

GAHC020002892019



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

Case No. : WP(C)/102/2019

METHAVINO NEIHU
D/O SHRI VIKETHOZO,
R/O KIGWEMA VILLAGE, KOHIMA, N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY, GOVT. OF N/L, KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L

DEPT. OF WORKS AND HOUSING
N/L
KOHIMA

3:THE ENGINEER-IN-CHIEF

NPWD
N/L
KOHIMA

4:THE CHIEF ENGINEER

PWD(NATIONAL HIGHWAY)
N/L
KOHIMA

5:THE EXECUTIVE ENGINEER

PWD(NATIONAL HIGHWAY - I)
KOHIMA
N/

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 19-02-2024

The present writ petition has been filed by the petitioner seeking a direction from this Court to the effect that the petitioner's husband service as Mason on provisional basis under the establishment of the Executive Engineer, National highway Division No.1 Kohima, Kohima Division should be regularized.

2. The facts involved in the instant proceeding is that the husband of the petitioner was appointed on provisional basis by the Engineer-in-Chief, NPWD Nagaland by office order dated 19/2/2001. It has been averred that the husband of the petitioner was receiving his pay as per the scale. However, unfortunately on 11/2/2019, the husband of the petitioner expired leaving the petitioner and minor children. Under such circumstances, the petitioner submitted a representation on 18/3/2019 to the Engineer-in-Chief, NPWD Nagaland Kohima with a prayer for service regularization of the petitioner's husband for the purpose of family pension. The entire edifice of the petitioner's case was on the basis of the direction passed by this Court in W.P.(C) 196(K)/2014 dated 25/8/2015. This Court upon hearing the learned counsels and also taking into account the judgment of the Supreme Court in the case of ***State of Nagaland & Ors vrs Nishevi Achumi*** reported in ***2022 SCC online SC 818*** is

of the opinion that the petitioner is not entitled to relief so claimed for. The Supreme Court was dealing with a situation similar to the present one and thereupon observed that the directions so passed the learned Division Bench of this Court in WA 21/2019 dated 19/4/2021 to grant regularization of the service of the deceased employee one day prior to his death was a grave error. It was also taken note of by the Supreme Court in the said judgment that the husband of the petitioner therein did not apply for regularization during his life time and it is only after the death of the husband, the wife applied for regularization for pensionary benefits which could not have been permitted. Paragraph 7 and 8 of the said judgment being relevant is quoted herein below:-

"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 work 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-charged employees even who were senior to the de-*

ceased 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."

3. Before concluding, this finds it relevant to deal with the submission of the learned counsel for the petitioner that the judgment in the case of Nishevi (supra) cannot be applied herein taking into account the wife in the said case had approached the authorities after 12 years after the death of her husband whereas in the instant case the petitioner herein approached 2 months after the death of her husband. It is the opinion of this Court that the said submission is misconceived inasmuch as if the husband of the petitioner was not entitled to regularization during his life time, the question of issuance of a direction to the authorities for granting regularization posthumously does not arise. In the instant case nothing was shown that on the basis of the prevailing policy, the husband of the petitioner was entitled to regularization at the time of his death.

4. Considering the above, this Court finds no merit in the instant writ petition for which the writ petition stands dismissed.

Sd/-
JUDGE