



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

Case No. : WP(C)/318/2021

SMTI. PONGYU. K
WIFE OF LATE EKHAMLIWANG KONYAK @EKHUMLEWANG. K @
EKEMKEWANG KONYAK @ PHUHSHAI. K, W/C FITTER GRADE-II, UNDER THE
OFFICE OF THE EXECUTIVE ENGINEER, PHED, MON- DEVISION, MON
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 8 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND,
KOHIMA 2:THE COMMISSIONER AND SECRETARY

3:THE FINANCIAL COMMISSIONER

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

5:THE CHIEF ENGINEER

6:THE ADDITIONAL CHIEF ENGINEERING

7:THE EXECUTIVE ENGINEER

8:THE TREASURY OFFICER

9:THE ACCOUNTANT GENERAL (A AND E

Advocate for the Petitioner : SUPONGWATI WALLING

Advocate for the Respondent :

**BEFORE
HON'BLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 01-05-2023

Heard Mr. Supongwati Waling, learned counsel for the petitioner. Also heard Ms. Pichano Kithan, learned Government Advocate, appearing on behalf of respondents No. 1 to 8; and Mr. N. Mozhui, learned counsel, appearing on behalf of respondent No. 9.

The petitioner who is the wife of Late Ekhamliwang Konyak, was initially appointed as W/C Jugali in the scale of pay vide order, dated 17.03.1979, in the Department of Executive Engineer, Public Health Engineering Department (PHED), Mokukchung PHE Division, Government of Nagaland, under Memo. No. MKG/PHE/E1-4/78-79; issued by the Executive Engineer, PHED, Mokukchung PHE Division, Government of Nagaland, Mokukchung and retired as W/C Fitter Grade-II on 31.03.2014; has filed this writ petition for regularization of the service of the late husband of the petitioner and for payment of pension thereof, contending that the late husband of the petitioner had retired from service after completion of 35 years of continuous service in the scale of pay and therefore, the petitioner is entitled to be paid the pension of the service of her late husband.

In support of her case, the petitioner has relied on a decision of this Court, dated 06.10.2015, passed in WA 15(K)/2013 whereby,

it has been held that after an employee has rendered 30 years of uninterrupted service; the State cannot deny the pensionary benefits to such an employee.

Relying on the aforesaid order of the Division Bench of this Court, Mr. Walling, learned counsel for the petitioner, has submitted that several orders have been passed by this Court directing the respondent authorities to regularize the services of an employee who had rendered continuous service of 30 years of uninterrupted service and pay the pension thereafter. One such writ petition being WP(c)114(K)/2018 which has been annexed as Annexure-8 to the petition.

The State respondents No. 1 to 8, has contested the case by filing the counter affidavit wherein, in paragraphs No. 4 and 6, it has been stated as under which have been quoted hereinbelow:

“4. That with regard to the averments made in paragraph-5 of the writ petition, the answering deponent respectfully states that the O.M. No. AR-3/Gen-67/2001 (Pt) dated 22.09.2004 is a policy decision of the State Government for regularization of Work-Charged Employees. It is categorically stated in para-iv of the O.M that **to quote “work charged employees will have the right to be considered for regularization against 50% of all future vacancies of similar nature in the department for which they possess the requisite qualification. Such regularization will be considered on the basis of seniority-cum-merit. That means the senior most work charged employee in the relevant category will be regularized subject to his/her fitness for the vacant post. It is further respectfully submitted that the department is doing the regularization of work charged employees strictly on the basis of seniority-cum-merit, in other words it is stated that the senior most work charged in the relevant category is regularized keeping in view of the policy framed by the State. It is stated that the husband of the petitioner was at Sl. No. 17 as on February 2014 in seniority list amongst**

the Fitter-II category in the Department, the petitioner not being the senior in the category during the time of his retirement was released from service without regularization.

6. *It is a submission of the answering deponent that in regard to the present case the Hon'ble Apex Court has made categorically finding and ordered inter alia in State of Nagaland and Ors-Vs-Nishevi Achumi that to quote "para 4.1..it is required to be noted that the deceased employee died in the year 2005. During his lifetime he never claimed any regularization. That the respondent herein-wife of the deceased employee claimed the regularization after a period of twelve years from the death of the deceased employee. At the time of the death of the deceased employee he was not entitled to regularization as he was much below in the list of the worked charge employees whose services were to be regularized. Under the Regularization Policy the services of the work-charge employees were required to be regularized as per the seniority and as when the vacancy arises. The services of the other work-charge employees even who were senior to the deceased employees were regularized in the year 2009 i.e. after the death of the deceased employee. Despite the above, the High Court has directed the State to regularize the services of the deceased employee one day prior to his death, which otherwise his services were not required to be regularize as his turn had not come and he was much below in the seniority list." It is the submission of the answering deponent that the present case is fairly covered by the law laid down by the Hon'ble Apex Court."*

A perusal of the decision of the Hon'ble Supreme Court in the ***State of Nagaland & ors. v. Nishevi Achumi***, in ***Civil Appeal No. 4223/2022***; it appears that the husband of the petitioner therein, had died in harness while working as W/C Jugali. After a period of 12 years from the date of the deceased employee; the widow/wife of the deceased employee, filed a writ petition claiming that the services of her late husband ought to have been regularized and therefore, she is entitled to the family pension.

It was in the aforesaid factual background of the case, that the Hon'ble Supreme Court had held that the services of the deceased employee was not required to be regularized, as his turn had not come and he was much below in the seniority list.

In contrast to the decision of the Hon'ble Supreme Court rendered in ***Nishevi Achumi***(supra), relied on by the State respondents No. 1 to 8; it has been categorically held by the Division Bench of this Court in WA 15(K)/2013, vide order, dated 06.10.2015, that the State cannot deny the pensionary benefits to an employee who had rendered 30 years of uninterrupted service.

The law laid down by the Division Bench of this Court in WA 15(K)/2013 is still a law applicable in the State, has not been denied by the learned State Counsels.

In view of the above, since in the instant writ petition, there is no dispute that the late husband of the petitioner who was appointed as W/C Jugali on a scale of pay on 17.03.1979, had retired as W/C Fitter Grade-II on a scale of pay on 31.03.2014 and thus, had rendered 35 years of uninterrupted service; the petitioner, herein, therefore, would be entitled to a pension after the services of the late husband of the petitioner, is regularized by the State respondents in terms of the order, dated 06.10.2015, passed by the Division Bench of this Court in WA 15(K)/2013.

In view of the above, this writ petition is hereby disposed of by directing the respondent authorities to regularize the services of Late

Ekhamliwang Konyak as W/C Fitter Grade-II and thereafter, pay the pension to the petitioner as admissible under the Rules.

The process for regularization of the services of Late Ekhamliwang Konyak as W/C Fitter Grade-II, as well as payment of pension thereafter, to the petitioner, shall be completed by the respondent authorities as expeditiously as possible and in any case, not later than 4(four) months from the date of receipt of a certified copy of this order.

The writ petition stands disposed of in terms above.

Sd/-

JUDGE

Comparing Assistant