

GAHC020001612023



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

Case No. : WP(C)/70/2023

DR. VIJOHO SAKHRIE AND 8 ORS
MEDICAL OFFICER(DOCTOR),
PRIMARY HEALTH CENTRE, JAKHAMA

2: DR. HOLIBA ANAR

MEDICAL OFFICER(DOCTOR
DISTRICT HOSPITAL KIPHIRE

3: DR. RUOKUOZOTUO MEZHU

MEDICAL OFFICER(DOCTOR
DISTRICT HOSPITAL PHEK

4: DR. NATALU SWURO

MEDICAL OFFICER(DOCTOR
PRIMARY HEALTH CENTRE
KHUZA

5: DR. RUKUTO TETSEO

MEDICAL OFFICER(DOCTOR
PRIMARY HEALTH CENTRE
PEREN

6: DR. ROSEMARY SEMA

MEDICAL OFFICER(DOCTOR

COMMUNITY HEALTH CENTRE
NUILAND

7: DR. MHAJAN KIKON
MEDICAL OFFICER(DOCTOR

PRIMARY HEALTH CENTRE
ENGLAN

8: DR. SUNGTIKUMBA I. IMCHEN

MEDICAL OFFICER(DOCTOR

PARAMEDICAL TRAINING INSTITUTE
KOHIMA

9: DR. KEZHALETUO KIRE

MEDICAL OFFICER(DOCTOR

PARAMEDICAL TRAINING INSTITUTE
KOHIM

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY,
NAGALAND, KOHIMA, PIN CODE - 797001

2:THE COMMISSIONER AND SECRETARY

PERSONNEL AND ADMINSTRATIVE REFORM (P AND AR)
NAGALAND
KOHIMA
PIN CODE - 797001

3:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

PIN CODE - 797001

4:THE PRINCIPAL DIRECTOR

DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND

KOHIMA

PIN CODE - 79700

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : GOVT ADV NL

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

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 06.02.2024

Date of Judgment : 13.02.2024

JUDGMENT & ORDER

Heard Mr. C.T. Jamir, learned Senior Counsel assisted by Mr. I. Imchen, learned counsel for the petitioners and Mr. Moa Imchen, learned Senior Govt. Counsel for all the respondents.

[2.] Claiming to have a common cause of action, the nine (9) writ petitioners have joined hands in filing the instant writ petition. The petitioners were appointed as Medical Officers on contract basis for a period of one (1) year or till the post is filled up through Nagaland Public Service Commission (NPSC). Their services were thereafter extended from time to time and they are continuing as such till date.

[3.] After serving for more than four (4) years on contract basis, the Health & Family Welfare Department vide Notification dated 04.09.2017 constituted

a committee to conduct a suitability test for regularization of contract services of 11 contract Doctors under the Health & Family Welfare Department, which included the present writ petitioners as well. Suitability test was conducted on 06.09.2017 and all those who participated for the test were declared to be qualified. The Department of Health & Family Welfare then submitted the Meeting Minutes dated 08.09.2017 along with the score sheet obtained by the contract Doctors to the Personnel & Administrative Reforms Department for onward submission to the Screening Committee for further necessary action. Thereafter, the Screening Committee which held its meeting on 13.10.2017 recommended regularization of the contract Doctors and for necessary follow up action vide Memorandum dated 17.10.2017.

[4.] According to the petitioners, they qualified in the suitability test conducted as per the Office Memorandum dated 04.08.2008 and on being recommended by the Screening Committee, the matter was submitted to the Cabinet for approval. The petitioners contend that the process of their regularization proceeded on the basis of the Office Memorandums dated 04.08.2008 and 11.08.2016, which provides for regularization of those contract employees who have completed three (3) years of continuous service and that the petitioners have all completed more than three (3) years of contract service. However, despite the above position since the petitioners

were not regularized in service, they approached this Court by filing WP(C) No. 172(K)/2018 with a prayer for a direction to dispose of their representation for regularization. The writ petition was disposed of vide Order dated 04.09.2018 with a direction to the respondent authorities to consider and dispose of their representation in consonance with the Office Memorandum dated 04.08.2008 within a time frame of three (3) months from the date of receipt of a certified copy of the Order.

[5.] However, while the case of the petitioners was pending for regularization, the unprecedented Covid-19 pandemic struck the world including the State of Nagaland and the Govt. of Nagaland was compelled to make emergency policy decision to deal with the pandemic situation in the State especially with regard to the Health & Family Welfare Department. Accordingly, the Cabinet took a decision to appoint fresh Doctors and Nurses vide its decision dated 11.06.2020 while also deciding to create new post, recruitment and condonation of age as one (1) time relaxation in view of the prevailing pandemic situation. The Cabinet also decided to regularize the services of 19 serving contract Medical Officers under Serial No. 7 of Agenda No. 1. It also decided to regularize 27 existing Medical Officers who were engaged by the Health & Family Welfare Department for a period of one (1) year under Serial No. 8 of Agenda No. 1. However, an agitation was staged

by the National Health Mission (NHM) against the regularization of the 27 Doctors which persuaded the Cabinet to revoke its decision to regularize the services of the existing contractual employees as well as the new appointees in its meeting held on 23.06.2020. The decision was conveyed to the Health & Family Welfare Department by the Cabinet Secretariat (Cabinet Cell) through Office Memorandum dated 25.06.2020. Being aggrieved with the said decision, the petitioners are before this Court.

[6.] Mr. C.T. Jamir, learned Senior Counsel submits that the complaint or agitation by the NHM was not against the proposed regularization of the contract services of the petitioners but against the proposed regularization of 27 Doctors who were engaged by the Department for a period of one (1) year only. However, without making any distinction, the Cabinet decided to revoke its decision to regularize the services of the existing contract employees. As such, the decision of the Cabinet conveyed through the Memorandum dated 25.06.2020 should be interfered with by this Court by directing the respondents to regularize the services of the petitioners.

[7.] The learned Senior Counsel further submits that the respondents have taken the stand that regularization of contract service cannot be done as provided by the Memorandum dated 04.08.2008 and also Office Memorandum dated 11.08.2016 in view of the Judgment & Order rendered

by a Coordinate Bench of this Court in WP(C) No. 145(K)/2017, which was upheld by the Writ Appellate Court vide Order dated 07.02.2019 in W.A No. 16(K)/2018 but the same cannot be accepted in view of the fact that the learned Single Judge did not decide the writ petition on merit and that a direction was made only to the extent that State respondents should not regularize any person if he or she has complete only three (3) years of continuous service on contract/adhoc basis in terms of the Office Memorandum dated 11.08.2016 and Office Memorandum dated 04.08.2008. The learned Senior Counsel submits that the present petitioners have all completed more than ten (10) years of service on contract basis and they are not debarred from being considered for regularization. The learned Senior Counsel further submits that even in the case of *State of Karnataka & Ors. -Vs- Umadevi (3) (2006) 4 SCC 1*, an exception was carved out under paragraph No. 53. Therefore, there is no impediment in regularization of the services of the petitioners by applying the two (2) Office Memorandums. In support of his submission, the learned Senior Counsel relies upon the case of *State of Jammu & Kashmir & Ors. -Vs- District Bar Association, Bandipora (2017) 3 SCC 410*.

[8.] The learned Senior Counsel further submits that the State Cabinet having taken a concise decision for appointment of Doctors and Nurses

under Health & Family Welfare Department in view of the Covid-19 pandemic as a one (1) time measure while also taking into account the High Court's Judgment dated 03.08.2018 and Order dated 07.02.2019 cannot revoke its decision in some case and implement the rest of its decision. The same will only amount to the State approbating and reprobating which otherwise is not permissible in law. In support of his submission, the learned Senior Counsel relies upon the case of *Shyam Telelink Limited Now Sistema Shyam Teleservices Limited -Vs- Union of India (2010) 10 SCC 165*.

[9.] Mr. Moa Imchen, learned Senior Govt. Advocate by referring to the affidavit-in-opposition filed by the respondents on 08.08.2023 submits that the services of the petitioners are only contractual in nature and as such, their services cannot be regularized until they are selected by the NPSC as prescribed under Schedule-II of the Nagaland Health Services Rules, 2006 (Rules of 2006). He further submits that the step taken to conduct suitability test vide Notification dated 04.09.2017 was only in violation of the provisions of the Rules of 2006, which otherwise mandates that recruitment to the post of Medical Officer is to be done 100% by the NPSC.

[10.] The learned State Counsel further submits that the Office Memorandums dated 04.08.2008 and 11.08.2016 by which the petitioners claim regularization of their services was put to challenge in WP(C) No.

145(K)/2007 by Against Corruption and Unabated Taxation (ACAUT) and the writ petition was disposed of vide Judgment & Order dated 03.08.2018 wherein, this Court had clearly held in paragraph Nos. 21 and 24 that the two (2) Office Memorandums were in violation of the law laid down by the Apex Court in the case of *State of Karnataka -Vs- Umadevi* (3) (supra) and therefore, the State should not regularize any person if he has completed only three (3) years of service on contract/adhoc basis in terms of the two (2) Office Memorandums. The said decision was put to challenge in W.A No. 16(K)/2018 and the decision of the learned Single Judge was upheld. Therefore, under the circumstances, the petitioners cannot claim regularization dehors the constitutional scheme and the Rules of 2006. He therefore submits that the writ petition should be dismissed.

[11.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record, including the authorities cited by the parties. As stated by the petitioners, they have been appointed on contract basis against sanctioned post for a period of one (1) year or till the post is filled up through NPSC. It is an admitted position in law that the post of Medical Doctor is to be filled up through the NPSC in terms of the Rules of 2006. The State respondents had come up with Office Memorandums dated 04.08.2008 and 11.08.2016 providing that in

supersession of the earlier department Memorandums, the Govt. of Nagaland was pleased to order that contract employees may be regularized by the department who have completed more than three (3) years of continuous service on contract/adhoc basis against sanctioned post subject to the further conditions as laid down in the said Office Memorandum. Further, as per the Office Memorandum dated 11.08.2016, the State Government in the Personnel & Administrative Reforms Department keeping in view the ban of appointment on contract basis and the need to clear earlier pending cases for earlier regularization, decided that the cases of those employees appointed on contract basis prior to the Notification dated 06.06.2016 shall be taken up for regularization on completion of three (3) years of continuous service on contract/adhoc basis in terms of the earlier Office Memorandum dated 04.08.2008.

[12.] The learned Senior Counsel for the petitioners has referred to and relied upon the case of *State of Karnataka -Vs- Umadevi (3)* (supra). Paragraph No. 53 of the said Judgment may be reproduced below for ready perusal:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in [S.V. Narayanappa](#) [AIR 1967 SC 1071], [R.N. Nanjundappa](#) [(1972) 1 SCC 409],

and B.N. Nagarajan [(1979) 4 SCC 507], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

[13.] From the above abstract, it may be seen that according to the Apex

Court, the services of irregular appointed employees who have worked for more than 10 years or more in duly sanctioned posts but not under cover of Orders of Courts or of Tribunals may be considered for regularization and the process of which should be set in motion within a period of six (6) months from the date of the Judgment i.e., 10.04.2006.

[14.] The Apex Court subsequently in *State of Karnataka & Ors. -Vs- M.L. Kesari & Ors. (2010) 9 SCC 247* at paragraph No. 11 of the said judgment held as follows:

“11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision of Umadevi (3)] without the protection of any interim

order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3) as a one-time measure.”

[15.] From the above abstract, it may be seen that the Apex Court reiterated that the true effect of the direction in *Umadevi (3)* (supra) is that all persons who have completed more than 10 years as on 10.04.2006 without the protection of interim order of any Court or Tribunal, in vacant post, possessing the requisite qualification are entitled for regularization. The fact that the employer has not undertaken such exercise of regularization within six (6) months of the decision of *Umadevi (3)* (supra) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the direction in *Umadevi (3)* (supra) as one (1) time measure.

[16.] In the present case, both the Office Memorandums dated 04.08.2008 and 11.08.2016 provides that the contract employees may be regularized by the Department who have completed more than three (3) years of

continuous service on contract/adhoc basis against sanctioned post only. The two (2) Notifications were put to challenge in WP(C) No. 145(K)/2017 and a coordinate Bench of this Court vide Judgment & Order dated 03.08.2018 although did not decide the case on merit but found the two (2) Office Memorandums to be in violation of *Umadevi (3)* (supra) in so far as consideration of employees who have completed three (3) years of continuous service on contract/adhoc basis. Therefore, this Court directed that the State respondents should not regularize any person if he has completed only three (3) years of continuous service on contract/adhoc basis in terms of the said Office Memorandums, having regard to the decision rendered in *Umadevi (3)* (supra).

[17.] The petitioners in the instant case as can be seen from paragraph No. 3 of the writ petition were either appointed on 17.05.2012 or 18.05.2013 and by now have completed more than 10 years of service on contract basis. Therefore, it is their case that having rendered their service on contract basis against sanctioned post, they are eligible to be considered for regularization as was initially decided by the Cabinet in its meeting held on 11.06.2020. It may however be noticed that the petitioners after having served for more than five (5) years submitted their representation on 21.08.2018 before the Commissioner & Secretary to the Govt. of Nagaland, Department of Health &

Family Welfare praying for their regularization in services in terms of the process that had been initiated prior to the interim order passed on 28.07.2017 in I.A(C) No. 78(K)/2017 arising from WP(C) No. 145(K)/2017 wherein, the operation of the two (2) Office Memorandums dated 04.08.2008 and 11.08.2016 were stayed. The representation of the petitioners having not been considered, the petitioners filed WP(C) No. 172(K)/2018. The said writ petition was disposed of vide Order dated 14.09.2018 and the operative portion of the Order is reproduced hereunder for ready perusal:-

*“After hearing the learned counsel for the parties and on consideration of the materials available on record, this writ petition is disposed of at the motion stage directing the Commissioner & Secretary to the Government of Nagaland, Department of Health & Family Welfare, Nagaland Kohima/respondent No. 2 to consider the representation dated 21/8/2018 made by the petitioners and disposed of the same by a speaking order in consonance with the O.M. dated 4/8/2008. Let such exercise be completed within a period of 3 months from the date of receipt of a certified copy of this order by the respondent No. 2. **Till the consideration is made by the respondents, the position of the petitioners should not be disturbed.***

With the above observations and direction, this writ petition is disposed of."

[18.] From the above abstract, it may be seen that this Court had directed the respondent authority concerned to consider the representation of the petitioners dated 21.08.2018 in consonance of the Office Memorandum dated 04.08.2008 within a time frame of three (3) months from the date of receipt of a certified copy of the Order. Till such consideration was made, the respondents were directed not to disturb the position of the petitioners. The petitioners were admittedly appointed initially for a period of one (1) year on contract basis or till such time the NPSC recruitment was made, whichever was earlier. Their appointments were extended from time to time and also, they were protected by the Order of the Court as can be seen from the **Order dated 14.09.2018** passed in **WP(C) No. 172(K)/2018**. Their last extension was issued vide Notification dated 05.04.2023 for a period of one (1) year although it does not indicate that the extension is as per the direction of the Court but the fact remains that the petitioners have been protected by the Order of the Court dated 14.09.2018 as already stated earlier. Therefore, under the given facts and circumstances and having regard to the law laid down in *Umadevi (3)* (supra) and in *M.L. Kesari & Ors.* (supra), the petitioners in the considered view of this Court, cannot be

granted any relief as prayed for.

[19.] The case of *Shyam Telelink Limited* (supra) and *State of Jammu & Kashmir & Ors.* (supra) under the given facts circumstances of the case are found to be not applicable in view of what has been stated herein above.

[20.] In the result, the writ petition is found to be without any merit and the same is dismissed. No cost.

Sd/-
JUDGE

Comparing Assistant