

GAHC020003172023



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

Case No. : WP(C)/126/2023

SHRI RAKESH RANJAN,
GRADUATE TEACHER,
GHS PHOMCHING, MON,
NAGALAND, PIN 798621

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA

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
KOHIM

For the Petitioner(s) : Mr. Taka Masa, Sr. Advocate
: Mr. Arenglong, Advocate
For the Respondent(s) : Ms. S. Mere, Government Advocate

Date of Hearing : **26.02.2024**

Date of Judgment : **01.03.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

Heard Mr. Taka Masa, the learned Senior counsel assisted by Mr. Arenglong, the learned counsel appearing on behalf of the Petitioner. I have also heard Ms. S. Mere, the learned Government Advocate appearing on behalf of the State Respondents.

2. The petitioner herein has filed the instant writ petition to set aside/review/reconsider the impugned order No.ED/MISC-2/2004-2005/180-209 dated 05.07.2010 only with regard to the Petitioner issued by the Director, School Education and further seeking a direction upon the Respondent Authorities to review and re-fix the date of regularization and the seniority of the Petitioner w.e.f. 16.01.2004 with all consequential benefits.

3. The case of the Petitioner in brief is that the Petitioner was appointed as a Graduate Teacher on Ad-hoc basis vide an order No.ED/EL/C/2/92-93(PT) dated 12.03.1993 issued by the Director, Department of School Education and posted at Government Middle

School, Tanhai, Mon. It is relevant to take note of the appointment order which has been enclosed as Annexure-A. From a perusal of the said appointment order, it reveals that the appointment of the Petitioner on Ad-hoc basis was against the transfer vacancy which arose in view of Shri N.T. Shitri who was transferred to the Government High School Chunlikha. Subsequent thereto, the Petitioner was granted two increments vide an order dated 18.06.1993 upon passing B.Ed. On 24.03.2008, the Petitioner upon completion of 10 years of continuous service under the establishment of the Deputy Inspector of Schools, Mon was granted a Senior Grade scale of pay w.e.f. 12.08.2003.

4. The Government of Nagaland in its Personal and Administrative Reforms Department (Administrative Reforms Branch) issued a Memorandum dated 18.02.2004. The said Memorandum was issued in pursuance to a Committee constituted to examine the issues relating to the large number of Ad-hoc/contract employees appointed in the past in various State Government Offices and the said Committee recommended solutions for taking various measures with the existing situation and to prevent recurrence of such appointment in future. The Cabinet of the Government of Nagaland on 16.01.2004 approved the said recommendations which resulted in the Office Memorandum dated 18.02.2004. In the said Memorandum, a decision was taken as regards the existing Ad-hoc/contract employees. There were two categories as per the said Memorandum. Category-I related to Ad-hoc/contract appointment made against sanctioned post whereas Category-II were Casual/fixed pay appointments without any sanctioned post. Category-

I was sub-categorized into three groups. The first group were those employees having more than 10 years of service. In respect to the said group, an employee may be considered for regularization provided:

- (i) There is a sanction post;
- (ii) The employee fulfils all the eligibility criteria for the post including the requisite educational qualification; and
- (iii) The performance of the employee has been satisfactory in the service.

In this sub-category, the requirement was that the concerned department shall submit specific cases to the Government for approval after obtaining the recommendations of a Screening Committee composing of various members.

The second sub-category are for those employees having 5 to 10 years of service who would also be regularized if there was a sanction post; the employee fulfilled all eligibility criteria for the post including the requisite educational qualifications and the performance of the employee had been satisfactory in the service. However, the difference between this sub-category with the sub-category of those employees having more than 10 years of service was that these employees having 5 to 10 years of service have to appear in an examination (both written and/or viva-voce) to test the suitability which was to be organized by the concerned Department under the supervision of the Administrative Training Institute, Nagaland, Kohima and those who qualified in such screening test would be considered for regularization

by following the same procedure as mentioned in Para 3(a) of the said Office Memorandum. In other words, those employees in this second sub-category who would qualify in the screening test would be treated at par with those employees who have already completed 10 years of service.

The third category are those employees having less than 5 years of service. In respect to those posts held by this sub-category of employees the concerned department shall process immediately to fill up these posts on regular basis through open advertisement or NPSC as the case may be and those existing Ad-hoc/contract appointees working in those posts would be allowed to appear in the selection test/open competitive examination without age bar subject to they possessing other required qualifications. It was also mentioned that the contracts may be extended, if considered unavoidable, following the existing procedures only till such times that the process of new recruitment are completed. However, it is very interesting to take note of that in respect to all the three sub-categories of Category-I, those Ad-hoc/contract appointments have to be again sanctioned posts.

5. The Category-II are for those casual/fixed paid appointments made without any sanctioned post. It was mandated in the said Office Memorandum that the concerned Departments should first review through the Work/Charged and Casual Employees Commission as to what extent the services of such appointees are required and whether all or some of the appointees are surplus. The appointees declared surplus should be terminated but be given age relaxation in applying

for the Government jobs to the extent of number of completed years in the Government service. In the remaining cases, the concerned Department should move for creation of posts on the basis of the Commissioner's recommendations by following the existing procedure for the creation of posts. It is only after creation of such posts on the basis of the recommendations, the appointees thereupon shall be considered for regularization in the similar manner in which the Category-I employees have been given a treatment.

6. From the above analysis of the said Office Memorandum, it would therefore reveal that primarily there were two Categories of employees. First category pertained to those employees working on Ad-hoc/contract basis against sanctioned post whereas the second category are those employees who were working without any sanction post. Therefore, in respect of the second category of cases, it is only after the recommendations are made and posts are created, such employees in the second category would be considered for regularization.

7. Now moving on the facts of the present case, it would be seen that pursuant to the said Office Memorandum dated 18.02.2004, the Deputy Inspector of Schools, Mon submitted the original documents in respect of Ad-hoc graduate teachers under its establishment on 18.06.2004. Amongst the various teachers, the Petitioner's name appeared at Serial No.11. Thereupon, the record reveals that the Respondent State regularized 183 nos. of teachers who have completed 10 years of continuous service as on 16.01.2004 vide an

order dated 30.11.2006. Subsequently, it is seen that in respect of those 183 graduate teachers who were regularized on the basis of the order dated 30.11.2006, their effective date of regularization was directed to be read as 16.01.2004 instead of 26.10.2006 on the basis of a corrigendum issued by the Director of Directorate of School Education, Nagaland with the due approval of the Government.

8. The Petitioner was not amongst those 183 employees who were regularized. The Petitioner neither represented before the authorities for not considering the case of the Petitioner for regularization nor approached this Court. The record further reveals that it was only on 05.07.2010, the services of the Petitioner was regularized giving the effective date of regularization w.e.f. 18.05.2010. In the said order dated 05.07.2010, it was mentioned that the past services rendered would be counted for all other benefits such as increment, leave, pension, etc. and the inter-se-seniority would be fixed in the order of the date of joining the post as Graduate Teacher. It is also seen from the order dated 05.07.2010 that along with the Petitioner, 17 other employees were regularized.

9. The record further reveals that the Petitioner had submitted a representation on 15.09.2010 to the Director of School Education stating inter alia that the Petitioner had been serving as a Graduate Science Teacher since 1993 and thereby enclosed the relevant documents. A request was made to look into the matter and do the needful action. The subject mentioned in the said communication was prayer for seniority as a Science Graduate Teacher. This document has

been enclosed as Annexure-D to the Affidavit-in-Reply filed by the Petitioner on 15.12.2003. The record further reveals that on 30.11.2018, the services of the Petitioner was confirmed along with others. In the case of the Petitioner, it was shown to be confirmed under the establishment of S.D.E.O. Mon w.e.f. 05.07.2012.

10. The records further reveal that the Petitioner was given benefit of the Modified Assured Career Progression Scheme (MACPS) showing that the Petitioner's date of promotion to the post to be on 16.01.2004. Be that as it may, in the seniority list, the Petitioner's name appeared at Serial No.970 taking into account that the Petitioner's date of regularization is 18.05.2010. After a lapse of more than 12 years from the date of the order of regularization dated 05.07.2010, the Petitioner submitted a representation on 11.10.2022 to the Principal Director, Directorate of School Education, Kohima stating inter alia that his name appeared in the inter-se-seniority list at Serial No.970 which was based from the date of Service Regularization in May, 2010 although, it was clearly mentioned to fix inter-se-seniority from the date of joining the Post as Graduate Teacher which in the case of the Petitioner was 12.03.1993. It was also mentioned that his date of regularization should have been in January, 2004 which due to an official error got delayed to May, 2010.

11. Subsequent thereto, the Petitioner submitted another representation on 28.03.2023 that his date of regularization should be read w.e.f. 16.01.2004 instead of 18.05.2010 and his serial number in the inter-se-seniority list should be 489 and not 970. It was also

mentioned that various other persons who were junior to the Petitioner have been given promotion and the Petitioner was deprived. Subsequent thereto, on 20.04.2023, the Principal Director, Director of School Education, Kohima forwarded the said representation to the Commissioner and Secretary to the Government of Nagaland for necessary action. However, as nothing was done, the Petitioner approached this Court by filing the instant writ petition on 17.07.2023.

12. This Court vide an order dated 20.07.2023 issued notice. The Respondent Nos. 1, 3 and 4 had filed an affidavit-in-opposition on 29.01.2024 and the Respondent No.2 has filed an affidavit-in-opposition on 11.12.2023. In the affidavit-in-opposition filed by the Respondent No.2, it was mentioned that there was no Cabinet decision that all regularization should be effective from 16.01.2004 and the Petitioner was regularized effective from the date of the Cabinet approval i.e. 18.05.2010 as clearly stated in paragraph (a) of the order dated 05.07.2010. It was further mentioned that the services of the Petitioner was regularized as soon as the sanctioned post was available and approved by the State Cabinet. It was also mentioned that the Petitioner had brought out the matter of the recent promotees and they have not been impleaded in the writ petition.

13. The affidavit-in-opposition of the Respondent Nos. 1, 3 and 4 filed by the Commissioner and Secretary in the Department of School Education is a more detailed and an elaborate affidavit. It was stated that the Petitioner was initially appointed as an Assistant Teacher on Ad-hoc/contract basis not to a sanctioned post but was on account of

transfer of Shri N.T. Shitri, an Assistant Teacher transferred to Government High School, Chunlikha resulting in need for a replacement at Government Middle School, Tanhai. The Petitioner was not appointed through any open advertisement/recruitment but appointed only on ad-hoc basis as a stop gap arrangement in view of the requirement at GMS Tanhai at that particular period of time. It was stated that the Petitioner cannot mislead this Court by concealing the facts without challenging the basic order of appointment but challenging consequential order, i.e. his regularization order which was issued as per the decision of the State Cabinet. It was stated that in the memorandum dated 18.02.2024, Category I(a)(i), the regularization of service of ad-hoc/contract employees having more than 10 years of service was for those ad-hoc contract appointments made against sanctioned vacant posts. The service regularization was strictly done by the Government's standing order/policy for which the Petitioner cannot claim something as a matter of right which is in contradiction to the Government Rules. It was specifically mentioned that the Memorandum dated 18.02.2004 was not applicable to the Petitioner as he was not appointed against any sanctioned post. It was mentioned that the 183 teachers were regularized vide order dated 30.11.2006 solely on the basis of their eligibility criteria contained in the said O.M. dated 18.02.2004 and the effective date of regularization was determined/fixed from 16.01.2004 with the approval of the Government/Cabinet. It was stated that the Petitioner did not qualify the criteria set in the Office Memorandum dated 18.02.2004 and as such, the Petitioner cannot claim parity with those 183 regularized

teachers. Further to that, it was mentioned that the Petitioner was regularized vide order dated 05.07.2010 and the effective date of regularization was fixed from 18.05.2010 as per the State Cabinet decision and approval. The Petitioner thereupon accepted the said order dated 05.07.2010 without any complaint/objection at the relevant point of time till 2023. It was only after a lapse of 12 years, the Petitioner submitted a representation on 28.03.2023 to the Department for correction of his effective date of seniority. The Directorate vide letter dated 20.04.2023 forwarded the case of the Petitioner to the Government and the Government vide a letter dated 06.10.2023 had conveyed that the Government's standing rules were followed in the regularization and preparation of the seniority list which is applicable to the Petitioner and all employees under the Department. It was further mentioned that when the Office Memorandum dated 18.02.2004 came into force, there were 500 Ad-hoc Graduate Teachers who had completed 5 (five) years of continuous service as on 16.01.2004 and in conformity with the said O.M. dated 18.02.2004, the Department entrusted the Administrative Training Institute (ATI) to conduct suitability test for service regularization of these teachers and the suitability test was conducted during May-June, 2005. Thereupon, 40 teachers' suitability test/screening test was conducted in June, 2011. Since these 40 teachers are of the batch of 2005 whose suitability test/interview was conducted by the ATI in 2005, the effective date of regularization was made at par with the similarly situated teachers vide Government approval letter dated 05.03.2012. It was further mentioned that on

account of the oversight, the 1st lift of financial upgradation under the Modified Assured Career Progression Scheme (MACPS) was erroneously granted to the Petitioner w.e.f. 16.01.2014. The Petitioner was actually eligible for grant of the 1st lift of financial upgradation under the Modified Assured Career Progression Scheme (MACPS) only w.e.f. 18.05.2020 in line with his effective date of service regularization order dated 18.05.2010. In that regard, for rectification, the Department vide letter dated 18.09.2023 had intimated the Petitioner to submit his Service Book. Further to that, preliminary objections were also taken on the ground of non-impleading the persons who would be affected if the relief sought for is granted and further that the instant writ petition should not be entertained on account of delay and laches.

14. To the said affidavit-in-opposition, the Petitioner filed an affidavit-in-reply wherein the Petitioner stated that he was appointed against a sanctioned post on Ad-hoc basis vide the order dated 12.03.1993 on account of the transfer of Shri N.T. Shitri. From a perusal of the said affidavit-in-reply, it was the specific case of the Petitioner that the Petitioner was entitled to be regularized w.e.f. 16.01.2004 and as such the non-granting of his regularization w.e.f. 16.01.2004 violated his rights under Article 14 of the Constitution of India.

15. In the backdrop of the above pleadings, let this Court now consider the respective submissions made on behalf of the learned counsels for the parties.

16. Mr. Taka Masa, the learned Senior counsel submitted that the Petitioner was appointed against the sanctioned post on 12.03.1993 and thereupon, the Petitioner's case for regularization ought to have been taken into consideration as a teacher belonging to the sub-category (a) of Category-I inasmuch as, as on the date on which the Memorandum dated 18.02.2004 has come into existence, the Petitioner had already completed 10 years. He further submitted that the Petitioner's name was duly forwarded by the Deputy Inspector of Schools on 18.06.2004. However, in spite of that, the Petitioner was not included amongst the 183 teachers who were regularized on 30.11.2006 w.e.f. 16.01.2004. He further submitted that in the order dated 05.07.2010, by which the Petitioner was regularized, it has also been mentioned that the Petitioner has been in continuous service as on 16.01.2004 for a period of 10 years and under such circumstances, the Petitioner should have been given the similar treatment like 183 other Ad-hoc teachers who have been granted regularization w.e.f. 16.01.2004. The learned Senior counsel further submitted that as on 18.02.2004, the Petitioner had duly completed 10 years. However, there were other teachers who had the experience of 5 to 10 years falling within the sub-category (b) of Category-I and they have been made senior to the Petitioner and under such circumstances, the rights of the Petitioner under Articles 14 and 16 have been duly violated. The learned Senior counsel further submitted that on 15.09.2010 the Petitioner had submitted a representation. But the Respondent Authorities did not take any steps. In the year 2022, when the Petitioner saw that the Petitioner's Serial Number was at 970 in the

inter-se-seniority list and the persons who were junior to the Petitioner have already been granted promotion although on officiating basis, the Petitioner submitted representation on 11.10.2022 and further submitted another detailed representation on 28.03.2023. He further submitted that this representation was duly forwarded to the Government vide the communication dated 20.04.2023 and the Government till date had not taken any steps to the said representation. He therefore submitted that as the Petitioner's rights have been violated, the aspect of delay and laches does not arise.

17. Further to that, the learned Senior counsel submitted that there is no necessity of impleading other persons inasmuch as the reliefs which have been sought for by the Petitioner are only to grant the benefit to the Petitioner by making certain changes to the inter-se-seniority list and consequential benefits to which the Petitioner thereupon would be entitled to. He therefore submitted that as no rights of the third parties would be affected by the reliefs if granted by this Court, the question of delay and laches or for that matter non-impleading of the other persons would affect the maintainability or the entertainability of the instant writ petition. In this regard, the learned Senior counsel has laid emphasis on the judgment of the Supreme Court in the case of ***General Manager, South Central Railway Secundrabad and Another Vs. A.V.R. Siddhanti and others*** reported in ***(1974) 4 SCC 335*** and referred to paragraph Nos. 2, 11 to 15, 20 to 22 and 37. The learned Senior counsel further referred to another judgment of the Supreme Court in the case of ***Vetindia Pharmaceuticals Ltd. Vs. State of Uttar Pradesh and Another*** reported in

(2021) 1 SCC 804 and referred to Paragraph Nos. 15 to 17 of the said judgment. The learned Senior counsel also referred to the judgment in the case of ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others*** reported in **(2015) 1 SCC 347** and specifically referred to paragraph Nos. 22 and its sub-paragraphs.

18. On the other hand, Ms. S. Mere, the learned Government Advocate appearing on behalf of the State Respondents submitted that the Petitioner was not appointed against sanctioned post on 12.03.1993. The Petitioner was appointed as stop gap arrangement on account of transfer of a teacher to another school. Therefore, the Petitioner could not have taken benefit in terms with the Office Memorandum dated 18.02.2004 inasmuch as Category-I were those employees who were appointed on Ad-hoc/contract basis against sanctioned posts. Taking into account that the Petitioner was not appointed against the sanctioned post, the question of the Petitioner coming within the ambit of Category-I of the Office Memorandum dated 18.02.2004 does not arise. She further submitted that it was on account of availability of a sanctioned post, the Petitioner was regularized vide the order dated 05.07.2010 giving his effective date of regularization to be 18.05.2010. Therefore, the Petitioner cannot claim parity with those 183 teachers or the 40 teachers who came within the ambit of Category-I employees of the Office Memorandum dated 18.02.2004. In addition to that, the learned Government Advocate further submitted that the Petitioner herein had duly accepted the order dated 05.07.2010 and it was only in the year 2023 that the Petitioner had duly submitted the representation. The Petitioner slept

over his rights (if any) for almost 13 years from the date of the order dated 05.07.2010. She further submitted that as of now, the Petitioner claims to be put in the seniority list at Serial No.489 whereas the Petitioner is presently at Serial No.970. If any change is made in the inter-se-seniority at this stage by granting the relief as sought for, it would affect the third parties who are the teachers from 489 to 969 and therefore, this is a fit case for which the instant writ petition not only should be dismissed on account of delay or laches but also on the ground of not impleading the remaining affected persons. In that regard, the learned Government Advocate has referred to the judgment of the Supreme Court in the case of ***Union of India Vs. Tarsem Singh reported in (2008) 8 SCC 648*** as well as the judgment rendered in the case of ***Union of India and Others Vs. N. Murugesan reported in (2022) 2 SCC 25***. Both the judgments primarily relate to when the High Court under Article 226 of the Constitution can interfere or not on account of undue delay, laches and acquiescence.

19. On the basis of the pleadings above noted and the submissions made by the learned counsels for the parties, 3 (three) points for determination arises for consideration:

(i) Whether the Petitioner herein was entitled to be considered for regularization in Category-I (a)(i) of the Office Memorandum dated 18.02.2004?

(ii) Whether in terms with 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 when the Petitioner was appointed

on Ad-hoc basis?

(iii) Whether the instant writ petition suffers from any delay and/or laches?

20. In the previous segments of the instant judgment, this Court had dealt in detail in respect to the various categories as well as the sub-categories of employees in the Office Memorandum dated 18.02.2004. The most pertinent aspect to be taken note of is that the Ad-hoc/contract employees who fall under Category-I are those employees appointed on Ad-hoc/contract basis to sanctioned post. In this regard, if this Court takes note of the appointment letter of the Petitioner dated 12.03.1993 enclosed as Annexure-A to the writ petition, it would show that the Petitioner herein was appointed on account of the transfer of a teacher namely Shri N.T. Shitri who was transferred to the Government High School, Chunlikha. Now, the question therefore arises as to whether a stop gap arrangement carried out to fill up a vacancy which arose on account of transfer can be deemed to be an Ad-hoc/contract employment against a sanctioned post.

21. In order to decide the said question, this Court finds it relevant to take into consideration the fundamentals of a transfer simpliciter and recruitment by transfer. This aspect would show when on account of a vacancy created by transfer, a vacancy to a sanctioned post arises. Transfer simpliciter and the recruitment by transfer are entirely two different concepts. No doubt, transfer can be from one category to another category or within the class if the Rule permits

interchangeability of the categories within the class. Any other transfer, both intra-category or inter-category are in fact, under law is a selection and appointment by way of transfer from one category to another or from one class to another or from one service to another. If it is a transfer simpliciter, it conveys a different meaning and if it is a recruitment by transfer, it conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

22. This Court further finds it relevant to observe that transfer in relation to a service simply means a change of place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore obviously such a transfer does not result in the termination of the lien in the parent cadre. But on the other hand, a recruitment by transfer is a totally different concept inasmuch as it is a method of recruitment to a service. Once an employee undergoes a transfer by way of recruitment to a different cadre or to a different service, the employee loses his/her lien in the parent cadre/service. In that process, there is an induction to a new cadre. Such induction has distinct consequences on the career of the employee different from what would have been the normal course had he continued in the parent service. Therefore a recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in the change of the place of employment and therefore there is no termination of the lien. [see paragraph Nos. 14 and 15 of the judgment of the Supreme Court in the case of ***Palure Bhaskar Rao and Others Vs. P. Ramaseshaiah and others*** reported in (2017) 5 SCC 783].

23. In the backdrop of the above, this Court finds it relevant to take note of that lien is not a word of art. It connotes the right of a civil servant to hold the post substantively to which he/she is appointed or in other words, the lien of a Government employee in service law is a right of the Government employee to hold a permanent post substantively to which he has been permanently appointed. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***State of Rajasthan and Another Vs. S. N. Tiwari and Others*** reported in **(2009) 4 SCC 700** and more particularly to paragraph No.17, the concept of lien is succinctly explained and when a lien to a post ends. Paragraph No.17 of the said judgment being relevant is quoted herein under:

“17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.”

24. In the backdrop of the above, if this Court takes note of the order dated 12.03.1993 enclosed as Annexure-A to the writ petition, it would be seen that Shri N.T. Shitri was merely transferred to a Government High School, Chunlikha. Therefore, Shri N.T. Shitri continued to hold his lien over the post substantively to which he was appointed. The logical corollary thereof would be that till Shri N.T.

Shitri was not promoted or transferred to some other cadre, he continued to hold the lien over the post to which the Petitioner was appointed as a stop gap arrangement. Under such circumstances, it cannot be said that the appointment of the Petitioner on Ad-hoc basis was to a vacant sanctioned post. The consequential effect therefore would be that the Petitioner would not come within the ambit of the employees of Category-I of the Office Memorandum dated 18.02.2004.

25. The second point for determination pertains to as to whether the Petitioner would be entitled to his seniority from the date of his appointment i.e. 12.03.1993 in terms with the order dated 05.07.2010 or his seniority is to be calculated w.e.f. the date of his regularization stipulated in the order dated 05.07.2010 i.e. 18.05.2010. The entire edifice on which the Petitioner claims his seniority is on Clause (c) of the order dated 05.07.2010 which stipulated that the inter-se-seniority would be fixed in the order of the date of joining the post as Graduate Teacher. It is however relevant to take note of that as per Clause (a), the effective date of regularization was held to be w.e.f. 18.05.2010. It is also relevant to take note of that the said order dated 05.07.2010 has also to be read along with the Annexure-A to the said order whereby 18 persons including the Petitioner were regularized. The inter-se-seniority therefore as mentioned in the order dated 05.07.2010 in the opinion of this Court has to be in relation to the inter-se-seniority amongst the 18 persons who were regularized as per Annexure-A to the order dated 05.07.2010. It is also the opinion of this Court that if any other interpretation given to the order dated 05.07.2010 would violate the very concept of regularization.

26. This Court at this stage finds it relevant to take note of the judgment of the Supreme Court in the case of ***State of Jammu & Kashmir and Others Vs. District Bar Association Bandipora*** reported in ***(2017) 3 SCC 410*** wherein at paragraph No.26, the Supreme Court explained that regularization is neither a source of recruitment nor it is intended to confer permanency upon appointment which have been made without following the due process as envisaged by Article 14 and 16 of the Constitution. Essentially, a scheme for regularization, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. Paragraph No.26 of the said judgment being relevant is quoted herein below:

“26. The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to Courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of

claims which has been shut out permanently by Uma Devi. Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in paragraph 53 and falls within the ambit of a scheme that may be formulated by the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Uma Devi and be upheld."

27. In view of the above proposition of law, it would be seen that as the Petitioner herein along with 17 others were regularized w.e.f. 18.05.2010 i.e. the date of the decision taken by the Cabinet, therefore, the said date has to be taken as the date on which the Petitioner had entered into the service of the Education cadre of the Government of Nagaland and consequently, the inter-se-seniority as stipulated in Clause (c) of the order dated 05.07.2010 has to be read as the inter-se-seniority amongst the 18 persons including the Petitioner who were regularized vide the order dated 05.07.2010. Therefore, in the opinion of this Court, the question of the Petitioner being entitled to have his inter-se-seniority as on the date of his contractual appointment i.e. 12.03.1993 is totally misconceived.

28. This leads this Court to the third point for determination. In the foregoing paragraphs of the instant judgment, it is seen that on 05.07.2010, the Petitioner was regularized w.e.f. 18.05.2010 stating inter alia that the inter-se-seniority would be fixed in the order of the date of joining the post as graduate teacher. Pursuant thereto, the

Petitioner submitted a representation on 15.09.2010 to the Director of School Education stating inter alia that the Petitioner has been serving as a Graduate Science Teacher since 1993. A request was made to look into the matter and do the needful action. Thereupon, the Petitioner did not take any further action and it was only on 11.10.2022 i.e. after 12 years, the Petitioner had submitted a representation to the Principal Director, Directorate of School Education, Kohima stating inter alia that his name appeared in the inter-se-seniority list at Serial No.970 which was being counted from the date of service regularization in May, 2010. It was also mentioned that his date of regularization should have been in January, 2004 which due to an official error got delayed to May, 2010. Subsequent thereto, the Petitioner submitted another more detailed representation on 28.03.2023 which was forwarded by the Principal Director, Directorate of School Education, Kohima to the Commissioner and Secretary to the Government of Nagaland for necessary action. The said representation was rejected as could be seen from the affidavit-in-opposition.

29. In the backdrop of the said facts, the question arises as to whether there has been any delay or laches on the part of the Petitioner in approaching this Court more so when the dispute was a service related dispute pertaining to seniority and not a pensionary dispute. In the case of **Tarsem Singh (supra)**, the Supreme Court dealt with what is the continuing wrong and as to how a belated service related claim is to be dealt with. Paragraph No.7 of the said judgment being relevant is reproduced herein under:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

30. It is however relevant to take note of that in the said judgment, the Supreme Court was taking into account a claim for pension and had observed while taking into account the judgment of the Supreme Court in the case of ***Shiv Dass Vs. Union of India*** reported in **(2007) 9 SCC 274** that in the case of pension, the cause of action continues from month to month which makes it a continuing wrong. It was also observed that if the grievance is in respect of any order or any administrative decision which related to or affected several others also

and if the re-opening of the issue would affect the settled rights of the third parties, then the claim would not be entertained. In another judgment of the Supreme Court in the case of ***Chennai Metropolitan Water Supply Sewerage Board and Others Vs. T.T. Murali Babu*** reported in (2014) 4 SCC 108, the Supreme Court observed that the doctrine of delay and laches should not be lightly brushed aside. Delay comes in the way of equity. In such circumstances, delay and laches may not be fatal but in most circumstances, inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. It was observed that the delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, “law does not permit one to sleep and rise like a phoenix”. Paragraph No.16 of the said judgment i.e in the case of ***Chennai Metropolitan Water Supply Sewerage Board (supra)*** is reproduced herein under:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic

norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

31. Applying the above principles as laid down by the Supreme Court and taking into account the facts involved, it would be clearly seen that the Petitioner neither challenged the actions of the Respondent Authorities in not regularizing the case of the Petitioner in the year 2006 along with 183 other teachers nor assailed the order dated 05.07.2010 when he was regularized and the Petitioner did not take any steps pursuant to 15.09.2010 when he submitted the representation and thereupon slept for more than 12 years over the issue of seniority. This Court also finds it relevant to take note of that in the present case, if any relief is granted, it would definitely affect the persons who are above the Petitioner in the inter-se-seniority list. In the present cleverly drafted writ petition, though no relief has been sought challenging the various promotional orders made to those persons who are senior in the inter-se-seniority list but any writ issued granting the reliefs herein would definitely affect those persons who are above in seniority list.

32. Consequently, in the opinion of this Court, as the Petitioner had slept over his rights for more than 17 years in respect to his first cause of action which arose in the year 2006 when 183 teachers with whom the Petitioner claims parity were regularized and 13 years from the date the Petitioner claims to be aggrieved on account of his regularization given effect to from 18.05.2010, it is the opinion of this Court that the writ petition suffers from delay and laches for which the

writ petition is required to be dismissed on this ground also.

33. In view of the above determination and analysis, this Court finds no ground for issuance of a writ as sought for, for which the instant writ petition stands dismissed. However, in the facts of the instant case, this Court is not inclined to impose any costs.

JUDGE

Comparing Assistant