

GAHC020000272017



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

Case No. : WP(C)/312/2017

THANGJENLA SANGTAM
W/O LT. YOLISE SANGTAM,DB,OLD MANGAKHI
VILLAGE,TUENSANG

VERSUS

STATE OF NAGALAND AND 8 ORS
KOHIMA

2:COMMISSIONER AND SECRETARY
PERSONNEL AND ADMINISTRATIVE REFORMS DEPT
NAGALAND
KOHIMA

3:FINANCIAL COMMISSIONER
N/L
KOHIMA

4:COMMISSIONER
N/L
KOHIMA

5:DEPUTY COMMISSIONER TUENSANG NAGALAND
TUENSANG

6:TREASURY OFFICER
TUENSANG
TUENSANG

7:ACCOUNTANT GENERAL
NAGALAND
KOHIMA

8:VIGILANCE COMMISSION.

DIRECTORATE OF VIGILANCE & ANTI-CORRUPTION POLICE,
NAGALAND, KOHIMA

9:NAGALAND LOKAYUKTA
N/L
KOHIMA

Advocate for the Petitioner : I. IMTI LONGCHAR

Advocate for the Respondent : GOVT ADV NL

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

For the Petitioner : Mr. I. Imti Longchar, Adv.

For the Respondents : Mr. N. Angami, Sr. Govt. Adv.
(for Respondent Nos. 1 to 6)
: Ms. P. Mhonbeni Ezung, Adv.
(for Respondent No. 7)

Date of Judgment : 05.03.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. I. Imti Longchar, learned counsel for the petitioner. Also heard Mr. N. Angami, learned senior Government Advocate, for the respondent Nos. 1 to 6 and Ms. P. Mhonbeni Ezung, learned counsel for the respondent No. 7.

2. On being aggrieved due to the denial of pensionary benefit, which was due to the late husband of the petitioner, on the ground that the husband of the petitioner has not completed minimum qualifying years of service required to get pensionary benefit, the petitioner has

approached this Court invoking its jurisdiction under Article 226 of the Constitution of India.

3. The case of the petitioner, in brief, is as follows:-

I. The petitioner's husband, Lt. Yolise Sangtam, was working as N.L.C. (Nagaland Labour Corps), under Deputy Commissioner Tuensang, was temporarily appointed as Contingency Paid Dobashi by the Deputy Commissioner Tuensang, by order dated 18th August, 1970 at the scale of pay of Rs.100-2.50-110-EB-4-150-EB-5-175 plus Inner Line Special Pay @ 20% of the basic pay subject to minimum of Rs.35/- and maximum of Rs.100/- and all other allowances as admissible under existing rules w.e.f., 01.08.1970 against the post, which was newly created by the authority No.APN.5/19/70/2 dated 28th July, 1970.

II. The appointment of the husband of the petitioner was purely temporary subject to termination with one month notice from the either side.

III. Thereafter, the husband of the petitioner by order dated 10th June, 1974 was promoted to Grade-II Dobashi, w.e.f. 1st June, 1974 in the scale of pay of Rs.120-4-153-EB-5-182-6-200/- per month plus Inner Line Special Pay subject to a minimum of Rs.35/- and maximum of Rs.100/- per month and other allowances as admissible under existing rule against the existing vacancy. Thereafter, on attaining the age of superannuation, the husband of the petitioner retired from Government services w.e.f., 01.07.1981, however, after his retirement, his pensionary benefits were not released to him

and, therefore, he pursued for release of his pension. On 16th June, 2002, the husband of the petitioner had expired without getting any pension. However, he received a meager amount of service gratuity of Rs.1593.75/- and DCRG of Rs.892.50/- only.

IV. Thereafter, on 02.08.2007, the petitioner filed a representation to the Deputy Commissioner, Tuensang, *inter alia*, stating that though the husband of the petitioner retired from the government service as per rules, however, the pension/family pension was denied to the husband of the petitioner and the petitioner.

V. It is stated by the petitioner that her husband was promoted to Gr.-II DB w.e.f., 01.06.1974 and as he was appointed initially on 01.08.1970 against a sanctioned vacancy, his tenure of service from 01.08.1970 to 01.06.1974 ought to have taken into consideration for computing the minimum qualifying service to be entitled to get pensionary benefits and if the said period is taken into consideration, the husband of the petitioner had completed 10 years 11 month of service and, therefore, the husband of the petitioner and the petitioner were illegally denied the pension/family pension benefits which was due to them.

VI. It is contended that the petitioner's husband, Yolise Sangtam, was in service from 01.08.1970 until his retirement on 01.07.1981, without any break in service, as Dobashi Gr. II in a scale of pay as mentioned hereinabove. It is also contended that not taking into consideration the period from 18.08.1970 to 01.06.1974, the date

on which the husband of the petitioner was promoted as the DB Gr.-II, is in violation of the office memorandum dated 26th November, 2009 bearing No. AR-5/ASSO/98(Pt-1) which provides that while fixing the length of the services, the period of service rendered by an employee on contract/*ad hoc*/work charged appointment should be taken into consideration for pension and other service benefits. It is, therefore, contended by the petitioner that the respondents have illegally denied the pensionary benefit to her husband as well as family pension to her which was legally due to them.

4. Mr. I. Imti Longchar, learned counsel for the petitioner has submitted that the appointment order dated 01.08.1970 of the husband of the present petitioner clearly shows that the husband of the petitioner was appointed as contingency paid interpreters (Dobashi) in the scale of pay against newly created sanctioned posts w.e.f. 01.08.1970 and was promoted to Grade-II Dobashi w.e.f. 1st June, 1974 against a sanctioned post. It is submitted that as husband of the Petitioner was appointed against a sanctioned post, he held a clear lien over the said post. It is also submitted by the learned counsel for the petitioner that by letter No. EST/PEN-1/15-16/2778 dated 2nd July, 2015, the Deputy Commissioner, Tuensang has clarified to the Commissioner, Nagaland, Kohima that though the appointment letter dated 18.08.1970, issued to the husband of the petitioner mentions, the post to which he was appointed as contingency paid dobashi, however, he was appointed against a sanctioned post with a scale of pay along with 15 others persons as mentioned in the said appointment letter. It was also clarified that in the

service book of the husband of the petitioner, it was erroneously mentioned that he was appointed as Contingency Paid Dobashi in the scale of Rs.100/- fix. It was also clarified in the said letter that in view of Office Memorandum dated 26th November, 2009 the length of service from the day on which he was appointed as Contingency Paid Dobashi till the day when he was promoted to Grade-II DB in the scale of pay should also be taken into consideration for computing the qualifying length of service.

5. Learned counsel for the petitioner has submitted that since his appointment as contingency paid Dobashi on 18.08.1970 till his retirement on 01.07.1981 the husband of the petitioner was in continuous service without any break and, therefore, as per the Office Memorandum dated 26th November, 2009, the period of service of three years ten months during which he was appointed as contingency paid Dobashi should be taken into consideration for computing the qualifying period for the purpose of entitlement of pension. It is also submitted by the learned counsel for the petitioner that there were certain lapses regarding the age of the present petitioner as well as date of death of the husband of the petitioner which were rectified and also confirmed by an inquiry conducted by respondent No. 8 i.e., the Director of Vigilance and Anti-Corruption, Police, Nagaland, Kohima by letter dated 28th November, 2016 which is annexed as Annexure- 20 to the writ petition.

6. Learned counsel for the petitioner has also submitted that by ignoring the office memorandum dated 26th November, 2009, the Deputy Secretary to Government of Nagaland, Personnel and Administrative

Reforms Department was wrong in conveying to the respondent No. 7 i.e., The Accountant General by letter dated 11.07.2017 that the total length of service rendered by the husband of the petitioner was only nine years i.e., one year short of the qualifying service of 10 years as the period of three years ten months rendered by the husband of the petitioner as contingency paid Dobashi ought to have been taken into consideration while computing such a period.

7. It is submitted by the learned counsel for the petitioner that the period from 01.08.1970 to 01.07.1981 during which the husband of the petitioner was in service comes to ten years and eleven months which is more than the qualifying period required to get pensionary benefit and, therefore, it is submitted that the petitioner's husband is entitled to get pensionary benefit from the date of his retirement till the date of his death and thereafter the petitioner is entitled to the family pension under the existing rules.

8. On the other hand, Mr. N. Angami, learned Senior Government Counsel for the State of Nagaland has submitted that petitioner's husband was appointed initially by order dated 18th August 1970, as a contingency paid Dobashi and, therefore, his status cannot be equated with a regular employee or even a temporary employee and the respondent authorities were correct in excluding the period of 3 years 10 months during which he was appointed as contingency paid Dobashi. It is also submitted by the learned Senior Government Advocate that though the appointment letter of the petitioner's husband as contingency paid Dobashi was issued on 18th August, 1970, however, by the same order, they were posted in their

present respective post, i.e., at N.L.C, Chare. The learned Senior Government Advocate for the State respondent has submitted that as the petitioner's husband was a contingency paid employee, the provisions of Central Civil Services (Pension) Rules, 1972 is not applicable to him "persons paid from contingencies" have been specifically excluded by Rule-2(c) of the said Rule.

9. The learned Senior Government Advocate has submitted that the Office memorandum No. AR-5/ASSO/98 (Pt-1) dated 26th November, 2009 which the petitioner is relying on has already been superseded by the Office Memorandum No. AR-3/GEN-231/2011 dated 29th March, 2017 issued by the Government of Nagaland, Personnel and Administrative Reforms Department.

10. The learned Senior Government Advocate has submitted that the period of three years ten months during which the petitioner was appointed as a contingency paid Dobashi was correctly excluded while computing the qualifying period for the purpose of eligibility of pension as during this period his appointment was only casual in nature and he has not a regular employee.

11. Learned Senior Government Advocate has also submitted that the period during which the petitioner was posted as contingency paid Dobashi has to be computed on the basis that only 50% of the said period may be taken into consideration for computing the qualifying service which, in the case of the petitioner, comes to one year and eleven months, and, therefore, by adding the said period to the period when the petitioner was appointed as Dobashi Grade-II w.e.f. 01.06.1974 to

01.07.1981 (seven years one month) the total qualifying service of the petitioner only comes to nine years, which is less than the qualifying period of ten years required for being eligible to get pension. In support of his submission, learned Senior Government Advocate has cited Government of India's decision under Rule- 14 of the Central Civil Services (Pension) Rule whereby it was provided that "period of service paid from contingency do not count as qualifying service for pension, it has been decided that half of the service paid from contingency will be allowed to count towards pension at the time of absorption in regular post."

12. Learned Senior Government Advocate for the State of Nagaland, therefore, submits that the Department of Personnel and Administrative Reforms (Pension Cell) has rightly computed the length of qualifying service of the husband of the petitioner as 9 years and same was communicated to the respondent No. 7 i.e., the Accountant General by letter dated 11.07.2017. It is submitted by the learned Senior Government Advocate that as the qualifying service of the husband of the petitioner falls short of the required period of 10 years, he has been rightly denied the pension and, therefore, the writ petition filed by the petitioner is liable to be dismissed.

13. Learned counsel for the respondent No. 7 has submitted that the case of the petitioner's claim for family pension and for pension to her late husband as well as family pension to her was forwarded to the vigilance commission to ascertain the genuineness of the claim as there were some manipulations in the date of birth of the claimant as well as of her husband in the service book. Moreover, the pension documents were forwarded to the office of the Accountant General after a lapse of 32 years

8 months of service. Learned counsel for the respondent No. 7 has also submitted that the respondent No. 7 has acted in pursuant to the letter No. PAR/PEN/FMLY-1/2017 dated 11.07.2017 of the Deputy Commissioner to the Government of Nagaland, Department of Personnel and Administrative Reforms (Pension Cell) by which it was intimated that the P&AR Department has not granted its concurrence for pension in respect of late Yolise Sangtam.

14. Ms. P. Mhonbeni Ezung, learned counsel for the respondent No. 7 has also submitted that as per the pension rules as quoted under Article 368 of the Civil Service Regulation (CSR) and Rule-14, the nature of appointment of contingency paid is different to that of nature of charge/*ad hoc* were on regularization of service, 50% of the period served as contingency paid is counted for qualifying service for pension benefit. In the instant case, the husband of the petitioner served from 01.08.1970 to 01.06.1974 as contingency paid Dobashi (3 years 10 months) and after computing 50% of the said period the qualifying service for the said period comes to 1 year 11 months, which when added to the qualifying service period of the husband of the petitioner as Dobashi Grade-II from 01.06.1974 to 01.07.1981 which comes to 7 years 11 months, the total qualifying period is computed as 9 years only which is less than the minimum qualifying period of 10 years to be entitled to get pensionary benefit.

15. I have considered the submissions made by the learned counsel for both the sides and also perused the materials available on record.

16. A bare perusal of the appointment letter dated 18th August, 1970

by which the husband of the petitioner, namely, Yolise Sangtam was appointed as contingency paid Dobashi, it appears that he was appointed on temporary basis in a scale of pay with all other admissible allowance under the rules and said appointment was against newly created post by Authority No. APA.5/19/70/2 dated 28th July, 1970.

17. There is no dispute at the bar that the State of Nagaland has adopted Central Civil Services (Pension) Rules, 1972 for its employees. The contention that due to the operation of Rule-2(c) of the Nagaland Civil Services (Pension) Rules, 1972 the said Rules are not applicable to the husband of the present petitioner does not appears to be convincing as at the time of the retirement from service on 17th July, 1981, the petitioner's husband was not a contingency paid Dobashi but was posted as Grade-II Dobashi in a scale of pay plus other allowances and said appointment as Grade-II Dobashi was effective from 1st of June, 1974 against existing vacancy, therefore, when the husband of the petitioner retired, therefore, it would be wrong to say that Central Civil Services (Pension) Rules, 1972 which has been adopted by the State of Nagaland would not be applicable to the husband of the petitioner merely because on the fact that in initial 3 years 10 months of his service he was paid from contingency.

18. Rule 13 of the Central Civil Services (Pension) Rules, 1972 provides as follows:-

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an

officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

19. From above Rules, it appears that the qualifying service of a government servant shall commence from the date he takes charge of the post to which he was first appointed either substantively or in an officiating or temporary capacity. Though, the petitioner was appointed by the appointment letter dated 18.08.1970 as contingency paid Dobashi, however, his appointment was temporary in nature and was against a sanctioned post in a scale of pay with all admissible allowances, therefore, it would not be wrong to say that the nature of service rendered by the petitioner from 01.08.1970 to 01.06.1974 was temporary in nature. It also appears that, thereafter, on 01.06.1974 he was promoted and appointed to the post of Grade-II Dobashi in a scale of pay against sanctioned post and there was no break in service from the date of his initial appointment as contingency paid Dobashi and, therefore, the first proviso to Rule- 13 of the Central Civil Services (Pension) Rule, 1972 is applicable to the case of the husband of the petitioner.

20. As regards the submission of learned counsel for the respondents

that the 50% of the service rendered by the husband of the petitioner as contingency paid Dobashi was taken into consideration for computing the qualifying service as per the Government of India decision under Article 368 of the CSR Rules as mentioned by the respondents in their affidavit-in-opposition, this Court is of considered opinion that though the Central Civil Services (Pension) Rule have been adopted by the State of Nagaland, any decision taken by the Government of India under the said rules would not be automatically applicable to the employees of the State of Nagaland unless same is adopted by the State of Nagaland.

21. In the instant case, the decision to take into consideration only half of the service of the employees who were paid from contingency for computing the qualifying period is not the part of Central Civil Services (Pension) Rules but only a decision of the Government of India. The State of Nagaland is governed by its own office memorandums and rules and regulations framed by it or adopted by it. Merely because Government of India has taken a decision in a particular manner, same would not bind the State of Nagaland when it has its own Office Memorandum to deal with similar circumstances. The respondent authorities are bound by the policy decision taken by the State of Nagaland and not by any decision taken by the Government of India in this regard, unless the policy decision of the Government of India is adopted by the State of Nagaland.

22. It appears that though the Office Memorandum dated 26th November, 2009 which is relied upon by the petitioner has been superseded by the Office Memorandum No. AR-3/GEN-231/2011 dated 29th March 2017, cited by the learned Senior Government Advocate,

however, Clause 6 of the said Office Memorandum dated 29th March 2017 provides as follows:-

“Now, therefore, it has decided that the period of service rendered on adhoc/contract/work- charged/substitute period which is followed by regularization or regular appointment without break or gap in service except resignation but notwithstanding the cases of resignations taken up with proper permission for another appointment, shall be treated as public employment and included in calculation of length of service for the purpose of pension under the Nagaland Retirement from Public Employment (2nd Amendment) Act, 2009”.

23. On perusal of the aforesaid clause of the said office memorandum, it appears that the period of service rendered on *adhoc/contract/work-charged/substitute* period which is followed by regularization or regular appointment without break or gap in service shall be treated as public employment and included in calculation of length of service for the purpose of pension under the Nagaland Retirement from Public Employment (2nd Amendment) Act, 2009. It appears that though the contingency paid employee are not specifically mentioned in the aforesaid clause, however, as the petitioner was appointed against a sanctioned post on the scale of pay without all admissible allowances, the nature of his service may be regarded as temporary in nature and as he continued in his service without any interruption or break since 18.08.1970 i.e., the date of his initial appointment, this Court is of considered opinion that he may not be deprived of the benefit given by Clause-6 of the aforesaid memorandum to the *adhoc/contract/work-charged/substitute* employees as it would amount to discriminating the

petitioner without any reasonable basis.

24. This Court is of considered opinion that the case of the petitioner's husband is covered under Clause-6 of the Office Memorandum No. AR-3/GEN-231/2011 dated 29th March 2017 and the respondent authorities were wrong in depriving the benefit of taking into consideration the period of service rendered by the husband of the present petitioner from 18.08.1970 to 01.07.1974 on the basis of Government of India's decision under Article 368 of the CSRs (Rule 14) by not taking into consideration of the period of service paid from contingencies as qualifying service for the pension.

25. This Court is, therefore, of the considered opinion that the qualifying service of the husband of the present petitioner for the purpose of ascertaining his entitlement to pension shall commence from 18.08.1970 when he joined as contingency paid Dobashi in a sanctioned post with a scale of pay with all admissible allowances and on doing so the period of qualifying service rendered by the husband of the present petitioner up to the date of his superannuation on 01.07.1981 comes to 10 years and 11 months which is more than the qualifying service required for getting pension. The petitioner's husband is, therefore, entitled to pension from the date of his superannuation i.e., 01.07.1981 till the date of his death i.e., on 16.09.2002 and after the said date the petitioner is also entitled to get family pension.

26. The State respondents shall ensure that the pension of the late husband of the petitioner as well as family pension of the petitioner is fixed at the earliest and all retirement benefits of the husband of the

present petitioner be released in favour of the petitioner within a period of three months from the date of this judgment.

27. In view of the above discussion, this writ petition is allowed.

JUDGE

Comparing Assistant