

GAHC020000392022



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

Case No. : WP(C)/24/2022

SHRI. P. KAJIRE
W/C JUGALI(RETIRED), OFFICE OF THE EXECUTIVE ENGINEER,
PHED, PHEK DIVISION, PHEK, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THROUGH THE CHIEF SECRETARY, GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2:THE CHIEF ENGINEER

PHED
NAGALAND
KOHIMA

3:THE EXECUTIVE ENGINEER

PHED
PHEK DIVISION
PHEK
NAGALAN

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

Date of hearing : **10.10.2023**
Date of judgment : **19.02.2024**

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Heard Ms. V. Therie, learned counsel for the petitioner and Mr. E. Thiba Phom, learned Government Advocate for the State respondent.

2. The present writ petition has been filed to quash and set aside the letter dated 06/10/2021 written by the Chief Engineer, PHED, Sanitation & WSSO, Nagaland, Kohima rejecting the representation submitted by the petitioner for regularization in service and further for a direction to retrospectively regularized the work-charged service of the petitioner as work-charged jugali under the Office of the Executive Engineer (PHED), Phek Division, Nagaland, for entitlement of pension and pensionary benefits.

3. That by Office order dated 23/06/1983 issued by the Executive Engineer, PHE, Phek Division, the petitioner was appointed as W/C scale Khalasi in the scale of pay Rs. 190-3-226-4-250/- PM against the work R/N of W/S at Meluri Lotan Village w.e.f from the date of joining the post. The appointment was made purely on temporary basis liable to be terminated at any time without any further notice.

4. That by the Office order dated 30/07/1988 issued by the Executive Engineer, PHE, Phek Division, the petitioner was promoted to skill labour at Rs. 18/- per day i.e. Rs. 540/- p.m. w.e.f. 21/07/1988. The promotion was made purely on temporary basis liable to be terminated at any time without notice.

5. That thereafter by the Office order dated 20/11/2007 issued by the Office of the Chief Engineer, PHED, Nagaland, Kohima, the petitioner service as work-charged labour was upgraded to W/C Jugali in the scale of Rs. 800-18-890-20-1050-25-1475/- PM (fixed). The up-gradation of the post was made on temporary basis subject to

reversion/termination without notice.

6. That the petitioner was released from service on 31/03/2014 on attaining the age of superannuation.

7. That on 20/12/2021 as well as on 26/04/2021, the petitioner submitted representation to the department for regularization of service, by giving effect to the Office Memorandum dated 17/03/2015 issued by the Government, for claiming pension and pensionary benefits. However, the same was not considered by the department.

8. The petitioner being aggrieved approached this Court by filing W.P.(C) No. 105/2021, which was disposed by the order dated 22/07/2021, with a direction to the State respondents to consider the regularization of the petitioner's service in terms of the O.M issued by the Government within a period of 3(three) months so as to enable the petitioner to enjoy the pension and pensionary benefits.

9. That in terms of the order dated 22/07/2021 passed by this Court, the case of the petitioner for regularization in service was considered by the department and consequent to which the petitioner was served with the letter dated 06/10/2021 inter-alia conveying that as the petitioner has retired from service w.e.f. 31/03/2014 on attaining 60(sixty) years of age, the case of the petitioner cannot be considered under the O.M dated 15/03/2015 issued by the Government. It was further conveyed that as per the service book, the date of birth of the petitioner has been entered as 04/03/1954 and accordingly, the petitioner was released from service on 31/03/2014 on attaining the age of superannuation.

10. The letter dated 06/10/2021 issued by the department rejecting the representation submitted by the petitioner for regularization in service is impugned in the present writ petition.

11. Ms. V. Annie Therie, the learned counsel for the petitioner, at the outset refers to the letter dated 27/08/2014 written by the Addl.

Chief Engineer, PHED, Nagaland, Kohima to the Executive Engineer, PHED, Phek Division in which it has been clarified that the retirement of the petitioner as per the office record is on 31/07/2018, on completion of 35 years of service. The learned counsel accordingly submits that the petitioner has been prematurely retired from service on 31/03/2014 instead of 31/07/2018.

12. It is submitted that the Government of Nagaland, Personnel and Administrative Reforms Department (Administrative Reforms Branch) vide Office Memorandum No. AR-3/GEN-201/2009, dated 17/03/2015 has formulated the 'Scheme for regularization and absorption of Work-charged and Casual Employees and Revision of pay/wages', which inter-alia provides that, all existing work-charged and casual employees of various department who are enjoying scale pay and who have completed 30(thirty) years or more of continuous service as on 01/01/2015 are to be regularized by conversion of their post into a regular post personal to them. The learned counsel accordingly submits that, the service of the petitioner counted from 23/06/1983 to 31/03/2014 will add up to 31 (thirty one) years of service, therefore, the case of the petitioner for regularization in service is squarely covered by the O.M dated 17/03/2015.

13. The learned counsel for the petitioner also submits that even if the petitioner had retired from service on 31/03/2014, his case for regularization in service should have been considered by giving effect to the Office Memorandum No. AR-3/Gen-67/2001(Pt), dated 22/09/2004 which is the 'Policy and Scheme for Regularization of service of Work-charged Employees', since the petitioner has already completed 31(thirty one) years of service.

14. It is further the case of the petitioner that the department by the impugned letter dated 06/10/2021 has without any cogent ground wrongly rejected the representation submitted by the

petitioner for regularization in service.

15. In support of her submission, the learned counsel for the petitioner has relied in the case of **State of Manipur -versus- Kh. Ibohal Singh**, reported in **(1997) 2 GLT 209** and in the case of **Tsalip Sangtam -versus- State of Nagaland**, reported in **(2014) 2 GLT 275**.

16. Mr. E. Thiba Phom, the learned Government Advocate referring to the service book of the petitioner submits that the petitioner's date of birth is clearly recorded as 04/03/1954 and therefore, the petitioner was released from service on 31/03/2014 on attaining the age of superannuation and therefore, the petitioner should not be allowed to raise the issue of premature retirement from service at this belated stage. The learned Government Advocate also submits that the Office Memorandum dated 17/03/2015 was issued by the Government only after the petitioner retired from service on 31/03/2014 and therefore, the petitioner's case for regularization in service cannot be considered under the O.M dated 17/03/2015. The department has therefore by the impugned letter dated 06/10/2021 rightly rejected the case of the petitioner for regularization in service under the O.M dated 17/03/2015. Mr. E. Thiba Phom further submits that the petitioner's case was also not considered under the O.M dated 22/09/2004 since the petitioner was not the senior most work-charged employee in the category. The learned Government Advocate referring to the Work-charged Seniority and Retirement List as on March 2013 issued by the department submits that the petitioner is placed in Sl. No. 602 of the seniority list and therefore, the petitioner's case could not be considered by superseding his senior and in violation of the Office Memorandum dated 22/09/2004 issued by the Government.

17. In the affidavit-in-reply, the petitioner, while reiterating the

averments made in the writ petition has referred to the information furnished by the department under the RTI Act 2005 and states that as many as 195 work-charged employees were regularized by the department from time to time. From the 195 employees, 39 of them were regularized in service without completing 30 years of service and out of the 39, 29 of the work-charged employees were regularized without completing 10 years of service and 8 of them were regularized on the very day they joined service. The petitioner has also stated that 28(twenty eight) work-charged employees who were in service along with the petitioner but were junior to the petitioner were all regularized in service. The case of the petitioner, therefore, ought to have been considered along with the similarly circumstanced employees. The State respondents however by adopting pick and choose policy and by applying different yard stick has discriminated the petitioner. The petitioner has further relied on the order dated 18/02/2022 passed by the Hon'ble Supreme Court in the case of the **State of Gujarat & Ors. -versus- Talsibhai Dhanjibhai Patel** in Petition for Special Leave to Appeal (C) No. 1109/2022 and also in the case of **Union of India and Others -versus- Munshi Ram**, reported in **2022 SCC Online SC 1493**.

18. Heard the learned counsel for the parties.

19. It is the case of the petitioner that as per the W/C identity card dated 30/04/2007 issued by the Department, the petitioner's date of birth is shown as 04/03/1960 and therefore, the date of the petitioner's retirement from service should be on 31/07/2018 on completion of 35 years of service. The State respondents however in their affidavit-in-opposition has annexed the relevant service book of the petitioner showing the date of birth of the petitioner as 04/03/1954 and submits that on the basis of the date of birth

recorded in the service book the petitioner was released from service on 31/03/2014 on attaining the age of superannuation. The petitioner has also not disputed that he was released from service on 31/03/2014. The stand taken by the State respondents therefore appears to be more authentic. This Court accordingly holds that the petitioner's date of birth is 04/03/1954 and there is no infirmity in releasing the petitioner's from service on 31/03/2014 on attaining the age of superannuation. Even otherwise, it will be futile, for this Court to adjudicate the premature release of the petitioner's from service in the present petition, at this belated stage, as the petitioner has already retired from service way back on 31/03/2014.

20. To regulate appointment and conditions of service of persons appointed as work-charged and casual employees in the State of Nagaland "*The Nagaland Work Charged and Casual Employees Regulation Act, 2001*" has been enacted. Section-2 d of the Act defines '*Work-charged employee*' to mean an employee engaged without sanctioned post under work-charged establishment. Section 12 of the Act, 2001 then provides for the '*scheme for absorption of service*' and stipulates that the State Government may draw up a scheme for absorption of service of work-charged employees into regular Government service.

21. By giving effect to Section-12 of the Act 2001, the Government of Nagaland in the Department of Personnel & Administrative Reforms (Administrative Reforms Branch) has issued the Office Memorandum No. AR-3/Gen-67/2001(Pt) dated 22/09/2004 on the '*Policy and Scheme for Regularization of service of Work-Charged Employees*' and the Office Memorandum No. AR-3/GEN-201/2009 dated 17/03/2015 on the '*Scheme for Regularization and Absorption of Work-charged and Casual Employees and Revision of pay/wages*'. It is submitted by the learned Government Advocate that both the Office Memorandum are in-force to regulate regularization of service of work-charged employees.

22. The O.M dated 22/09/2004 was introduced by the Government when the petitioner was in the work-charged service of the department and the said O.M

continued to hold the field even on the date the petitioner retired from service on 31/03/2004. Therefore, the claim and the rights of the petitioner for regularization in service will have to be examined in the light of the O.M dated 22/09/2004. The subsequent O.M dated 17/03/2015 came into force only after the petitioner retired from service on 31/03/2014. This Court is therefore of the view that the O.M dated 17/03/2015 is not relevant for the present case.

23. The relevant criteria for regularization of the work-charged service as stipulated in the O.M dated 22/09/2004 inter-alia provides as follows;

“(i) Each department having work-charged employees shall maintain a list of work-charged employees in various categories in order of their length of service.

(ii) Regularisation of work-charged employees will be done against available regular vacancies.

(iii) 50% of all regular vacancies of similar nature arising in a year will be reserved for regularization of work-charged employees, and the remaining 50% will be filled up as per normal rules of recruitment.

(iv) Work-charged employees will have the right to be considered first 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. This means that the senior most work-charged employee in the relevant category will be regularized subject to his/her fitness for the vacant post.

.....”

24. A reading of Clause-(ii), (iii) & (iv) of the O.M dated 22/04/2009 reveals that regularization of work-charged employees can be done only against the 50% regular vacancies arising in a year which is reserved for work-charged employees and it is only the senior most work-charged employee in the relevant category who can be considered for regularization in service subject to his/her fitness for the vacant post. It is therefore clear that under the O.M dated 22/09/2004, putting in 31 years of service, by itself, is not the criteria for enabling a work-charged employee to be regularized in service but it must also be demonstrated that he/she is the senior most work-charged employee who is eligible and has a right to be considered for regularization to the regular vacant post reserved for the work-charged employee. In the present case, the petitioner has not been

able to show that he is the senior most work-charged employee in the relevant category who has been denied regularization in service against the vacant post meant for work-charged employees. Moreover, the Work-Charged Seniority and Retirement List dated March 2013, which has been issued by the department, showing the seniority of the petitioner at Sl. No. 602 cannot be ignored or lost sight of. This seniority position of the petitioner has also not been contested in the present writ petition. This Court, therefore, has no hesitation in holding that the petitioner is not the senior-most amongst work-charged employees in the relevant category and fails to fulfill the criteria for regularization in service in terms of the O.M dated 22/09/2004. It is further observed that although the petitioner was released from service on 31/03/2014 on attaining the age of superannuation, the petitioner had submitted the application to the department for regularization of service only on 26/04/2021 after a lapse of more than 6(six) years after his retirement and no reason has been given by the petitioner explaining the delay. It is therefore apparent that the petitioner has not only failed to explain the delay but has also been very casual in approaching the Court.

25. In the case of the *State of Nagaland & Others -versus- Nishevi Achumi*, reported in 2022 SCC Online SC 818, the Hon'ble Supreme Court in a similar case quashed and set aside the order passed by the Hon'ble Division Bench confirming the judgment & order passed by the learned Single Judge directing the appellant State to regularize the service of the deceased husband of the respondent one day earlier to his death and thereafter, to pay the family pension to the respondent. The Hon'ble Supreme Court in the said Nishevi Achumi (supra) held as follows;

"7. Having heard learned counsel for the State and considering the submissions made on behalf of the State and having gone through the judgment and order passed by the learned Single Judge confirmed by the Division Bench, we are of the firm opinion that the High Court has committed a grave error in directing the appellant to regularize the services of the deceased employee one day prior to his death.

8. 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 - original writ petitioner - 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 and 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 regularized as his turn had not come and he was much below in the seniority list.

9. Considering the aforesaid facts and circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.

10. In view of the above and for the reason stated above present appeal is allowed. The impugned judgment and order passed by the Division Bench of the High Court as well as the learned Single Judge is hereby quashed and set aside. Consequently, the original writ petition filed by respondent - wife herein stands dismissed. However, in the facts and circumstances of the case there shall be no order as to costs."

26. In a similar case recently decided in W.A No. 27/2022 (*State of Nagaland & Others -versus- Shri. Alemba*), vide judgment & order dated 08/06/2023, the Hon'ble Division Bench of this Court relying in the case of Nishevi Achumi (*supra*) had allowed the appeal filed by the State by setting aside the order passed by the learned Single Judge directing the State to regularize the service of the respondent/petitioner a day before the superannuation to allow pensionary benefits to the respondent/petitioner. The Hon'ble Division Bench in the said case has held as follows;

"11. The ratio laid down in the case of Smti. Magi H Desai (supra) as well as Nishevi Achumi (supra), in our opinion, squarely covers the present case. It is no doubt correct that the respondent has rendered more than 26 years of service as a work-charged employee and therefore, as a model employer, the State was duty bound to come up with a policy decisions and/or schemes for regularization of service of such work-charged employees. However, as would be evident from the facts alluded, the Government of Nagaland did come up with not only one but as many as two such schemes. Unfortunately, the respondent did not meet the requirements of either of the schemes. This is the

reason why his service was not regularized. Therefore, it cannot be said that the State has meted out a discriminatory treatment to the respondent by declining his request for regularization in service.

12. It is also to be noted herein that the respondent has never made a prayer for regularization of his service prior to his retirement. The representation was submitted only after he had retired from service and that too only for the purpose of receiving pension. The matter could have been considered from a different angle had the respondent made the requirement of the scheme and had approached this Court seeking regularization prior to his retirement. At this stage, consideration of the prayer made by the respondent may called for creation of a supernumerary post for regularization of his service which would not be permissible in the fact of this case. In the case of UOI & Ors. -versus- Ilmo Devi & Anr., reported in 2021 SCC Online SC 899, the Hon'ble Supreme Court has held that the High Court cannot direct the State to sanction and create posts for regularization of part-time employees. Framing of any scheme is not the function of the Court but is the sole prerogative of the Government. Even creations and/or sanction of post are also the sole prerogative of the Government and the High Court in exercise of the powers under Article 226 of the Constitution cannot issue mandamus to that effect."

27. In the **Secretary, State of Karnataka & Others -versus- Umadevi (3) & Others**, reported in **(2006) 4 SCC 1**, the Hon'ble Supreme Court has held that the High Court acting under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. It was also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In paragraph-45 of the said judgment, it was also held as follows;

"45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain--not at arm's length--since he might have been searching for some employment so as to eke

out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in [Article 14](#) of the Constitution of India.”

28. Furthermore, in the case of **State of Manipur & Another -versus- KSH. Moirangninthou Singh & Others**, reported in **(2007) 10 SCC 544**, the Hon'ble Supreme Court while dealing with a case, where the learned Single Judge of the High Court, had directed the State Government to regularize the service of the writ petitioners and to grant them all service benefits including pensionary benefits as are payable to Government employees holding civil post, and upheld by the Division Bench, held that in view of the Constitution Bench judgment in *Secy. State of Karnataka v. Umadevi (3)*, no direction can be given for regularization of service and as the Court does not have any power to direct regularization, it follows that it has no power to direct grant of benefits payable

to regular employees.

29. It is therefore clear that the High Court acting under Article 226 of the Constitution of India does not have the power to direct regularization and/or absorption in service unless the recruitment itself was made regularly and in terms of the constitutional scheme. In the present case, since the appointment of the petitioner as work-charged on fixed pay was not in accordance with the constitutional scheme, no direction can be issued to regularize the service of the petitioner with retrospective effect so as to enable the petitioner to claim pensionary benefits. To put it differently when the petitioner's service could not be regularized during the lifetime of the petitioner's work-charged service as he did not fulfill the conditions stipulated in the scheme for regularization, it would be equally impermissible to regularize the service of the petitioner after retirement only for entitling the petitioner to avail the pensionary benefits.

30. The petitioner has relied in *Talsibhai Dhanjibhai Patel (supra)* where the Hon'ble Supreme Court has upheld the decision of the High Court directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years of adhoc service and *Munshi Ram case (supra)* where the Hon'ble Supreme Court has held that Commission Vendors/bearers working in the Northern Railway are entitled to the same benefits which are held to be entitled to all the similarly situated Commission Vendors/bearers working under different zones/divisions on the ground of parity and on the ground that there cannot be different criteria/parameters with respect to similarly situated employees. The petitioner has further relied in the case of *KSH. Ibobal Singh (supra)* where the Hon'ble Division Bench has inter-alia held that if the contract appointment continues uninterruptedly till the age of superannuation, the character of the appointment automatically changes and the employee has to be treated under normal Government service rules entitling them to pensionary benefits. The facts of the present case is different from those cases relied upon by the petitioner. The present case deals with the issue as to whether the petitioner who is a work-charged employee fulfills the criteria to be regularized in service as per the scheme formulated by the Government

for regularization of work-charged employees, which is not so, in the cases relied by the petitioner. The cases relied by the petitioner, therefore in the considered opinion of this Court, is not relevant for deciding the present case.

31. Moreover, by referring to the affidavit-in-reply and the information furnished by the department under the RTI Act, 2005, the petitioner has submitted that similarly situated employees and even those junior to the petitioner has been regularized in service by giving effect to the scheme formulated by the Government and therefore, the action resorted to by the respondents in denying regularization to the petitioner is arbitrary and discriminatory. The petitioner in the present case has not impleaded nor brought on record any of those similarly circumstanced employees who has been regularized in service by giving effect to the O.M dated 22/09/2004. It will therefore not be appropriate for this Court to examine the case of those persons who are not present before this Court. In this connection, it is relevant to refer to the case of **Chandigarh Administration & Another -versus- Jagjit Singh & Another**, reported in **(1995) 1 SCC 745**, wherein the Hon'ble Supreme Court has held as follows;

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again

and again. The illegal/unwarranted action must be corrected, if it can be done according to law--indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law --- but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course---barring exceptional situations-- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

32. In the light of the discussions made above, this Court is of the view that the petitioner has not been able to make out the case for enabling this Court to issue directions to the State respondents to retrospectively regularize the service of the petitioner post-retirement.

33. Furthermore, having held that this Court under Article 226 of the Constitution of India does not have the power to direct regularization and/or absorption in service, unless the recruitment itself was made regularly and in

terms of the constitutional scheme and also having considered that the petitioner has failed to satisfy this Court that he is eligible to be considered for regularization in service as per the scheme formulated by the Government and further having considered that the present writ petition is filed only after about 6(six) years after the retirement of the petitioner, no direction can be issued at this stage to regularize the work-charged service of the petitioner. Having held so, this Court considers that, it will be futile to discuss the petitioner's claim for pension and pensionary benefits.

34. There is no merit in the writ petition and the same is accordingly dismissed. No cost.

Sd/-
JUDGE

Comparing Assistant