



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

Case No. : WP(C)/355/2021

SMTI. MERENTULA
W/O LATE TAKUWATI, W/C SWEEPER, UNDER THE ESTABLISHMENT OF THE
EXECUTIVE ENGINEER PWD (R AND B), CHANGTONGYA DIVISION,
MOKOKCHUNG

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND,
NAGALAND KOHIMA 2:THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND

3:THE ENGINEER-IN-CHIEF

4:THE CHIEF ENGINEER (R AND B)

5:THE EXECUTIVE ENGINEE

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

28.03.2023

Heard Mr. Sentianger, learned counsel for the petitioner and Ms. Livika, learned State Counsel appearing for the State respondents. Having regard to the nature of the case projected by the petitioner as well as the respondents, the writ petition is taken up for disposal at this stage.

[2.] The husband of the petitioner while working as Truck Driver under the Executive Engineer, Public Works Department (R&B), Changtongya Division expired on 20.01.1998 after prolong illness. The petitioner as the wife of the late Government Servant submitted an application to the Chief Engineer, Public Works Department (R&B) through proper channel asking for her appointment on humanitarian ground. She was therefore appointed vide Office Order dated 24.04.1998 as Work Charged Contingency Sweeper @ Rs. 750 per month. The petitioner has been working as such till date.

[3.] The petitioner on 26.02.2020 submitted an application to the Engineer-in-Chief, NPWD, Nagaland, Kohima through proper channel requesting for grant of pay scale and for regularization of her service stating that she has been working for the last 22 years under the establishment of Sub-Divisional Officer (Civil), Chantongya. The application of the petitioner was forwarded by the Executive Engineer, Public Works Department (R&B), Changtongya

Division to the Engineer-in-Chief, NPWD, Nagaland, Kohima on 16.04.2020 stating that there is no other regular Sweeper in the Sub-Division and therefore, the application of the petitioner be favorably be considered. However, the same having not been considered by the competent authority, the petitioner is before this Court.

[4.] Mr. Sentianger, learned counsel submits that although the appointment of the petitioner as contingency Sweeper on fixed pay does not indicate that she was appointed on compassionate basis, but the fact remains that the husband of the petitioner expired while serving as Truck Driver under the Department concerned and on that account, the petitioner was given appointment on humanitarian ground. Therefore, for all intended purpose, the same could only be understood as appointment made on compassionate basis. The learned counsel submits that the Govt. of India, Ministry of Home Affairs in the Department of Personnel and Administrative Reforms on 23.05.1978 had issued an Office Memorandum on the subject 'Compassionate Appointments of Son/Daughter/Near relative of Deceased Government Servant Consolidated Instruction.' As per the Office Memorandum, the guidelines and the manner in which the compassionate appointment is to be made has been provided. This Office Memorandum had been adopted by the Govt. of Nagaland vide

Office Memorandum dated 01.08.1978, issued by the Department of Personnel & Administrative Reforms (Administrative Reforms Branch) vide Memo No. AR-8/8/78. The Govt. of India Office Memorandum has also been further adopted vide Office Memorandum dated 13.06.1979 issued by the same Department vide Memo No. AR-8/8/1978. It is therefore clear that there existed relevant guidelines for appointment on compassionate basis. This aspect of the matter has also been put at rest by the Division Bench of this Court in *State of Nagaland & Anr -Vs- Aseino Sakhrie 2005 (4) GLT 523*.

[5.] The learned counsel further submits that an appointment on compassionate basis has to be on regular basis. This aspect of the matter is clear from the relevant scheme issued by the State Government from time to time including the Office Memorandum dated 17.09.2015 issued by the Personnel & Administrative Reforms Department (Administrative Reforms Branch) vide Memo No. AR-8/8/78 under the subject 'Revised Compassionate Appointment Scheme for State Government employees who die in harness'. Therefore, the respondent authorities should be directed to appoint the petitioner against a regular post. In support of his submission, the learned counsel relies upon the case of *Ashmia Dhar -Vs- State of Assam & Others 2020 SCC Online Gau 4150*.

[6.] Ms. Livika, learned State Counsel on the other hand submits that the petitioner was only appointed as contingency Sweeper on fixed pay vide Officer Order dated 24.4.1998 on her application for appointment on humanitarian ground. The petitioner never submitted any application for appointment on compassionate basis and that the scheme for compassionate appointment has been introduced by the State Government in the year 2002. Moreover, the petitioner is appointed as contingency Sweeper on fixed pay and not even enjoying scale pay and therefore, the question of regularizing her service does not arise. She submits that there are hundreds of other contingency workers appointed on fixed pay and if the petitioner is given the benefit of regularization, it would open flood gate for the similarly situated persons. She further submits that as per the Addendum dated 09.04.2019, criteria for considering compassionate appointment is strictly based in the order of death of the person. In other words, first preference shall always be given to those who have expired earlier. Admittedly, the petitioner's name will not figure in the list and therefore, her case cannot be considered on this count as well.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have also perused the materials available on record. There is no dispute to the fact that the appointment of the petitioner as contingency Sweeper on fixed pay was on account

of the death of her husband while he was working as Truck Driver under the Public Works Department (R&B), Changtongya Division. Taking a compassionate view of the application submitted by the petitioner, the Chief Engineer, Public Works Department, Nagaland, Kohima had recommended her appointment as such. The petitioner has been serving such capacity till date. Against the request made by the petitioner, which was even forwarded and recommended by the Executive Engineer concerned, the respondents authority concerned have not made any consideration leading to the filing of the present writ petition.

[8.] In the present writ petition, through the affidavit-in-opposition dated 26.04.2022, the State respondents have contended that the scheme for compassionate appointment has only come into existence through the Office Memorandum dated 13.02.2002 and therefore, the question of applying the said scheme to the case of the petitioner does not arise. However, the fact remains that the Govt. of India in the Ministry of Home Affairs, Department of Personnel & Administrative Reforms through its Office Memorandum dated 23.05.1978 had formulated a scheme for compassionate appointment of son, daughter and near relative of the deceased Government Servant. The said Office Memorandum admittedly was adopted by the State Government through Office Memorandum dated 01.08.1978 and thereafter,

through Office Memorandum dated 13.06.1979. Therefore, the plea of the State respondents that no scheme existed at the relevant time cannot be accepted. Moreover, appointment was given to the petitioner as already notice herein above on humanitarian ground and on compassionate basis. Although the appointment does not reflect that the appointment was on compassionate basis but the same was given on account of the expiry of her late husband who was working as Truck Driver in the Department. It is further noticed that any such appointment on compassionate basis has to be on regular basis. This fact is also clearly discernible from the Office Memorandum issued by the State Government in the Department of Personnel & Administrative Reforms vide Office Memorandum dated 17.09.2015 stating that appointment on compassionate ground shall be made only on regular basis to direct recruitment post. Therefore, upon due consideration, I find merit in the writ petition. The case of the petitioner is also not comparable to other contingency workers or to those who are not enjoying pay scale or even to those who are enjoying scale of pay for being considered for regularization. Therefore, the case of the petitioner altogether falls in a different category. The Division Bench of this Court in *State of Nagaland & Anr -Vs- Aseino Sakhrie* (supra) has already held that the scheme for compassionate appointment formulated by the Govt. of India in the Ministry of Home Affairs,

Department of Personnel & Administrative Reforms having been adopted by the State Government, there is no denying of the fact that the scheme existed since the date of its adoption. There are no materials on record to show that the decision of the Division Bench of this Court has been altered by a superior Court. As such, the subject matter about the existence of compassionate scheme at the relevant time has only attained a finality.

[9.] Thus, upon finding merit in the writ petition, the same is disposed of with a direction to the respondent Nos. 2 & 3 to regularize the service of the petitioner against any Grade-IV post or equivalent post as expeditiously as possible and at any rate, within an outer limit of 4 (four) months from the date of receipt of a certified copy of this Order. No cost.

Sd/-

JUDGE

Comparing Assistant