance with the ROP Rules 2017.

**13.** It is also stated by learned Senior Government Advocate for the respondents that the Government of Nagaland on 24<sup>th</sup> July, 2017 issued an Office Memorandum whereby it was provided that no application for grant of scale of pay/service regularization in respect of contingency/casual employees should be submitted and the regularization of services through District Level Recruitment Board is admissible provided there is a sanctioned post/vacancy and the employees has the prescribed qualification.

**14.** Learned Senior Government Advocate has submitted that in view

of the Office Memorandum dated 24<sup>th</sup> July 2017, the respondents are prohibited from processing the representation of the present petitioner on the ground that he is not a regular employee appointed against any sanctioned post. Learned Senior Government Advocate for the respondents has also stated that the judgments of the Writ Appeal of the Division Bench of this Court cited by the learned counsel for the petitioner are not applicable in case of the present petitioner as the facts of the said writ petitions are distinguishable from the facts of the present case, inasmuch as, the petitioner in those cases were fixed pay/contingency employees whereas the present petitioner is enjoying a scale of pay, on the basis of ROP of 1993.

**15.** Learned Senior Government Advocate has also submitted that the petitioner has also failed to establish that he performs similar duties and responsibilities like that of a sweeper who has been appointed on regular basis. Learned Senior Government Advocate has, thus, submitted that the petitioner has miserably failed to make out the case warranting interference of this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India and, as such, he has prayed for dismissal of the instant writ petition.

**16.** I have heard the rival submissions made by learned counsel for both sides and I have also gone through the pleadings and affidavits and other documents available on record.

**17.** It is an admitted fact that the petitioner has been engaged on temporary basis in the year 2003 and since 2004 he has been working as a Sweeper in the establishment of Extra Assistant Commissioner, Sitimi in

Kiphire district. The fact that the service of the present petitioner has been utilized as a sweeper by the respondent authorities since 2003 has not been denied by the State respondents. It also appears that by order dated 21.01.2022, the writ petition, which was registered as WP(C) No. 354/2021, filed by the present petitioner, alleging non-consideration of his representation by the State respondents claiming equal pay for equal work, was disposed of by the Judgment dated 21.01.2022 of a Co-ordinate Bench of this Court, whereby the State respondents were directed to consider the representation of the petitioner in the light of the principles settled by the Hon'ble Supreme Court of India.

**18.** It also appears that the main reason for denying the benefit of equal salary to the present petitioner to that of those sweeper who were regularly appointed was mainly on the ground that the petitioner has been appointed on temporary basis and his appointment was without any sanctioned post i.e., he is not a regular employee and that ROP Rules 2017 are not applicable to the employees who are not regularly employed.

**19.** In earlier round of litigation, when the petitioner approached this Court by filing WP(C) No. 354/2023, same was disposed of by this Court by order dated 21.01.2022, whereby the respondents were directed to consider the representation dated 28.10.2021 filed by the present petitioner for grant of scale of pay as per the latest ROP in the light of principles of law settled by Hon'ble Apex Court, however, the said representation was disposed of by the respondent No. 3 by his letter dated 06.05.2022, whereby the representation of the present petitioner was rejected on the ground that the present petitioner was appointed on

temporary basis without any sanctioned post and, therefore, he is not a regular employee and the Nagaland Service (Revision of Pay) Rules, 2017 applies only to regular employees.

**20.** It is to be noted that in the present writ petition, the petitioner has not prayed for regularization of his services, he has approached this Court only for ensuring that he gets his salary on the basis of principle of law regarding equal pay for equal work. It appears that the principle of law regarding equal pay for equal work has been laid down by Hon'ble Apex Court in a number of its rulings. Hon'ble Apex Court in the “**State of Punjab and Others –Vs- Jagjit Singh and Others**” (*supra*) has observed as follows:-

*“49.1. We are of the considered view, that in para 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity and regularisation in service. It was held, that on the issue of pay parity, the concept of "equality" would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of "equality" could not be invoked for absorbing temporary employees in government service, or for making temporary employees regular/permanent. All the observations made in the above-extracted paragraphs, relate to the subject of regularisation/permanence, and not, to the principle of "equal pay for equal work". As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good by making such a direction.”*

**21.** The Hon'ble Apex Court has further observed in the aforesaid

judgment is as follows:-

*“57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.*

*58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”*

**22.** It also appears that the Division Bench of this Court in “***The State of Nagaland and Ors. –Vs- Smti Hesheni Sumi (supra)***” has, on the principles of law laid down by Hon’ble Apex Court, upheld the judgment of the Single Bench of this Court in WP(C) No. 228/2019 whereby the petitioner in that case who was serving as a sweeper on contingency basis was held to be entitled to equal pay similar to that which was received by regular sweepers. When the law regarding equal pay for equal work has been laid down by Hon’ble Apex Court, depriving the present petitioner and when the present petitioner has shown that he has been performing the duties of sweeper which are similar to the duties performed by a regular sweeper and the said claim has not been denied or contradicted by the respondent authorities, it would be unconstitutional and arbitrary to deny him equal pay similar to that of regularly appointed sweeper only on the ground that ROP 2017 is applicable only to a regular employee. Though, the present petitioner has been paid the salary on scale of pay which is in terms of ROP 1993, however, the regular sweepers who are performing similar work to that of the present petitioner are being paid the salary in terms of 2017. The plea taken by the respondent authorities for depriving the present petitioner from scale of pay similar to the regularly appointed sweeper only on the plea that ROP 2017 is not applicable to temporary employees would be illegal and unconstitutional in the light of principles of law laid down by the Hon’ble Apex Court. As regards the principle of equal pay for equal work the Hon’ble Apex Court has unambiguously held in the aforementioned judgment that the said principle has been extended to temporary employees (differently described as worked-charged, daily wage, casual, *ad hoc*, contractual and

like) and in view of the above principle, the grounds mentioned by the respondent No. 2 in the impugned letter dated 6<sup>th</sup> May, 2022 for depriving the present petitioner the benefit of scale of pay in terms of ROP 2017 is not acceptable. As held by Hon'ble Apex Court, such a deprivation would constitute an act of exploitative enslavement emerging out of a domineering position and such an action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

**23.** For the above mentioned reasons, this Court is of the considered opinion that the present petitioner is entitled to get the same scale of pay which is being given to the regular sweepers and who are discharging same duties like that of the petitioner. The respondents Nos. 1, 2, 3 and 4 are, therefore, directed to pay to the present petitioner a scale of pay similar to that of a regularly appointed sweeper i.e., as per ROP 2017 w.e.f. the date of filing of representation dated 28.10.2021 within a period of 3(three) months from the date of this judgment.

**24.** This writ petition is, accordingly, disposed of.

**JUDGE**

**Comparing Assistant**