

GAHC020002562024



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

Case No. : WP(C)/84/2024

SHRI VIMBAL
S/O ZHOHOL
R/O VISWEMA VILLAGE
KOHIMA NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE CHIEF SECRETARY
GOVT. OF NAGALAND
NAGALAND KOHIMA
2:THE COMMISSIONER AND SECRETARY
P AND AR DEPT
NAGALAND KOHIMA

3:THE COMMISSIONER
NAGALAND KOHIMA

4:THE EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONER (CAWD)
NAGALAND KOHIMA

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 30-07-2024

Heard Mr. M. Solo, learned counsel for the petitioner. I have also heard Ms. Bichano Kithan, learned Government Advocate for the State respondents.

2. The petitioner filed this writ petition under Article 226 of the Constitution of India praying for regularization of his service as Work-Charged Jugali by converting his post into a regular one in terms of the OM No. AR-3/GEN-201/2009(PT) dated 17.03.2015, issued by the Government of Nagaland.

3. The case of the petitioner is that he was appointed as Work-Charged Jugali under the establishment of the Executive Engineer, (CAWD), Commissioner Office, Kohima, Nagaland in the scale of pay 375-7-445-9-490-EE-10-10-590/- per month by office order No. CNW-8/45/90-91 dated 20.03.1992, issued by the Executive Engineer, (CAWD), Commissioner Office, Kohima, Nagaland.

4. Thereafter, the service of the petitioner along with 66 others were extended for a period of 7 months vide order dated 12.05.1999. Thereafter, the service of the petitioner has been extended from time to time and since then, the petitioner has been rendering his service with utmost sincerity and dedication for more than 30 years. However, the service of the petitioner has not yet been regularized.

5. It is submitted that, the Government of Nagaland, Department of Personnel and Administrative Reforms (Administrative Reforms Branch), Nagaland, Kohima formulated a policy vide OM No. AR-3/Gen-67/2001(PT) dated 22.09.2004 under the subject **"Policy and schemes for regularization of service of work-charged Employees"**, the relevant part of the said memorandum is reproduced herein below:

- (i) *"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 retirement.*
- (ii) *Work charged employees will have the right to be considered first for regularization against 50% of all the future vacancies of similar nature in the Department for which they possess the requisite qualification. Such regularization will consider 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."*

6. It is further submitted that in terms of the said Office Memorandum dated 22.09.2004, the petitioner is entitled to be considered for regularization given the fact that there were several vacancies which arose from time to time. However, the petitioner's case has not been considered in terms of the aforesaid Office Memorandum till date. The further case of the petitioner is that while the above mentioned Office Memorandum dated 22.09.2004 is still in operation, the Government of Nagaland has introduced another scheme for regularization and absorption of Work-Charged and Casual Employees and revision of their pay and wages vide Office Memorandum No. AR-3/GEN/201/2009 (PT) dated 17.03.2015. The said scheme amongst others provides the following:

1. "Regularization in service:

- (i) *All existing work-charged and casual employees of various Departments who are enjoying scale pay and who have completed 30 (thirty) years or more continuous service as on 01.01.2015 will be regularized by conversion of their posts into regular ones personal to them and subject to fulfilment of conditions as indicated below:*
- (a) *The incumbent concerned and his/her service rendered as work-charged/casual employee have been duly verified and found genuine by the District Level Verification Committee constituted by the Government.*
- (ii) *In respect of those work-charged and casual employees. In scale pay and who have completed or will complete 30 (thirty) years of continuous service after 01.01.2015, their cases for regularization will be taken up subsequently in two batches as on 1st July and 1st January every year. The procedures and terms and conditions will be the same as laid down in this O.M.*
- (iii) *The existing scheme for regularization of work-charged employees against normal vacancy is being modified and the quota for work-charged employees stand enhanced from 50% to 67% for the next 5 (five) years effective from 01.01.2015. This existing scheme will also be applicable for the casual employees appointed on full time basis."*

7. It is the further case of the petitioner that in terms of the Office Memorandum dated 17.03.2015, a verification was conducted by the Additional Deputy Commissioner, Kohima, Nagaland for work-charged labors under the establishment of Executive Engineer, (CAWD), Commissioner Office, Kohima, Nagaland. The list of work charged and casual employees incumbency list was then prepared for physical verification under the establishment of Executive Engineer, (CAWD), Commissioner Office, Kohima, Nagaland. In the said process list, the name of the present petitioner find place at Serial No. 5 and recorded as duly found as genuine by the Additional Deputy Commissioner, Kohima, Nagaland.

8. However, despite of the petitioner having fulfilled all the conditions to be considered for regularization and having served the Department for more than 30 years of continuous service as work

charged employee, the case of the petitioner has not been considered in terms of the aforesaid Government memorandum. Therefore, the petitioner approached the concerned authorities for regularization of his service and submitted a representation dated 07.11.2023 with the request for regularization of his work-charged service. However, the said representation has not be attended by the concerned authority, hence, the petitioner filed this writ petition seeking direction for regularization of his work- charged service in terms of the aforesaid Office Memorandum dated 17.03.2015.

9. In a similarly situated case, this Court has directed the State respondents to consider the case of the petitioner for regularization of his service on the ground that he had rendered more than 30 years of service and the case of the petitioner squarely covers the direction in the above case and is entitled for consideration of regularization in terms of the Office Memorandum dated 17.03.2015, in as much as the petitioner has also completed more than 30 years of continuous service in the Department as a work charged employee.

10. The State respondents has filed affidavit-in-opposition. The learned Government Advocate has also produced a communication letter dated 02.07.2024 issued by the Assistant Chief Engineer, (CAWD), Commissioner Office, Kohima, Nagaland which is taken on record and marked as document "X". While referring to the affidavit filed by the State respondent and the said letter-X, the learned counsel for the state contended that the case of the petitioner has already been taken up and accordingly a proposal was submitted to the Government for necessary action for regularization and

absorption of the petitioner who is presently working as work charged employee and in the said list of work-charged employees who has completed more than 30 years of continuous service, the petitioner's name has been listed at Serial No. 18.

11. The learned Government Advocate for the State respondents further submits that the process of regularization of work charged employees has to undergo some stages for regularization due to which there has been some delay in the process of regularization of the petitioner's service. However, since the Government has now already initiated for regularization of service of the petitioner, the same shall be done as per the scheme; hence, prays that a sufficient time may be given to the State respondents for completion of the process for regularization of the service of the petitioner.

12. Heard the submission made by both the learned counsel for the parties and also considered the contention of the parties as well as the document placed on record.

13. Undisputably, the petitioner was appointed on 20.03.1992 as Work-Charged Jugali under the Executive Engineer, (CAWD), Commissioner Office, Kohima, Nagaland and since then he has been continuously serving in the department as such for more than 30 years; and thus, he is entitled to be considered for regularization of his service in terms of the Office memorandum dated 17.03.2015. It also appears that the State respondent has already also initiated the process for regularization of the service of the petitioner and the same is now pending for government approval.

14. In view of the above and also as agreed upon by both the learned counsel for the parties, this writ petition is disposed of with a direction to the State respondents to complete the entire process of regularization of service of the petitioner in terms of the OM dated 17.03.2015 within a period of 4 (four) months from the date of receipt of a certified copy of this order.

15. This writ petition stands disposed of in the above terms.

Sd/-
JUDGE

Comparing Assistant