

GAHC020003322022



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

Case No. : WP(C)/125/2022

SHRI. SANTOSH SETHI
AGED ABOUT 57 YEARS, S/O KHETRA SETHI,
R/O SUPER MARKET, DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, NAGALAND, KOHIMA
2:THE FINANCE COMMISSIONER

FINANCE DEPARTMENT
NAGALAND
KOHIMA

3:THE SECRETARY

DEVELOPMENT AUTHORITY
NAGALAND
DIMAPUR

Advocate for the Petitioner : M WABANG

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/124/2022

SHRI. PRASANTA KUMAR GOUDA
AGED ABOUT 56 YEARS

S/O BACHHA GOUDA
R/O SUPER MARKET
DIMAPUR
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND
NAGALAND
KOHIMA

2:THE FINANCE COMMISSIONER

FINANCE DEPARTMENT
NAGALAND
KOHIMA

3:THE SECRETARY

DEVELOPMENT AUTHORITY
NAGALAND
DIMAPUR

Advocate for : M WABANG
Advocate for : GOVT ADV NL appearing for THE STATE OF
NAGALAND AND 2 ORS

Linked Case : WP(C)/126/2022

SHRI. PRAFULLA SETHI
AGED ABOUT 49 YEARS

S/O KIRTAN SETHI
R/O UNITED COLONY
DIMAPUR
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THOROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND
NAGALAND

KOHIMA

2:THE FINANCE COMMISSIONER

FINANCE DEPARTMENT
NAGALAND
KOHIMA
3:THE SECRETARY

DEVELOPMENT AUTHORITY
NAGALAND
KOHIMA

Advocate for : M WABANG

Advocate for : GOVT ADV NL appearing for THE STATE OF
NAGALAND AND 2 ORS

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

ORDER

Date : 25.06.2024

This order will dispose of all the 3 writ petitions since the issues involved are similar and identical.

2. Heard Mr. Moa Jamir, learned counsel for the petitioners and Mr. E. Thiba Phom, learned State counsel for all the respondents.

3. All the 3 writ petitioners were appointed as Work Charge Labour vide order dated 28.4.1983 w.e.f. 2.5.1983. The petitioner after working for some time were regularized in service. The petitioner in W.P.(C) 124/2022 was regularized as Chowkidar vide order dated 5.8.2004, the petitioners in W.P.(C)

125/2022 and W.P.(C) 126/2022 were both regularized as Mali vide order dated 22.7.2010. The petitioners after having completed 35 years of service retired on superannuation vide order dated 28.6.2021. In the said order, it was also reflected that the petitioners had over-stayed in their service for a period of 34 months. Upon submitting an application, the period of their over-stay in service was condoned by the respondent No.3 and the pay drawn during the over stay period was treated as honorarium.

4. It is the case of the petitioners that upon their superannuation from service they were given gratuity by counting their service only from the date of their regularization i.e 5.8.2004 in respect of the petitioner in W.P.(C)124/2022 and 22.7.2010 in respect of the petitioners in W.P.(C) 125/2022 and W.P.(C) 126/2022. According to the petitioners, they are entitled to be given gratuity by reckoning their service with effect from the date their initial appointment and there also being no break in their service.

5. Mr. Moa Jamir, learned counsel for the petitioners by relying upon the case of *Netram Sahu vs State of Chhattisgarh and Another* reported in (2018) 5 SCC 430 submits that the Apex

Court in the facts of that case held that the appellant therein was entitled to get gratuity from the date of initial appointment till the date of superannuation. He submits that the petitioners in the present case are similarly situated and therefore the same covers the case of the present petitioners as well. He thus, submits that the writ petition may be allowed as prayed for by the petitioners.

6. Mr. Thiba Phom, learned State counsel on the other hand by referring to the affidavit-in-opposition filed by the respondent No.3 on 4.5.2023 submits that the petitioners upon attaining the age of superannuation were granted one time gratuity and therefore they are not entitled to any further gratuity as claimed by them. He submits that the Development Authority Nagaland is an autonomous body and therefore, unlike the case referred to by the learned counsel for the petitioners wherein the employers was the State Government, the case of the present petitioners are not similar and accordingly, they are not entitled to any more gratuity apart from the one time already paid to them.

7. To this submission Mr. Moa Jamir, learned counsel draws the attention of the provision of Payment of Gratuity Act,

1972 (the Act) and submits that the Act applies to every factory, mine, oilfield, plantation, port and railway company, and also every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. He submits that the Act also encompasses the service rendered by the petitioners under the respondent No.3 as well and therefore, the petitioners are clearly entitled to be given gratuity by counting their service w.e.f the initial date of their appointment.

8. I have considered the submissions made by the learned counsel for the parties and I have perused the materials available on record.

9. The facts narrated by the petitioner broadly are not disputed by the respondents. The only dispute raised is with regard to the claim for gratuity counting from the date of the initial appointment as Wrok Charge Labour. The Apex Court in the case of *Netram Sahu* (supra) in the given facts of that case held that the appellant had actually rendered service for about 25 years and that his initial appointment as Daily Wager was regularized by appointing him to the post of Pump Operator. The appellant

having continuous and uninterrupted service till he attained the age of superannuation, the respondent authorities cannot deprive him of the benefit of gratuity from the date of his initial appointment by restricting the same only from the date of his regularization which was for about 3 years only. Further, the Apex Court also held that no provisions under the Act was brought to the notice of the Court which disentitled the appellant from claiming gratuity nor was any provision brought to the notice of the Court which prohibits the appellant from taking benefit of his long and continuous period of 22 orders of service which he had rendered prior to his regularization for calculating his continuous service of 5 years. Similarly in the instant case, there is no dispute to the fact that the petitioners who were initially appointed w.e.f 02.05.1983 and thereafter regularized w.e.f.05.08.2004 and 22.07.2010 are debarred from claiming continuity in service or from claiming gratuity under any provision of law.

10. Under the circumstances, this Court is of the view that the ratio laid down in the case in *Netram Saha* (supra) is squarely applicable to the present cases as well. Accordingly, the respondents are directed to work out the gratuity payable to the petitioners w.e.f initial appointment up till their regularization

within a period of 6(six) weeks from the date of receipt of certified copy of this order. Thereafter, amount worked out and payable to each of the petitioners, be paid to them within a period of 2(two) months.

11. With the above observation and directions, the writ petitions stands disposed of. No cost.

**Sd/-
JUDGE**

Comparing Assistant