

GAHC020001492024



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

Case No. : WA/10/2024

SHRI RAKESH RANJAN
GRADUATE TEACHER
GHS PHOMCHING MON NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
NAGALAND
KOHIMA

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF SCHOOL EDUCATION NAGALAND
KOHIMA

4:THE PRINCIPAL DIRECTOR

DIRECTORATE OF SCHOOL EDUCATION

NAGALAND
KOHIMA

Advocate for the Petitioner : Taka Masa, Sr. Adv
Arenlong

Advocate for the Respondents : N. Angami, Sr. Govt. Advocate

::: B E F O R E:::

THE HON'BLE MR. JUSTICE NELSON SAILO

THE HON'BLE MR. JUSTICE BUDI HABUNG

Date of Hearing : 21.08.2024

Date of Judgment : 03.09.2024

JUDGMENT & ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. Taka Masa, learned Senior Counsel assisted by Mr. Arenlong, learned counsel for the appellant and Mr. N. Angami, learned State Counsel appearing for all the respondents. This is a Writ Appeal filed by the writ appellant who is also the writ petitioner against the Judgment & Order dated 01.03.2024 passed by the learned Single Judge in WP(C) No. 126(K)/2023 dismissing his writ petition. For the sake of convenience, the writ appellant shall be referred to as the petitioner hereafter.

[2.] The prayer of the petitioner in his writ petition is for setting aside the impugned Order dated 05.07.2010 issued by the Director, School Education in so far as he is concerned and to direct the respondent authorities to review and re-fix the date of his regularization and his seniority w.e.f 16.01.2004 with all consequential benefits. Additionally, in his affidavit-in-reply, the petitioner has prayed for the protection of the MACP benefit

granted to him and the same should also be accounted as one of his prayer and for which, reliance is placed on the case of *Sri-la Sri Subramania Desika Gnanasambanda Pandarasannidi Vs. State of Madras & Anr. AIR 1965 SC 1578.*

[3.] The case of the petitioner is that he was appointed as a Graduate Teacher in Government Middle School, Tanhai on adhoc basis in the Scale of Pay of Rs.775-25-950-30-1100-ER-35-1590/- per month plus an innerline compensatory allowance @ 25% of basic pay with all other allowances prescribed by the Government from time to time with effect from the date of joining upto 30.04.1993 vice Sh. N.T. Shitiri, who was transferred to Government High School, Chunlika vide Order dated 12.03.1993 issued by the Director of School Education, Government of Nagaland. As the petitioner before his appointment had passed B.Ed, he along with two (2) others were granted two (2) increments with effect from the declaration of the result i.e., 12.12.1991 in case of the petitioner vide order dated 18.06.1993. Thereafter, the petitioner having completed 10 years of continuous service, he along with eight (8) other teachers were granted Senior Grade Scale of Pay vide Order dated 24.03.2008 and the effective date being 12.08.2003 in case of the petitioner.

[4.] The Government of Nagaland in the Personnel & Administrative

Reforms (Administrative Reforms Branch) on 18.02.2004 issued a Memorandum on the subject 'Regulation of Contract/Adhoc Appointments'. The Memorandum was issued pursuant to the recommendation made by the constituted committee to examine the issues relating to large number of adhoc/contract employees appointed in various State Government Offices and which was approved by the Cabinet on 16.01.2004. The recommendation comprised of two (2) categories. Category-I pertains to adhoc/contract appointments made against sanctioned post and Category-II in respect of casual/fixed pay appointments made without any sanctioned post.

[5.] Pursuant to the Office Memorandum, the Deputy Inspector of Schools, Mon submitted the original documents in respect of adhoc graduate teachers under its establishment who have completed five (5) years and above of service in the prescribed proforma for regularization of their service. The name of the petitioner appeared at Sl. No. 11 in the proforma showing his date of joining the school as 14.03.1993. Thereafter, vide Order dated 30.11.2006, the services of 183 teachers named in Annexure 'A' of the Order who had completed ten (10) years of continuous service as on 16.01.2004 were regularized w.e.f the date of joining into service subject to the conditions stipulated in the said Order. Again vide Order dated 14.05.2007,

the effective date of regularization was fixed as 26.10.2006. Subsequently, vide Corrigendum dated 12.03.2009, the effective date of regularization was finally corrected as 16.01.2004.

[6.] That in respect of the petitioner, his services came to be regularized along with 17 other teachers vide Order dated 05.07.2010 with the effective date of regularization being the date on which the Cabinet gave its approval i.e., 18.05.2010. The services of the petitioner along with 20 other teachers was then confirmed w.e.f 05.07.2012 vide Order dated 30.11.2018 where his name appeared at Sl. No. 5 in the list.

[7.] The respondents vide Order dated 10.03.2012 on the recommendation of the Board for Service Regulation also regularized the services of 39 Graduate Teachers and one (1) Primary Teacher who had completed five (5) years of continuous service as on 16.01.2004 w.e.f 16.01.2004. The petitioner upon completion of ten (10) years of service as on 16.01.2014 was granted financial up-gradation under the MACP/ACP Scheme vide Order dated 16.09.2014 and his name appeared at Sl. No. 96 in the said Order.

[8.] The Principal Director, Directorate of School Education, Nagaland, Kohima (respondent No. 4) vide Notification dated 09.11.2022 directed all eligible Graduate Teachers to appear physically for verification of documents for fixation of seniority. As per the seniority list that was drawn, the

petitioner's name appeared at Sl. No. 970 and the date of his regularization was shown as 18.05.2010. According to the petitioner, in respect of Graduate Teachers who had completed ten (10) years or five (5) years of service as on 16.01.2004, the effective date of their regularization for fixation of seniority was shown as 16.01.2004.

[9.] Aggrieved with his seniority position, the petitioner submitted his representation to the Director of School Education on 15.09.2010 and to the Principal Director of School Education on 11.10.2022 and 28.03.2023. According to the petitioner, the respondent authorities upon finally realizing the mistake committed, recommended the correction of the effective date of his seniority to the State Government vide letter dated 20.04.2023. However, as no action was taken, the petitioner filed his writ petition.

[10.] According to the petitioner, the State Government vide Notifications dated 18.01.2023 and 05.04.2023 promoted many of his juniors to the post of Assistant Headmasters/JEO. Since as many as 183 Graduate Teachers who had completed ten (10) years of continuous service as on 16.01.2004 were given the benefit of fixing their seniority with effect from 16.01.2004, he too should be given similar benefit with all consequential benefits as well.

[11.] According to the respondents in their counter affidavit, the petitioner was appointed as a teacher on adhoc basis on account of the

transfer of one Sh. N.T. Shitiri, Assistant Teacher to Government High School, Chunlika. The appointment of the petitioner was not in a sanctioned post or through an open advertisement but only as a stop gap arrangement. The respondents further contended that regularization of the services of adhoc/contract employees who have served more than ten (10) years was only for those who were appointed against sanctioned vacant post. The petitioner having not fulfilled the criteria as stipulated in the Office Memorandum dated 18.02.2004, he cannot claim parity with those 183 regularized teachers. The respondents only after ascertaining the vacancy position due to promotion of some regular graduate teachers w.e.f 16.01.2004 magnanimously recommended the petitioner against a sanctioned vacancy and it was only then that his service could be regularized vide order dated 05.07.2010 w.e.f the date the Cabinet gave its approval i.e., 18.12.2010. Further, the petitioner having accepted the Order dated 05.07.2010 without any objection cannot now at this belated stage claim for his regularization from 16.01.2004. Besides, the petitioner having failed to implead the teachers whom he claims to be his juniors but were promoted cannot be given any relief. Therefore, his writ petition should be dismissed.

[12.] The learned Single Judge upon hearing the parties came to the conclusion that the appointment of the petitioner on adhoc basis was not

against a vacant sanctioned post and therefore, his case did not fall within the ambit of the employees covered by Category-I of the Office Memorandum dated 18.02.2004. This apart, the learned Single Judge held that the writ petition suffers from delay and laches since the petitioner failed to raise any grievance pursuant to the issuance of the order dated 15.09.2010 and further, having failed to implead those who are likely to be affected if his seniority position is to be re-fixed also found the writ petition to be not maintainable for non-joinder of necessary parties. Accordingly, the writ petition was dismissed both on merit and on delay/laches.

[13.] Mr. Taka Masa, learned Senior Counsel submits that as per the Office Memorandum dated 18.02.2024, all that is provided is that there should be a sanctioned post. He submits that while other similarly situated persons numbering 183 graduate teachers have been given service regularization w.e.f 16.01.2004, the petitioner has been regularized only w.e.f 18.05.2010. Therefore, the respondents have adopted different yardstick for similarly situated person without any justification. As such, the petitioner should also be regularized w.e.f 16.01.2004. He further submits that since third parties rights cannot be said to be affected, there is no delay in the claim of the petitioner to be placed along with similarly situated persons. He also submits that for the same reason, the impleadment of other persons is not necessary.

He submits that those likely to be affected at best will be proper parties but not necessary parties as the petitioner is not claiming any relief from any particular individual. The learned Senior counsel also submits that although a specific prayer is not made in the writ petition for protection of the financial up-gradation already given to the petitioner but the same has clearly been mentioned in the affidavit-in-reply of the petitioner. The same can be very well be acted upon by this Court in view of the Apex Court decision in *Sri-la Sri Subramania Desika Gnanasambanda Pandarasannidi (Supra)*. He thus submits that the impugned Judgment & Order of the learned Single Judge may be set aside and the petitioner be granted the relief as sought for. The learned Senior Counsel in support of his submissions has further relied upon the following authorities:-

(i) The General Manager, South Central Railway, Secunderabad & Anr. Vs. A.V.R. Siddhantti & Ors. (1974) 4 SCC 335.

(ii) A. Janardhana Vs. Union of India & Ors. (1983) 3 SCC 601.

(iii) State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334.

(iv) Royal Medical Trust & Anr. Vs. Union of India & Anr. (2017) 16 SCC 605.

(v) Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh & Anr.

(2021) 1 SCC 804.

(vi) Basanti Prasad Vs. Chairman, Bihar School Examination Board & Ors. (2009) 6 SCC 791.

[14.] Mr. N. Angami, learned State Counsel on the other hand submits that the prayer made by the petitioner in writ petition is for regularization of his service and for re-fixation of his seniority. He submits that the learned Single Judge has considered and decided the issue raised by the petitioner and therefore, the contention of the petitioner that the learned Single Judge has failed to properly consider the issues raised in the writ petition is misconceived and without any basis. The learned State Counsel further submits that according to the petitioner, those who are junior to him in service have been regularized and promoted but the fact remains that the petitioner did not ventilate his grievance at the relevant time. He submits that for reasons best known to the petitioner, he did not take any steps to redress his grievance and he chose to remain quite. As such, no relief can be granted to him at this stage. The learned State Counsel further submits that the so called representation of the petitioner dated 15.09.2010 cannot be accepted as a representation against the order dated 05.07.2010 which is impugned by the petitioner since it lacks the basic statements and grounds to constitute a representation.

[15.] Mr. N. Angami the learned State Counsel submits that the learned Single Judge rightly held that transfer does not result in the termination of the lien to the post and that the lien of the government employee in service law is the right of a Government employee to hold a permanent post substantively to which he has been permanently appointed. It therefore can be clearly seen that the appointment of the petitioner was not against a substantive post and that his service was regularized at a subsequent stage only when he could be adjusted against a substantive post. He therefore submits that under the facts and circumstance, learned Single Judge rightly dismissed the writ petition through the impugned Judgment and Order and the same may not be interfered with by this Court.

[16.] Mr. Taka Masa, learned Senior Counsel in reply submits that the learned Single Judge failed to take into consideration the fact that the Principal Director, School Education Department, Government of Nagaland vide his letter dated 20.04.2023 had recommended for correction of effective date of seniority of the petitioner in view of the delay in his regularization along with other similarly situated persons on 26.10.2006. The claim of the petitioner was not rejected on the ground of delay but his case was forwarded to the Government. He therefore submits that the writ petition ought not to have been rejected on the ground of delay by the learned

Single Judge and the same may be interfered with by this Court by setting aside the impugned Judgment & Order while directing the respondents to grant the petitioner regularization of his service from the date as was given to similarly situated persons.

[17.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. The learned Single Judge in deciding the writ petition had framed three (3) issues for consideration –

(i) whether the petitioner is entitled to be considered for regularization in Category-I(a)(i) of the Office Memorandum dated 18.02.2004

(ii) whether in terms of the order of regularization dated 05.07.2010, the inter-se-seniority of the petitioner was required to be fixed as on 12.03.1993 i.e., the date of which he was appointed on adhoc basis and (iii) whether the writ petition suffers from any delay and laches.

[18.] In respect of the first issue, according to the learned Single Judge, transfer does not result in termination of lien in the parent cadre. It is only once an employee undergoes a transfer by way of recruitment to different cadre or to a different service, the employee loses lien in the parent cadre/service. In that process, there is an induction to a new cadre. Therefore, recruitment by transfer terminates the lien of the employee in the

parent cadre/service. On the other hand, transfer simpliciter to a similar post in the same cadre results only in the change of place of employment and therefore there is no termination of the lien.

[19.] It may be seen that in the present case, one Sh. N.T. Shitiri, Assistant Teacher was transferred to Government High School, Chunlika and because of the transfer, the petitioner was appointed on adhoc basis with Scale of Pay vide order dated 12.03.1993. The transferred person apparently has been transferred in the same cadre of service as he was only transferred to another Government High School. Therefore, his lien is to the teaching cadre and not to a particular post which he was holding before his transfer. The learned Single Judge had also observed that transfer does not result in termination of lien in the parent cadre. Lien of the transferee is to the teaching cadre and not to the post itself. Therefore against the post vacated by the transferee, the petitioner was appointed though on adhoc basis but with scale of pay. If his appointment was not against a sanctioned post, there would have been no salary head from where he could draw his salary.

[20.] It may also be seen from the petitioner's appointment order dated 12.03.1993 that a copy of the same was given to the Deputy Inspector of Schools, Mon for information and necessary action with a request to conduct the interview by observing all codal formalities for regular recruitment and to

submit a report. The appointment of the petitioner was to take effect from the date of joining and upto 30.04.1993. There are however no materials on record to show the extension of the appointment of the petitioner but the fact remains that the petitioner continued with his appointment and he having acquired B.Ed before his appointment, he was granted two (2) increments w.e.f the date of his B.Ed result was declared vide Order dated 18.06.1993. Thereafter, upon completion of ten (10) years of continuous service, he was granted Senior Grade scale of pay w.e.f 12.08.2004 by reckoning the date of his appointment i.e., 12.03.1993. Not only this but vide Order dated 16.09.2014, by taking 12.03.1993 as the date of his entry into service, 16.01.2004 as the date of his promotion to the present post and 16.01.2014 as the date of his completion of ten (10) years of service, he was given the benefit of financial upgradation under the MACP/ACP Scheme.

[21.] It can therefore be seen that the petitioner despite not being included amongst the 183 teachers for regularization of service issued vide Order dated 30.11.2006, the petitioner was given the benefit of Senior Grade scale of pay and financial up-gradation under the MACP/ACP Scheme. As per Order dated 30.11.2006, the date of regularization was initially made effective from the date of the teachers joining in their service but thereafter, 26.10.2006 was taken as the effective and finally, 16.01.2004 was fixed as the effective

date vide Corrigendum dated 12.03.2009. As can be seen, the reason why 16.01.2004 is taken as the effective date is because approval was given by the Cabinet for regularization of contract/adhoc appointments on this date.

[22.] It may be seen that vide Memorandum dated 18.02.2004, the Government of Nagaland in the Personnel & Administrative Reforms Department (Administrative Reforms Branch) had circulated the modalities for regularization of contract/adhoc appointments. Category-I deals with adhoc/contract appointments made against sanctioned post while Category-II deals with casual/fixed pay appointments made without sanctioned post. Against the claim of the petitioner for regularization along with 183 teachers who were regularized vide Office Memorandum dated 30.11.2006, the learned Single Judge held that since the transferee held lien over the post vacated by him, the petitioner cannot be said to have been appointed against a vacant sanctioned post. We have already observed that the transferee has only been transferred to a cadre post and that he holds lien to the teaching cadre and not to the particular post which he was holding in the school before he was transferred. It would therefore mean that the petitioner was appointed against a sanctioned post vacated by the transferee. If such is the position, the petitioner is only covered by Category-I of the Office Memorandum dated 18.02.2004 and for which, he is entitled to count his

service with effect from 16.01.2004 as similar to the other 183 graduate teachers regularized vide the order dated 30.11.2006.

[23.] In respect of the second issue, if the date of regularization of the petitioner is 16.01.2004, his service would be counted from that date and amongst those whose service has been regularized on 16.01.2004, seniority will have to be reckoned from their initial date of joining the post before regularization. Further, from the order dated 05.07.2010 by which the petitioner and 17 others were regularized in service, it may be seen that the same has been done by taking into account the decision of the Cabinet dated 16.01.2004 and the ten (10) years of service of the teachers have been reckoned from 16.01.2004 for the purpose of regularization. Therefore, there is no justification in adopting a separate yardstick for those who had completed ten (10) years of service as on 16.01.2004 but regularized subsequent to the passing of the order dated 30.11.2006.

[24.] Coming to the third issue, it may be seen that according to the learned Single Judge, the writ petition suffers from delay and laches and therefore, it was not maintainable on this ground as well. From the materials available on records, it is seen that the petitioner initially submitted his representation on 15.09.2010 before the Director of School Education. Thereafter, he submitted his second representation before the Principal

Director of School Education on 11.10.2022 and lastly, on 28.03.2023. The last representation of the petitioner was forwarded by the Principal Director of School Education to the Commissioner & Secretary to the Govt. of Nagaland, Department of School Education and SCERT on 20.04.2023 highlighting the grievance of the petitioner and since he had already completed ten (10) years for service as on 16.01.2004, there was delay in his regularization and therefore his effective date of seniority be corrected. The said representation of the petitioner forwarded by the Principal Director of School Education was responded back during the pendency of the writ petitioner through Communication dated 06.10.2023 of the Under Secretary to the Government of Nagaland, School Education Department to the Principal Director of the same Department stating that Government's standing rules were followed in the regularization and preparation of seniority which is applicable to all employees under the Directorate of School Education. The sum and substance of the said communication is that the representation of the petitioner was rejected.

[25.] In the case of *A. Janardhana* (supra), the Apex Court has held that the appellant did not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention was that criteria adopted by the Union

Government in drawing-up of the impugned seniority list are invalid and illegal and the relief was claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus as the relief claimed was against the Union Government and not against any particular individual, the Apex Court considered it unnecessary to have all the direct recruits impleaded as respondents.

[26.] In the present case as well, the claim made by the petitioner is for giving him a similar benefit like those who are similarly situated. Although his particulars were furnished at the relevant time for consideration but he was left out. Therefore, under the given facts and circumstances, we are of the considered view that the petitioner should not be left out and should also be given the benefit of regularization in service with effect from 16.01.2004 and for appropriate fixation of his seniority. We therefore find merit in the writ appeal and accordingly, the impugned Judgment & Order of the learned Single Judge is hereby set aside.

[27.] Having come to the above conclusion, the other authorities relied upon by the petitioner will not be required to be referred to. Since the petitioner is found to be entitled to be regularized in service with effect from 16.01.2004, he will be entitled to receive the initial up-gradation as per the

MACP/ACP Scheme and therefore, there will be no question of making any correction in his service book in this regard, much less a recovery from him. In the result, the petitioner shall be deemed to be regularized in service with effect from 16.01.2004 in terms of the Office Memorandum dated 18.02.2004. The writ appeal accordingly stands disposed of as allowed.

JUDGE

JUDGE

Comparing Assistant