

GAHC020005132020



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

Case No. : WP(C)/183/2020

SENTIKALA SANGTAM
W/O JADAV GHIMIRA,
PRESENT R/O 6TH MILE KHANAPARA,
GUWAHATI, ASSAM

VERSUS

STATE OF NAGALAND AND 13 ORS REPRESENTED BY CHIEF
SECRETARY, GOVERNMENT OF NAGALAND, NAGALAND, KOHIMA

2:THE HOME COMMISSIONER TO THE GOVERNMENT OF
NAGALAND DEPARTMENT OF HOME NAGALAND KOHIMA

3:THE DEPUTY RESIDENT COMMISSIONER NAGALAND HOUSE
CHACHAL ROAD 6TH MILE KHANAPARA GUWAHATI ASSAM

4:SMTI. KENEINGUNUO TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

5:SMTI. THUKUTALU TUNYI TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

6:SMTI. NEISAKHONUO MEDOM TYPIST UNDER HOME
DEPARTMENT SECRETARIAT ADMINISTRATION BRANCH A OFFICE
OF THE NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

7:SMTI. IMOSONGLA TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

8:SMTI. DUPRALU TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

9:SMTI. L. HANLU YIM TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

10:SMTI. V. CHICHANBENI LOTH A TYPIST UNDER HOME
DEPARTMENT SECRETARIAT ADMINISTRATION BRANCH A OFFICE
OF THE NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

11:SMTI. MHASILENO TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

12:SMTI. T. PITOLI TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

13:SMTI. AKALI TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

14:SHRI. VEPFUZO CHUZHO TYPIST UNDER HOME DEPARTMENT
SECRETARIAT ADMINISTRATION BRANCH A OFFICE OF THE
NAGALAND CIVIL SECRETARIAT KOHIMA NAGALAND

Advocate for the Petitioner : L LIKHASE SANGTAM

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Date : 07-11-2023

Heard Mr. L. Likhase Sangtam, learned counsel for the petitioner and Ms. S. Mere, learned Sr. Government Advocate for the State respondents.

2. On 13/09/2022, Mr. Likhase Sangtam, the learned counsel for the petitioner had submitted that the matter can be taken up for hearing as the State respondents have

filed their affidavit and the rights of the profoma respondent No. 4 to 14 will not be adversely affected even if the matter is taken up for hearing. Considering the submission made by the learned counsel for the petitioner, this Court had directed that the case can be listed for admission hearing.

3. The present writ petition has been filed for a direction to the State respondents to consider the regularisation of the service of the petitioner as typist with retrospective effect from the date the respondent No. 4 to 14, who are juniors to the petitioner, were regularised in service.

4. The facts of the case, in brief, as submitted by the petitioner, is that, by the order dated 30/06/1998, the petitioner was appointed as a Typist on contingency basis on a fixed pay of Rs. 450/- P.M w.e.f 01/06/1998 for a period of 1(one) year at Nagaland House Guwahati, by the Deputy Resident Commissioner, Nagaland House Guwahati. The service of the petitioner has been extended from time to time and the petitioner has been serving in the post for more than 22 years. The petitioner is presently receiving a fixed pay of Rs. 6000/- P.M. The petitioner has submitted the representation dated Nil to the Home Commissioner, Nagaland, Kohima, for regularisation of his service, however the same has not been considered.

5. That the Government of Nagaland in the Personnel & Administrative Reforms Department (Administrative Reforms Branch), has brought out the Office Memorandum dated 16/03/2006 stating therein that, the Cabinet on the recommendation of the Committee has approved the Nagaland Directorate Common Ministerial Rules on 23/02/2006 and has accordingly asked all the departments to strictly implement the service rules. The said O.M has also brought out some of the salient features of the rules which inter-alia provides that no further recruitment will be made to the post of typist and on conversion of all the post of typist to LDA-cum-Computer Assistant, the post of typist will stand abolished.

6. The Government has thereafter issued the notification dated 01/07/2009, conveying that all the existing post of typist in all levels of service and offices under the State Government, including the Nagaland Civil Secretariat, the office of the

Nagaland Public Service Commission, the office of the State Vigilance Commission, the office of the Chief Electoral Officer, the Directorate offices, the District offices and the Sub-divisional offices shall be automatically converted to the post of the Lower Division Assistant-cum-Computer Assistant with effect from the date of retirement of the incumbent from service or from the date the Government servant dies in harness. The notification dated 01/07/2009 has been issued in partial modification of the O.M. dated 16/03/2006.

7. The Government has thereafter issued the O,M dated 20/08/2015 partially modifying the notification dated 01/07/2009 and cancelling the policy of converting all the post of Typist in the Nagaland Civil Secretariat to the post of LDA-cum-Computer Assistant on vacation of the post by the incumbent typist and providing for phase wise regularisation of the 94(ninety four) fixed pay adhoc typist in the Nagaland Civil Secretariat as per seniority and suitability against retirement vacancies of regular typist in the Nagaland Civil Secretariat in terms of the existing policy of regularisation of adhoc/contract service. The O.M further provides that all the post of typist in the Nagaland Civil Secretariat will be abolished phase wise and no more fresh appointment of typist will be made in the Secretariat and the post of typist vacated on the retirement of the regular incumbent typist or for any other reasons shall stand automatically abolished with effect from the date of vacation.

8. That further by the order dated 11/09/2018 issued by the Government of Nagaland, Home Department, Secretariat Administrative Branch-A, 82(eighty two) post of typist created by the Government on 05/09/2018 has been regularised in the Pay Level-5 with Pay Matrix of Rs. 20500-65100/- p.m. plus all other allowances as are admissible under the rules in force in the State from time to time with immediate effect. The order further provides as follows;

“2. Regularisation is made against the above created post personnel to them and the post shall be abolished upon vacation by the incumbent.

3. The seniority in respect of 82(eighty two) regular Typist shall be counted from the date of regularisation.

4. The inter seniority within the 82(eighty two) regularised Typist shall be counted from the date of appointment.

5. The past services rendered by the incumbent shall be counted towards his/her pension and leave.”

9. That by the letter dated 08/08/2016 written by the Under Secretary to the Government of Nagaland, Home Department, General Administration Branch-II, the Deputy Resident Commissioner, Nagaland House, Guwahati has been informed that, the scale pay cannot be granted to the petitioner as there is no existing vacancy at Nagaland House, Guwahati.

10. That the petitioner submitted the representation dated Nil, to the Home Commissioner, Nagaland, Kohima, for regularisation of her service. In the representation, the petitioner has referred to the order dated 11/09/2018 and has requested the authority to create a post of typist personal to the petitioner under the Nagaland House, Guwahati and to regularise the service of the petitioner in line with the 82(eighty two) typist whose services has been regularised. The Joint Secretary, Home department, by the letter dated 11/12/2018 has however conveyed to the Deputy Resident Commissioner, Nagaland House, Guwahati, that the service of the petitioner cannot be regularised as the petitioner has not completed 30(thirty) years of service under the policy formulated by the Government for regularisation of work-charge and casual employees.

11. The petitioner being aggrieved by the inaction of the Government in regularising her service has filed the present writ petition.

12. The main thrust of the case of the petitioner is that though by the O.M dated 16/03/2006 and the notification dated 01/07/2009, the State Government has decided to abolish the post of typist by conversion of the same to LDA-cum-Computer Assistant, the State Government has thereafter again issued the O.M dated 20/08/2015 partially modifying the earlier Notification dated 01/07/2009 and ordering phase wise regularisation of the existing 94(ninety four) fixed pay adhoc typist in the Nagaland Civil Secretariat and therefore, the benefit of regularisation which has been

extended to the fixed pay adhoc typist cannot be denied to the petitioner as the post of the typist both under the Nagaland Civil Secretariat and the Nagaland House Guwahati falls under the Home department. Mr. Likhase has further referred to the order dated 11/09/2018 issued by the Home department, Secretariat Administrative Branch-A, regularising the service of the existing 82(eighty two) post of casual typist under the Home department and submits that, the exclusion of the petitioner's service for regularisation is discriminatory and against administrative fair play as the service of the petitioner like that of the 82(eighty two) regularised typist comes under the establishment of the Home Commissioner Nagaland and there is no justifiable reason as to why the petitioner's service should be left out from regularisation when the petitioner and the 82(eighty two) regularised typist are similarly circumstanced. Mr. Likhase further submits that the respondent No.4 to 14 who are amongst the 82(eighty two) regularised typist are much junior to the petitioner and therefore, the petitioner has the right to be retrospectively considered for regularisation in service with effect from the date the petitioner's junior were regularised. Mr. Likhase also by referring to the letter dated 11/12/2018 submits that the Home Department has wrongly projected the service of the petitioner as a work-charged service when the petitioner has been appointed as a casual typist in the Home Department like the respondent No. 4 to 14 who were regularised by the order dated 11/09/2018. Mr. Likhase further submits that the petitioner has been in the service of the Government for more than 22(twenty two) years and therefore, there is no reason as to why the service of the petitioner should not be regularised in the light of the O.M dated 20/08/2015 and the order dated 11/09/2018.

13. Ms. S. Mere, the learned Sr. Government Advocate on the other hand submits that the Office Memorandum dated 20/08/2015 issued by the Government ordering phase wise regularisation of 94(ninety four) fixed pay adhoc typist was meant only for those typist who were serving in the Nagaland Civil Secretariat. The petitioner not being a member of the Nagaland Civil Secretariat service has no right to claim the benefit of the O.M dated 20/08/2015. Ms. S. Mere further submits that the State Guest Houses comes within the ambit of the Home Department, General Administrative

Branch-II (GAB-II) and therefore, the order dated 11/09/2018 issued by the Home Department Secretariat Administrative Branch-A (SAB -A) regularising the service of 82(eighty two) typist, can have no application to the petitioner, since the Typist under GAB-II and the Typist under SAB-A in the Home department, comprises different cadre service. Ms. S. Mere has further referred to the letter dated 08/07/2016 written by the Under Secretary to the Government of Nagaland, Home Department where it has been clearly spelt out that the petitioner has been appointed against non-existing vacancy at Nagaland House Guwahati. Ms. S. Mere has also referred to the letter dated 11/08/2018 written by the Joint Secretary to the Government of Nagaland, Home Department, to submit that the petitioner's service can be regularised only on completion of 30(thirty) years of service under the policy formulated by the Government for regularisation of work-charged and casual employees.

14. Heard the learned counsel for the parties and perused the materials on record. The case of the petitioner is that since the Government has issued the O.M dated 20/08/2015 partially modifying the policy decision for conversion of the post of Typist to LDA-cum-Computer Assistant and ordering the phase wise regularisation of 94(ninety four) post of fixed pay adhoc typist in the Nagaland Civil Secretariat as per seniority and against retirement vacancy of regular typist in terms of the existing policy for regularisation of adhoc/contract service, the petitioner's service should also be regularised in tune with the phase wise regularisation of 94(ninety four) fixed pay adhoc typist in the Nagaland Civil Secretariat. The petitioner has also referred to the order dated 11/09/2018 to contend that as the existing 82(eighty two) casual typist under the Home Department has been regularised, the petitioner who is serving as a typist, in the Nagaland House Guwahati, which comes under the Home Department, should also be extended the same benefit of regularisation in service. It is further submitted that the respondent No.4 to 14 who are amongst the 82(eighty two) typist regularised by the order dated 11/09/2018 are junior to the petitioner, therefore, the State respondents should be directed to consider the regularisation of the petitioner's service with retrospective effect from the date the petitioner's junior were regularised.

15. This Court has perused the O.M dated 20/08/2015 issued by the Government of

Nagaland, Personnel and Administrative Reforms Department (Administrative Reforms Branch) and the order dated 11/09/2018 issued by the Government of Nagaland, Home Department, Secretariat Administrative Branch-A. The O.M dated 20/08/2015 has been issued for regularising 94(ninety four) adhoc typist serving in the Nagaland Civil Secretariat. The petitioner who is appointed as a fixed pay contingency typist at Nagaland House Guwahati is not from the Nagaland Civil Secretariat service and therefore, not entitle to claim the benefit of regularisation extended to the 94(ninety four) typist by the O.M dated 20/08/2015. So also by the order dated 11/09/2018 the Home Department, Secretariat Administrative Branch-A has regularised the existing 82(eighty two) typist who were appointed by the department vide notification dated 05/09/2018. Ms. S. Mere submits that the State Guest Houses comes within the ambit of the Home Department, General Administrative Branch-II (GAB-II), whereas the typist regularised by the order dated 11/09/2018 though under the Home Department belongs to the Secretariat Administrative Branch-A (SAB-A). The service in the two branches comprises different cadre service and therefore, the benefit of regularisation extended to the typist under SAB-A cannot be extended to the typist under GAB-II which also includes the employees under the State Guest Houses. The petitioner therefore cannot derive any benefit of regularisation under the order dated 11/09/2018.

16. The petitioner was appointed as typist on contingency basis at Nagaland House Guwahati, on a fixed pay of Rs. 450/- p.m. with effect 01/06/1998 for a period of 1(one) year. The appointment was made purely temporary terminable without any prior notice. Though in the writ petition, the petitioner has averred that his appointment was extended from time to time, no order has been annexed showing extension of the service of the petitioner. Moreover, from the order of appointment dated 30/06/1998, it is also seen that the petitioner was not appointed in a sanctioned post. The Government in the letter dated 08/07/2016 has also conveyed that the request made by the Deputy Resident Commissioner, Nagaland House Guwahati, cannot be considered as the petitioner is appointed in a non sanctioned post at Nagaland House Guwahati. When the petitioner has been appointed on contingency

basis in a non sanctioned post the question of regularising the service of the petitioner can never arise for consideration far less regularising the service of the petitioner with retrospective effect from the date the respondent No. 4 to 14 were regularised in service. It is a settled law that to consider regularisation in service, a regular sanctioned post is sine qua non. Moreover, even if a regular post is available such post is required to be filled up in consonance with the requirement of Article 14 and 16 of the Constitution of India.

In the case of **Reshmi Basfor -versus- State of Assam and Ors.**, reported in **(2008) 2 GLR 461**, the Hon'ble Division Bench of this Court has held as follows;

“9. Admittedly, there is no regular sanctioned post of Sweeper in the office of the CJM, Sonitpur at Tezpur. The need for regular post or the need for an ad-hoc or additional appointment is a matter which the Government is competent to decide by taking into account all the relevant materials and also whether a regular post is required in any place. It is basically an administrative function and the executive is the better judge to decide on the question of creation or abolition of a post, which decision is required to be taken in the interest and necessity of administration. The petitioner in the present petition except contending that there is no regular sanction post in the office of the CJM for which her case for regularization in service could not be considered, has not furnished any requisite material for creation of a regular post. In the absence of any requisite material, the court cannot interpose its own decision on the necessity of creation or abolition of a post, as whether a particular post is necessary is a matter depending on the exigency of the situation and administrative necessity. In the absence of regular sanctioned post there cannot be any question of consideration of the case of a daily wage earner for regularization of service as for such consideration existence of a regular sanctioned post is sine-qua-non. Moreover, it is not the case of the petitioner that before her engagement a selection process was undertaken. The petitioner has also not spelt out her qualification and also the requisite qualification for being appointed as Sweeper. Hence, no direction can be issued to regularize her services even if a regular post is available as, such post is required to be filled up in consonance with the requirement of Articles 14 and 16 of the Constitution of India.”

The Hon'ble Supreme Court in the case of **State of Manipur and Another -versus- Ksh. Moirangninthou Singh and Others**, reported in **(2007) 10 SCC**

544, has also held that;

“7. We are of the opinion that in view of the Constitution Bench judgment of this Court in Secy., State of Karnataka v. Umadevi (3)¹ this Court cannot direct regularisation in service. Since the Court has no power to direct regularisation, it also follows that it has no power to direct grant of benefits payable to the regular employees.”

17. In the light of the discussion made in the forgoing paragraphs no directions can be issued to the State respondents to regularise the service of the petitioner in the post of Typist at Nagaland House Guwahati. The writ petition is therefore liable to be quashed and set aside.

18. The writ petition accordingly stands dismissed.

19. Before parting with the file, this Court in the light of the letter dated 10/12/2018 written by the Joint Secretary to the Government of Nagaland (Annexure-I to the writ petition) directs the State respondents to consider the case of the petitioner for regularisation in service to the post of Typist in accordance with the policy framed by the Government for regularising the service of work-charged and casual employees and in accordance with law.

JUDGE

Comparing Assistant