

GAHC020004062022



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

Case No. : WP(C)/151/2022

MR. RANGTSUMONG SANGTAM
RETD. WORK CHARGE SECTIONAL ASSISTANT,
R/O SANGSOMONG VILLAGE,
DISTRICT - TUENSANG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF NAGALAND, NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF WORKS AND HOUSING

NAGALAND
KOHIMA

3:THE CHIEF ENGINEER

NAGALAND PUBLIC WORKS DEPARTMENT(NPWD)
NAGALANDM KOHIMA

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
NAGALAND

KOHIMA

5: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**

ORDER

27.02.2024

Heard Mr. L. Likhase Sangtam, learned counsel appearing on behalf of the petitioner and Ms. Livika, learned State counsel appearing on behalf of the respondents.

The case of the petitioner is that the petitioner was appointed vide an Order bearing No. TSG/E/CD/E-I/APT-12 dated 24.10.1986 as Work-charged *Khalasi* in the scale of pay of Rs. 375-7-445-9-490-10-590/- per month under the establishment of the Sub-Divisional Office, Public Works Department, Longkhim, Tuensang Central Division, Tuensang. The petitioner thereupon by an Order dated 17.05.1991 was promoted to the post of Work-charged Sectional Assistant under the same establishment under the scale of pay plus other allowances as admissible in the Government of Nagaland from time to time.

2. The Government of Nagaland had issued an Office Memorandum (OM) dated 17.03.2015 thereby bringing out a scheme for regularization and absorption of Work-charged and Casual employees and revision of pay/wages. Clause 1(i) relates to those Work-charged and Casual employees of various departments who were under the scale of pay and who had completed 30 (thirty) years or more service as on 01.01.2015 who would be regularized by conversion of their posts into post personal to them and subject to fulfillment of the conditions as indicated therein. Relevant herein to take note of Clause 1(i)(f) which stipulates that the past services rendered as Work-charged/Casual employees will be

counted towards length of service for the purpose of Nagaland Retirement from Public Employment Act, 2009 and as qualifying service for the purpose of pension.

3. Clause 1(ii) relates to those Work-charged and Casual employees in scale pay who have completed or would complete 30 (thirty) years of continuous service after 01.01.2015 and their cases for regularization would be taken up subsequently in 2 (two) batches as on 1st July and on 1st January every year. The said Clause further stipulates that once the period of 30 (thirty) years of continuous service is completed after 01.01.2015, the procedure as stipulated in the said OM shall be applied.

4. In the instant case, the petitioner herein completed the 30 (thirty) years on 23.10.2016. However, the case of the petitioner for regularization in terms with the OM dated 17.03.2015 is yet to be decided by the respondent authorities although in terms with Clause 1(ii) of the said OM, the petitioner's case ought to have been considered in the month of January or July of that year. Be that as it may, as in view of the provisions of Nagaland Retirement from Public Employment Act, 2009, the petitioner, upon completion of 35 (thirty-five) years have retired on 30.11.2021. Taking into account that the petitioner's case for regularization was not taken up by the respondent authorities which was contrary to the OM dated 17.03.2015 and consequently the petitioner have not been paid his pension even after rendering 35 years of continuous service the petitioner has approached this Court under Article 226 of the Constitution by filing the instant writ petition on 27.07.2022.

5. The record reveals that this Court, by Order dated 29.07.2022 issued notice and also observed that the pendency of the writ petition shall not bar the respondent authorities to consider the case of the petitioner for regularization of his service.

6. The record reveals that the affidavit-in-opposition was filed by the respondent Nos. 1 to 5. In the said affidavit-in-opposition, it was mentioned that the respondent authorities requires to carry out various verification process. It has also been mentioned that the case of the petitioner cannot be considered till today because the Nagaland

Employment Verification is still under process and due to which all employees for regularization for 30 (thirty) years and above, the State Government has kept in abeyance till verification report was scrutinized and finalized. It was also mentioned that in another meeting convened on 24.06.2022 by the Secretary, Works & Housing Department, along with Officials of the Works & Housing Department, Engineer-in-Chief NPWD, Chief Engineers of R&B, Housing, National Highway, Mechanical and the representatives of the All Nagaland Public Works Department Field Workers Association and others, it was resolved to review the verification exercise in case of Work-charged employees of NPWD. It was categorically stated that the case of the petitioner would be considered/taken up as and when the State Government apprises the status of verification process of the Work-charged employees to the department concerned. Further to that the Office of the Engineer-in-Chief, Nagaland, Kohima, vide Order Letter dated 18.01.2023 wrote to the Commissioner & Secretary, Works & Housing, to consider the case of the petitioner along with other second phase after making necessary rectification as forwarded to the Government for regularization.

7. In the backdrop of the above pleadings, this Court has also heard the learned counsels appearing on behalf of the petitioner as well as the respondents. The learned counsel for the petitioner have referred to the order of the Supreme Court in the case of ***State of Gujarat and Others vs. Talsibhai Dhanjibhai Patel*** in Special Leave Appeal (C) No. 1109/2022 wherein the Supreme Court had observed that the State having continued to take the service of the respondent therein on an *ad hoc* basis for 30 (thirty) years thereafter cannot contend that as the service rendered by the respondents working as *ad hoc* would not be entitled to pension/pensionary benefits. The Supreme Court further observed that the High Court was justified in directing the State to pay the pensionary benefits to the respondents therein who had retired after rendering services for more than 30 (thirty) years.

8. This Court having given anxious consideration to the submission and having taken into account the OM dated 17.03.2015 is of the opinion

that it is apparent that the petitioner herein had completed 30 (thirty) years of service as on 23.10.2016. Therefore, the case of the petitioner ought to have been taken into consideration in terms with the OM dated 17.03.2015 for regularization in the month of July 2016 or in the month of January, 2017. On account of the delay on the part of the respondent authorities due to certain verification process being initiated in respect to various Work-charged employees, the respondents did not regularize the service of the petitioner till the petitioner retired from service on 30.11.2021 upon completion of 35 (thirty-five) years of service. Under such circumstances the delay in consideration of the case of the petitioner for regularization has to be taken as a delay caused by the respondent authorities thereby depriving the petitioner of his rights in terms with the OM dated 17.03.2015.

9. Considering the above, this Court is also of the opinion that the petitioner's case requires to be taken up for regularization at the earliest and thereupon his pension and pensionary benefits have to be worked out in terms with the Nagaland Retirement from Public Employment Act, 2009. Accordingly, this Court, therefore, disposes of this writ petition directing the respondent authorities, to take appropriate steps for regularization of the case of the petitioner only for the purpose of pension and pensionary benefits and thereupon fix the pension as per the extant law. The same exercise be completed within a period of 4 (four) months from the date of certified copy of the instant Order is served upon the respondent No. 3.

10. With the above observations and directions, the writ petition stands disposed.

Sd/-
JUDGE

Comparing Assistant