

GAHC020004342022



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

Case No. : WP(C)/160/2022

SMTI. HOSHELI SUMI
OFFICE OF THE ADDITIONAL DEPUTY COMMISSIONER, KIPHIRE,
NAGALAND,
R/O SITIMI VILLAGE, KIPHIRE,
NAGALAND

VERSUS

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

2:THE COMMISSIONER
GOVERNMENT OF NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER
KIPHIRE
NAGALAN

Advocate for the Petitioner : ANUNGLA LKR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. Toshitemjen Pongener, Advocate
For the Respondents : Ms. Supong Chang, Govt.
Advocate, Nagaland

Date of Hearing : 30.05.2023
Date of Judgment : 02.06.2023

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. Toshitemjen Pongener, learned counsel for the Petitioner. Also heard Ms. Supong Chang, learned Government Advocate appearing for State respondents.
- 2.** The Petitioner, namely, Smt. Hosheli Sumi has approached this Court by filing the instant writ petition under Article 226 of the Constitution of India praying for issuance of Writ in the nature of Mandamus or any other Writ or Order directing the State respondents to consider the case of the petitioner for grant of scale of pay to her.
- 3.** The case of the Petitioner is that by Office Order No. EET-3/2003-04/1482-88 dated 14.01.2004, the Petitioner was appointed as a Mali at the fixed pay of Rs.750/- per month w.e.f. 01.01.2004 under the establishment of Extra Assistant Commissioner Office, Kiphire, Nagaland. The petitioner is presently serving in the same capacity without any service break on the fixed monthly salary of Rs.5,300/- per month.

4. It is contended by the Petitioner that from the date of her initial appointment, she has been serving the department for more than eighteen years without any service break with unblemished service record.

5. It is contended by the Petitioner that on several occasion she approached the concerned department for grant of scale of pay similar to that of the other employees, who are appointed in Grade-IV in the same department and are enjoying the scale of pay.

6. The petitioner has also submitted a representation, on 17.06.2022, to the Deputy Commissioner Kiphire, Nagaland praying for grant of scale of pay similar to other similarly situated Grade-IV employees who were working in the same department and getting scale of pay. However, the department has not yet considered her representation, hence, she has approached this Court by filing instant writ petition seeking the reliefs as stated herein before.

7. Mr. Toshitemjen Pongener, learned counsel for the petitioner, has submitted that this Court by a common order dated 04.09.2020 passed in WP(C) No. 119/2020, WP(C) No. 121/2020 WP(C) No. 122/2020, WP(C) No. 123/2020 & WP(C) No. 126/2020 had directed the State respondents to consider the case of the petitioners of those cases, for grant of scale of pay within three months from the date of passing of the said order. It is submitted that the petitioners in all the above mentioned writ petitions were also work charged labourers under fixed pay discharging duties similar to that of the present petitioner. Learned counsel for the petitioner has produced a copy of the Judgment delivered by the Division Bench of this Court in Writ Appeal No. 25/2022 wherein directions given by this Court, in WP(C) No. 228/2019, by order dated 14.09.2022 whereby the

State respondents were directed to pay to the petitioner of the said case, the minimum scale of pay of Sweeper within four months from the date of receipt of the certified copy of the order of the Writ Court was upheld.

Mr. Toshitemjen Pongener, the learned counsel for the petitioner, has submitted that on the basis of the principle of equal pay for equal work, the present petitioner is also entitled to be treated in a similar manner as that of other similarly placed Grade-IV employees of the department where she has been employed and who are performing duties similar to her, however, are getting scale of pay.

8. On the other hand, Ms. Supong Chang, learned Government Advocate for the State respondents admitted that the present petitioner was appointed as Mali on temporary basis at fixed pay. However, she has opposed the claim of the petitioner for grant of minimum scale of pay on the ground that the present petitioner was not appointed against the sanction post and was only temporarily appointed as Mali. She has further contended that to claim the benefit of scale of pay, one has to be a regular employee and as the present petitioner was appointed without a sanction post, she may not be treated as a regular employee. It is submitted that the regularization of all in-service employees may only be considered as per the guidelines contained in Office Memorandum No. CNE-1/GEN/2015/154 dated 14.09.2018. It is further contended that for in-service for regularization, seniority is the main criteria and it is contended that the present petitioner's seniority amongst adhoc/casual/fixed pay multi tasking staff of Kiphire district as on 1st July, 2022 is at Serial No. 19 and there are many other senior employee and, therefore, logically the petitioner has to wait for her turn as per seniority

depending on the arising of vacancies.

9. I have considered the rival submissions made by learned counsel for both sides. I have also perused the materials available on record carefully.

10 At the outset, it would be pertinent to mention herein that though main opposition of learned Government counsel to the prayer for grant of scale of pay to the present petitioner is that unless she is a regular employee she is entitled to get minimum scale of pay and as the present petitioner's seniority amongst adhoc/casual/fixed pay multi tasking staff of Kiphire district as on 1st July, 2022 is at serial No. 19 and there are many other employee senior to her, she may not be regularized immediately. However, the issue before this Court, in this writ petition, is not the regularization of the services of the petitioner but as to whether she may be granted scale of pay similar to that of other similarly situated employees of her department or not.

11. It is a settled proposition of law that there is a distinction of pay parity and regularization of service. Hon'ble Supreme Court of India in "***State of Punjab and Others -Vs- Jagjit Singh and Others***" reported in "**(2017) 1 SCC 148**" has observed as follows:-

"44.6. In State of Karnataka case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], a Constitution Bench of this Court set aside the judgment of the High Court, and directed that daily wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularisation. It was held that the concept of equality would not be applicable to issues of absorption/regularisation. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity — if the work component was the same.

The judgment rendered by the High Court was modified by this Court, and the daily-wage employees concerned were directed to be paid wages equal to the salary at the lowest grade of the cadre concerned.

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."

12. Hence, the plea of the respondents that the services of an employee has to be first regularized and only thereafter he or she may be considered for grant of minimum scale of pay similar to that of other similarly situated employees is not tenable in law.

13. However, the petitioner has to show as to with whom she is seeking equation of salary on the basis of similar work discharged by her. In the instant case, the petitioner is a Mali on fixed pay basis whereas she has claimed parity of pay with other Grade-IV employee of her department claiming that she is discharging same duties and responsibilities like them. However, she has not given the details of the work and responsibilities performed by her as well as those Grade-IV employees with whom she claims pay parity on the basis of equal pay for equal work. In absence of clear pleadings to that effect and in absence of sufficient material on record to that effect, it may not be possible to verify her claim as to

whether she is actually performing similar work like that of persons with whom she is claiming pay parity. Under such circumstances, the task of evaluation of work claimed to have been performed by the petitioner and equation and determination of pay scale, which is an executive function, may only be left to be performed by the State respondents only.

As the present petitioner has filed a representation to the Deputy Commissioner, Kiphire way back on 17.06.2022 claiming equal pay for equal work and same has not yet been disposed of, the State respondents, more specifically, Respondent No. 3 is directed to enquire into the claim of the present petitioner for minimum scale of pay and thereafter shall dispose of her representation dated 17.06.2022 within a period of three months from the date of this order by giving an speaking order.

14. With the above observation, this Writ Petition is disposed of.

JUDGE

Comparing Assistant