

GAHC020008082022



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

WP(C)/334/2022

1. Shri K Asura
W/C Labour, Office of the Executive
Engineer, PWD-H,
Tuensang Division, Nagaland

Petitioner

-Versus-

1. The State of Nagaland
Represented by the Chief Secretary to the Govt.
of Nagaland
2. The Commissioner and Secretary
To the Govt. of Nagaland NPWD
Nagaland Kohima
3. The Engineer-In-Chief
NPWD Nagaland Kohima
4. The Chief Engineer
PWD - Housing Nagaland Kohima
5. The Executive Engineer
PWD-Housing Tuensang Division
Nagaland

Respondents

For Petitioner : Ms. S. Longkumer, Advocate
For Respondent(s) : Mr. Moa Imchen, learned Senior Government Advocate
Date of judgment : 17.10.2023

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

(Mridul Kumar Kalita, J)

1. Heard Ms. S. Longkumer, learned counsel for the petitioner. Also heard Mr. Moa Imchen, learned Senior Government Advocate appearing for the State of Nagaland.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, *Shri K Asura*, praying for grant of minimum scale of pay to him.

3. The facts relevant for consideration of the instant writ petition, in brief, are as follows:-

(i) The petitioner was appointed as a worked charged employee on fixed pay of Rs. 300/- per month, on 02.09.1990, under the Establishment of the Executive Engineer, PWD (Housing) Tuensang Division, Nagaland. The pay of the petitioner was enhanced from time to time and presently, the petitioner is receiving a monthly fixed pay of Rs. 5250/- only.

(ii) The petitioner having been rendered his services continuously for more than thirty two (32) years had filed a representation to the respondent no.3 praying for grant

of scale of pay to him against the retirement vacancy of Shri P. Longkhang Jugali, who retired on 29.02.2020. The said representation was forwarded to the Engineer-In-Chief by one Shri T. Yangseo Sangtam, Member of Nagaland Legislative Assembly, Nagaland, Kohima, requesting to consider the grant of scale of pay to the petitioner on humanitarian ground. Though the said forwarding letter bears the date 26.04.2021, however, till date the representation of the petitioner has not been considered by the respondent authorities.

4. Ms. S. Longkumer, learned counsel for the petitioner has submitted that the petitioner has rendered services for more than thirty two (32) years in the Establishment of Executive Engineer PWD (Housing) Tuensang Division, Nagaland and he would be retiring from service on completion of thirty five (35) years on 30.09.2025 and that he is entitled to get minimum scale of pay on the principle of equal pay for equal work, like any other employees of the State Government.

5. Learned counsel for the petitioner has also submitted that the case of the petitioner is a covered case as in a writ petition filed by a similarly situated worked charged employee, who approached this Court by filing Writ Petition No. WP (C) 80(K)/2020, directions were given to the respondent authorities to consider the case of the said petitioner for grant of minimum scale of pay within three (3) months from the date of receipt of

the copy of the said judgment. Learned counsel for the petitioner has also placed a ruling of a Division Bench of this Court in Writ Appeal No. 25/2021, passed on 14.09.2022, whereby it upheld the judgment dated 14.06.2022, passed in WP(C) 228/2019, whereby the petitioner of that case, who was similarly situated to that of the present petitioner was held entitled to get salary like that of a sweeper appointed on regular basis who performs works of the same nature like that of the said petitioner, on the basis of equal pay for equal work. It is submitted by learned counsel for the petitioner that the present petitioner has been rendering his service for last 32 years by performing all kind of field works which is performed by similarly situated worked charged employees who are already given pay in a scale of pay by the respondent authorities.

6. On the other hand, Mr. Moa Imchen, learned Senior Government Advocate has submitted that the State Government does not have any policy regarding grant of minimum scale of pay to the worked charged employees and in absence of a clear policy of the Government for grant of scale of pay to the worked charged employees, the respondent authorities are not in a position to consider the case of the petitioner even though the petitioner has served the department for a long period of time. It is also submitted by learned Senior Government Advocate that grant of scale of pay to the present petitioner will open flood gates of petitions for grant of scale of pay to other similarly

situated worked charged employees and it should be left to the State Government to decide on the question of policy matters as grant of scale of pay to all the worked charged employees would involve huge financial burden on the State Exchequer.

7. I have considered the rival submission made by the learned counsel for both the sides and have gone through the pleading on affidavits and other documents available on record.

8. The fact that the petitioner has been rendering his service as worked charged employee in the Office of respondent no. 3 continuously for last thirty two (32) years has not been disputed by the respondent authorities.

9. It is also to be taken note of the fact that the petitioner has not approached this Court for regularization of his services but only for grant of minimum scale of pay which is provided to a similarly situated worked charged fixed pay employees of the Nagaland PWD Department.

10. It is the case of the petitioner that he renders the same nature of work and duties and responsibilities as performed by those worked charged employees, who are granted minimum scale of pay and this contention has not been denied by the State respondents.

11. It appears that the principle of law regarding equal pay for equal work has been laid down by Hon'ble Apex Court in a number of its rulings. Hon'ble Apex Court in the "***State of Punjab***

and Others –Vs- Jagjit Singh and Others” reported in “(2017) 1 SCC 142” has observed as follows:-

"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. The Hon'ble Apex Court has further observed in the aforesaid judgment is as follows:-

"57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has

been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser

wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

13. This Court has perused the judgment of the Co-ordinate Bench of this Court in WP(C) 80(K)/2020, which has been cited by learned counsel for the petitioner, which was also disposed of with a direction to the respondent authorities to consider the case of the petitioner of that case, who was also a worked charged employee of PW Department and who was similarly situated to that of the present petitioner, for grant of minimum scale of pay.

14. This Court has also taken note of the fact that in WP(C) 165/2018, WP(C) 166/2018, WP(C) 167/2018 and WP(C) 168/2018 also the State respondents were directed to consider grant of minimum scale of pay to the petitioners therein who were similarly situated to the petitioner of this instant case.

15. Apart from plea that there is no policy of the Government to grant minimum scale of pay to the worked charged employees, no other justifiable ground has been shown by the learned Senior Government Advocate for treating the present petitioner differently from those similarly situated worked charged employees who have been granted minimum scale of pay by the respondent authorities. This Court is of the considered that such

an approach is discriminatory and violative of the fundamental rights of the present petitioner. In the view of the law laid down by Hon'ble Apex Court regarding "*equal pay for equal work*", this Court is of considered opinion that the present petitioner is entitled to receive the same pay as extended to similarly situated persons discharging identical nature of work, duties and responsibilities.

16. In view of above, the State respondents are hereby directed to consider the representation of the present petitioner for grant of minimum scale of pay to him like that of other similarly situated worked charged employees to whom minimum scale of pay has been granted, within a period of three months from the date of this order.

17. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant