

GAHC020005162021



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

Case No. : WP(C)/256/2021

SMTI. HUKALI ZHIMO
MEDICAL ATTENDANT, CHEKIYE SUB-CENTER, CHIEF MEDICAL
OFFICER, DIMAPUR, NAGALAND

VERSUS

THE PRINCIPAL SECRETARY AND 2 ORS
GOVT. OF NAGALAND, DEPARTMENT OF HEALTH AND FAMILY
WELFARE, KOHIMA, NAGALAND

2:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
KOHIMA, NAGALAND

3:THE CHIEF MEDICAL OFFICE
DIMAPUR NAGALAND.

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 24-04-2023

Heard Mr. Joshua Sheqi, learned counsel for the petitioner along with Mr. Suponglemla Chang, learned Government Advocate for the respondent.

2. This writ petition is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus or any appropriate writ for the enforcement of the petitioner's right, in extending her services as Medical Attendant, Sub-Center, Sangtamilla, under Part-III of the Constitution.

3. The petitioner's case is that she was appointed as Medical Attendant on contingency basis at Chekiye Sub-Center, under the establishment of CMO, Dimapur with a fixed pay of Rs. 1500 per month for a period of one year vide the Order dated 09.06.2010 which was extended from time to time. The Village Council of Chekiye on 17.05.2011 had requested the regularization of the service of the petitioner since the Sub-Center was constructed on the land previously owned by the petitioner's family which however did not materialize. The services of the petitioner was then last extended for a period of one year from 02.04.2016 to 31.03.2017 vide the Order dated 14.10.2016. Thereafter, the petitioner in anticipation of further extension of her services continue

to work under Medical Officer as Medical Attendant, Chekiye Sub-Center and also submitted a representation for further extension of her services in the month of December, 2017. Meanwhile, the State respondents had approved a similarly situated employee namely Smti. Asangla Sangtam, appointed as Medical Attendant (Adhoc), Sub-Center Sangtamtilla under the CMO, Dimapur approved the extension of her service w.e.f., 02.04.2016 to 31.03.2021 with one day break of financial year vide Notification dated 25.06.2020. The petitioner then again submitted an application dated 17.07.2020 for extension of her service, contending that a similarly situated candidate has been considered by the Department and had extended her services. However, since no positive was received, she had filed a writ petition before this Court registered as WP(C) No. 110/2020.

4. A Co-ordinate Bench of this Court, while considering the case of the petitioner, disposed of the writ petition at the motion stage, vide Order dated 15.09.2020, directing the State respondents to consider the representation submitted by the petitioner dated 17.07.2020 since similarly situated person has been considered for extension of service. On receipt of the Order dated 15.09.2020 passed by this Court, the respondent, Principal Director wrote to the CMO, Dimapur in his Letter dated 17.12.2020, seeking clarifications whether the petitioner applied for extension of service, whether the petitioner was attending the office and

on what ground the petitioner's service was utilized during COVID-19.

The CMO in reply stated that the petitioner has been working consistently and assisted as an effective contributor devotedly attending to her duties and further recommended that given her commendable work ethics she would be of great assistance to the Department vide Letter dated 23.02.2021. The CMO, Dimapur also justified that the services of the petitioner was utilized though her service was not extended by the Government, due to the shortage of frontline Health Workers during the COVID-19 Pandemic and that the services of the petitioner was utilized under Chekiye Sub-Center, since the area covered did not have enough man-power to manage the situation.

5. Thereafter, the State respondents disposed of the petitioner's representation dated 17.07.2020 in their impugned reply dated 08.03.2021, stating that the extension of services for the petitioner cannot be considered at the belated stage since her representation was received late and the same can only be considered for fresh appointment. The State respondents also denied giving extension to the service of Smti. Asangla Sangtam. Being dissatisfied with the reply dated 08.03.2021, information was sought through RTI vide Letter dated 15.09.2021 seeking information with regard to the appointment of Smti. Asangla Sangtam, Medical Attendant (ad hoc), Sub-Center Sangtamtilla and her service extension. As per the reply received on 16.09.2021, an

order dated 30.06.2021 issued by the Principal Director, Directorate, Health & Family Welfare, Nagaland, Kohima, shows the re-appointment of Smti. Asangla Sangtam to the post of Medical Attendant at Sangtamtilla Sub-Center in the scale pay of Rs. 800-18-890-20-1050-25-14175 per month for a period of 1 (one) year from 02.04.2021 up to 31.03.2022. Further extension of service being subject to performance of the individual and as per requirement of the Department. Aggrieved by the reply dated 08.03.2021, the petitioner filed the instance Writ Petition.

6. Mr. Joshua Sheqi, learned counsel for the petitioner submits that since the petitioner has been sincerely performing her duties even though she had not received any extension order, due to the shortage of manpower, her services were utilized by the Department in the most needed moment. That the similarly situated person has been re-appointed vide the Letter dated 30.06.2021, while the case of the petitioner has not been considered in spite of her sincere services being utilized by the State respondents. That the State respondents may be directed to pay the salary of the petitioner for the services utilized by the said State respondents and also direct the State respondents to re-appoint the petitioner to the same post of Medical Attendant, Chekiye Sub-Center under the CMO, Dimapur, by applying the same yardstick as applied to a similarly situated person.

7. Ms. Suponglemla Chang, learned Government Advocate, on the other hand, submits that the petitioner's last service extension was issued vide common Order dated 14.10.2016, till 31.03.2017 under the condition that further extension of service shall be subject to performance of the individual and as per the requirement of the Department. She further submits that the appointment does not guarantee for extension of service in future, neither right for claim of seniority/regularization. That the appointment of the petitioner is purely on contingency basis and may be terminated with a one month's notice from either side. The records available in the Department shows that the petitioner never applied for her service extension after the expiry of her last extension Order dated 14.10.2016. That the application for extension of her service by the petitioner was submitted after a lapse of 3 years and therefore, the State Government had not considered the application for extension of service after the last extension Order dated 14.10.2016.

8. Having heard the submissions made by both the parties, this Court finds that the petitioner who was appointed as Medical Attendant at Chekiye Village Sub-Center for one year on 09.06.2010, extended from time to time and was last extended on 31.03.2016 till 31.03.2017. Thereafter, though there was no extension order, the services of the petitioner was utilized in the Sub-Center Sangtamtilla, Dimapur due to the shortage of man-power at Chekiye Village during the COVID-19

Pandemic. It is seen that in the appointment order and order dated 14.10.2016 it mentions that the appointment may be terminated with one month's notice from either side, however, no such notice was made by the State respondents and it can be seen from the Letter dated 28.05.2020 that the CMO, Dimapur, Nagaland had forwarded an application for extension of service in respect of the petitioner, Medical Attendant, Chekiye Sub-Center, Dimapur. This Court finds that the reason given by the State respondents in their Letter dated 08.03.2021 for non-consideration of the extension of service of the petitioner, which is that the petitioner had applied for extension in the month of December, 2017 through the CMO which was forwarded to the Department by Letter dated 18.12.2017. By the time her application for extension was received, the Government had already approved for extension of service of the employees and her name was left out as she had not applied in time. That since 2017 till date, her service has not been extended by the Government, it is deemed that she was no longer in service as there was a gap of more than 3 years since your last extension Order. As such, since there was no extension of her service since her last extension Order, the Department could at this stage grant her extension as her case has to be taken up as afresh appointment and not extension.

9. This Court finds that the reason given by the State respondents is unacceptable especially when the services of the petitioner was utilized

due to shortage of man-power at Chekiye Village, Dimapur and that her services were bonafidely required by the Department in the said district. It is further seen from the report given by the CMO, Dimapur that the performance of the individual is commendable and further, the Department had failed to give any one month's notice as per the conditions made in the Order dated 14.10.2016 for termination of the service of the petitioner. It is seen that the petitioner had promptly applied for the extension of her services in the month of December 2017 duly forwarded to the Department by the CMO on 18.12.2017. Thus, if the State respondents had decided to regret her extension, they had the obligation to inform the petitioner, which they did not, and the petitioner in anticipation of her extension order, continued her services and thereafter, she had made the representation dated 17.07.2020. The State of Nagaland is a Welfare State and cannot exploit the services of an employee who had rendered her services faithfully as a Medical Attendant even during the difficult COVID-19 Pandemic at Chekiya Village, Dimapur.

10. In view of the above, this Court finds that since the petitioner is entitled to be paid for the services rendered either by way of the extension of her services which was last extended till 31.03.2017 upto the date her services have been utilized by the State respondents and accordingly pay the salary due to the petitioner, or the State respondent may also consider the re-appointment of the petitioner to the same post

of Medical Attendant, Chekiye Sub-Center under the CMO, Dimapur, as per their Letter dated 08.03.2021, by applying the same yardstick as applied to a similarly situated person namely Smti. Asangla Sangtam.

11. The writ petition stands disposed with the above direction.

**Sd/-
JUDGE**

Comparing Assistant