

GAHC020003832022



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

Case No. : WP(C)/141/2022

MRS. C.SELILA SANGTAM
(RETIRED) WORK CHARGE SKILLED LABOUR,
PHED, TUENSANG DIVISION, DISTRICT - TUENSANG,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF NAGALAND, NAGALAND,
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

PUBLIC HEALTH ENGINEERING DEPARTMENT(PHED)
NAGALAND
KOHIMA

3:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING DEPARTMENT
NAGALAND
KOHIMA

4:THE EXECUTIVE ENGINEERING

PUBLIC HEALTH ENGINEERING
TUENSANG DIVISION

5:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
NAGALAND
KOHIMA

6:THE SECRETARY TO THE GOVERNMENT OF NAGALAND

DEPARTMENT OF FINANCE

NAGALAND
KOHIM

Advocate for the Petitioner : L LIKHASE SANGTAM

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : **25.07.2024**

Date of Judgment : **22.08.2024**

JUDGMENT AND ORDER (CAV)

Heard Mr. L. Likhase Sangtam, the learned counsel appearing on behalf of the petitioner and Mr. K. N. Balgopal, the learned Advocate General, Nagaland assisted by Ms. V. Soukhrie, the Additional Advocate General, Nagaland for the respondents.

2. The case of the petitioner in brief is that the petitioner was appointed as a semi skilled labour vide an order dated 06.09.1980 in the scale of pay of Rs.240/- per month. Thereupon, the petitioner was promoted as work-charged semi skilled labour on the 11.09.1991 in fixed pay of Rs.480/-. At this stage, it is relevant to mention that on 07.07.2005, the petitioner requested that she should be granted the scale of pay.

Subsequently, vide another order dated 20.01.1992, the petitioner was promoted to work-charged skilled labour in fixed pay of Rs.540/-. After rendering continuous service for 35 years, the petitioner was released from service w.e.f. 07.10.2015 on superannuation vide an order dated 13.10.2015. After 7 years of the post retirement, the petitioner submitted a representation on 27.05.2022 requesting the authority to grant regularization so as to receive the pensionary benefits. However, the same not being considered, the petitioner has therefore approached this Court by filing the instant writ petition.

3. The case of the petitioner is based upon similar directions being passed by this Court in the judgment and order dated 27.03.2015 passed in WP(C) No.96 (K) of 2014 whereby the Coordinate Bench of this Court had directed the respondent authorities to consider the services of the petitioner therein for regularization only for the purpose of paying pensionary benefits. The learned counsel appearing on behalf of the petitioner has sought for similar relief.

4. The respondent authorities have filed an affidavit-in-opposition on the 17.05.2023 whereby it was mentioned that the petitioner during her entire length of service never made a representation for regularization of her service. It was mentioned that the petitioner was released from service on the 13.10.2015 and she submitted her representation only on 27.05.2022, i.e. after 7 years. There is no explanation or reason for the delay for filing the instant writ petition after 7 years from the date of retirement. The respondents further have taken the stand that the Supreme Court in the case of ***State of Nagaland & Others vs. Nishevi***

Achumi, reported in **2022 SCC OnLine SC 818** have dealt with a similar issue and had set aside the judgment passed by the Division Bench of this Court wherein there was a direction for regularizing the services of the husband of the petitioner therein one day prior to his death, and in that regard, have referred to paragraph Nos.8 & 9 of the said judgment.

5. I have heard the learned counsels appearing on behalf of the parties and given an anxious consideration to the materials of the record. From the materials on record, there is nothing seen that the petitioner ever sought for regularization of her service during the period when she was in service. It is further seen that the petitioner was also never granted a scale of pay. In addition to that, the petitioner had accepted her fate after rendering 35 years of service and did not take any steps for a period of 7 years and thereupon submitted a representation on 27.05.2022 and immediately thereafter, filed the instant writ petition. There is nothing also shown that the juniors of the petitioner were regularized at the time when she was in service thereby offending the Office Memorandum dated 22.09.2004. It is also relevant to take note of that the petitioner was not granted a scale of pay, and as such, the petitioner is not entitled to the benefit of the Office Memorandum dated 17.03.2015. Under such circumstances, in the opinion of this Court, the law laid down by the Supreme Court in the case of **Nishevi Achumi** (supra) squarely applies. In that regard, this Court finds it relevant to reproduce paragraph Nos.8 & 9 of the said judgment as herein under:-

“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 worked 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-charge employees even who were senior to the deceased 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.

9. Considering the aforesaid facts and circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside."

6. In view of the above judgment passed by the Supreme Court, the judgment to which the learned counsel for the petitioner has relied upon passed by the Coordinate Bench would not be a binding precedent upon this Court.

7. Accordingly, this Court finds no merit in the instant writ petition for which the instant writ petition stands dismissed. However, in the facts of the case, no cost is imposed.

JUDGE

Comparing Assistant