

GAHC020004332021



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

Case No. : WP(C)/205/2021

SMTI. MUTSIPHULU KHAMO AND 2 ORS
D/O SHRI. ERECUYI INCHAMO, R/O KENUOZUO COLONY, KOHIMA,
NAGALAND

2: SHRI. VIRIELETUO KHAWAKHRIE
S/O SHRI. KEKUOLELIE
R/O LOWER MIDLAND
KOHIMA
NAGALAND

3: SHRI. NEIKIETO PESEYIE
S/O SHRI. PHREZO PESEYIE
R/O LOWER BAYAVU
KOHIMA
NAGALAN

VERSUS

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF NAGALAND, SOCIAL WELFARE DEPARTMENT, NAGALAND,
KOHIMA

2:THE SECRETARY
SOCIAL WELFARE DEPARTMENT
NAGALAND
KOHIMA

3:THE PRINCIPAL SECRETARY
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
NAGALAND
KOHIMA

4:THE DIRECTOR

DIRECTORATE OF SOCIAL WELFARE
NAGALAND
KOHIMA

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioners : Mr. Moa Jamir, Adv.

For the Respondents : Mr. E. Thiba Phom, Govt. Adv.
(for Respondent Nos. 1 to 4)

Date of Judgment : 08.03.2024

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. Moa Jamir, learned counsel for the petitioners. Also heard Mr. E. Thiba Phom, learned Government Advocate, for the respondent Nos. 1 to 4.
- 2.** This writ petition under Article 226 of the Constitution of India has been filed by the petitioners, namely, *Smti Mutsiphulu Khamo, Shri Virioletuo Khawakhrie and Shri Neikieto Peseyie* for enforcement of their Fundamental Rights guaranteed Under Articles 14, 16 and 21 of the Constitution of India.
- 3.** The petitioners have been aggrieved by non-consideration of their joint representations dated 20.02.2019 and 14.07.2020 regarding regularization of their service as LDA-cum-computer Assistants after being

qualified in the Suitability Test conducted by the respondent No. 3. The petitioners have also alleged that the respondents have not adhered to the Office Memorandum No. AR-5/ASSO/98, dated 04.08.2008 as well as Office Memorandum No. AR-5/ASSO/98 dated 11.08.2016, which provides for regularization of services of employees who were on contract/*adhoc* basis and who have completed the continuous service of 3 years.

4. The case of the petitioners is that all the above named petitioners were appointed as LDA-cum-Computer Assistants in the Directorate of Social Welfare Nagaland, Kohima on contract basis against sanctioned posts, initially for a period of one year or till the post is filled by direct recruitment whichever is earlier, thereafter, their services were extended from time to time on the basis of extension orders and they are still continuing in service.

5. The petitioner No. 1 was appointed on 01.02.2012, petitioner No. 2 was appointed on 11.04.2013 and petitioner No. 3 was appointed on 04.09.2013. All the petitioners have completed more than 10 years of service as on date. It is contended by the petitioners that in pursuant to the policy decision taken by State Government, the Office Memorandum No. AR-5/ASSO/98, 04.08.2008 was issued by the state respondents whereby providing for regularization of services of contract/ *adhoc* appointments, against sanctioned posts, of those who have completed three years of continuous service. It is contended by the petitioners that the said policy decision of the State Government was taken to facilitate the contract/*adhoc* employees who have put into long service and have already become overage for other public employment, however, their

utility is still there for public service.

6. It is also contended by the petitioners that a non-governmental organization called "Against Corruption and Unabated Taxation", (hereafter called "ACAUT") filed a public interest litigation before this court, which was registered as PIL No. 11(K)/2015, seeking directions for CBI investigation into widespread corruption in public employment. During impendency of the aforesaid PIL, the Government of Nagaland had issued Office Memorandum dated 06.06.2016 by which appointment on contract basis has been totally banned. After issuance of the Office Memorandum dated 06.06.2016, the Department of Personal and Administrative Reforms, Nagaland has issued another Office Memorandum No. AR-5/ASSO/98, dated 11th August, 2016, providing that the cases of the employees appointed on contract/*ad hoc* basis prior to the Office Memorandum of 06.06.2016 shall be taken up for regularization on completion of three years of continuous service in terms of Office Memorandum dated 04.08.2018.

7. Thereafter, in terms of the Office Memorandum dated 04.08.2018 and 11.08.2016, the respondent No. 2 by notification No. DSW/ESTT-1/2003/PT-1 dated 06.10.2016 constituted a committee to conduct Suitability Test for regularization of contract employees who have completed three years of continuous service against sanctioned posts under the Directorate of Social Welfare, Nagaland. Thereafter, on 29.11.2016 and 30.11.2016, Suitability Test was conducted by the department for several posts including nine posts of LDA-cum-Computer Assistants. All the three above named petitioners have qualified the

suitability test and the Joint Director, Directorate of Social Welfare by Letter No. SW/ESTT-53/99(PT)/983 dated 14.12.2016, forwarded the names of the petitioners along with others recommending their regularization by the committee.

8. However, when the matter did not progress any further, the petitioners along with a few others submitted a joint representation to the respondent No. 4, on 20.02.2019, for regularization of their service based on the Suitability Test conducted on 30.11.2017. However, the respondent authority have not done anything on the representation filed by the petitioner. In the meanwhile, a writ petition was filed by the NGO, namely, ACAUT and others which was registered as the WP(C) No. 145(K)/2017, challenging the Office Memorandum dated 04.08.2008 and 11.08.2016 and by order dated 03.08.2018, a Co-ordinate Bench of this Court dismissed the said writ petition on the ground of maintainability, without entering into the merit of the case. However, liberty was given to the petitioners to make fresh challenge to the appointments of the impleaded respondent as per the law. As the judgment did not delve upon the merit of the case, the Office Memorandum dated 04.08.2008 and 11.08.2016 were not interfered with. However, an observation was made by the court while dismissing the writ petition that within "*the state respondent should not regularize any person if he has completed only three years of continuous service on contract basis in terms of Office Memorandum dated 11.08.2016 and Office Memorandum dated 04.08.2008*".

9. The State of Nagaland has preferred a writ appeal against the aforementioned judgment of the Single Bench of this Court, which was

registered as W.A. No. 16/2018. By the judgment dated 07.02.2019, passed in WA No. 16/2018, the judgment dated 03.08.2018 passed in WP(C) No. 145(K)/2017 was upheld. It is contended by the petitioners that due to pendency of the aforesaid writ petition, the matter of regularization of the petitioners was kept in abeyance, however, in view of the dismissal of the aforesaid writ petition, the petitioners again submitted a representation on 14.07.2020 requesting the respondent authorities to regularize their services. It is further contended by the petitioners that the respondent No. 4, in the meanwhile, had regularized the services of four LDAs in the department by order No. SW/ESTT-53/99(pt)/2756 dated 17.10.2011. It is also contended by the petitioner that similarly the department of Animal Husbandry and Veterinary Science Services also regularized the service of six LDAs who have completed three years of continuous service, however, nothing has been done in respect of the regularization of the services of the petitioners in spite of the fact that they have submitted two representations to this effect to the respondent authorities.

10. Mr. Moa Jamir, learned counsel for the petitioners has submitted that when similarly situated contractual/*ad hoc* employees have been given benefit of the OM dated 04.08.2008 by the respondent authorities, depriving the present petitioners of the benefits of aforesaid office memorandums is a clear case of treating equals as unequally and is a violation of the fundamental rights of the petitioners.

11. Learned counsel for the petitioners has also submitted that in the WP(C) No. 145(K)/2017, the court has not dealt with the matter before it

on merit and had actually dismissed the writ petition only on the question of maintainability, however, while doing so it made a passing observation that state respondents should not regularize any person if he has completed only three years of continuous service on contract/*adhoc* basis in terms of OM dated 04.08.2008 and 11.08.2016. It is submitted that the said observation was not the decidendi ratio of the case decided by it as the WP(C) No. 145(K)/2017 was dismissed on the question of maintainability only. It is further submitted by the learned counsel for the petitioners that the observation made by this Court in WP(C) No. 145(K)/2017 has no binding effect as it was a mere obiter dictum of the court.

12. Learned counsel for the petitioners has also submitted that without deciding the validity of Office Memorandum dated 04.8.2008 and 11.08.2016 and without setting aside the said office memorandum, the court erred in making an observation of not to regularize any person who has completed only three years of continuous service on contract/*ad hoc* basis.

13. It is also submitted by the learned counsel for the petitioners that in any view of the matter all the three present petitioners, who are before this court, have completed more than 10 years of continuous service on *adhoc*/contract basis and, therefore, they do not fall under the category of completing only three years of continuous service as mentioned in the judgment of the Division Bench of this Court in Writ Appeal No. 16/2018 dated 07.02.2019.

14. Learned counsel for the petitioners has also submitted that a

decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from various observations made in it. In support of his submission, learned counsel for the petitioners has cited the judgment of the Apex Court in the case of "***The State Of Orissa –Vs- Sudhansu Sekhar Misra And Ors.***" reported in "***AIR 1968 SC 647***".

15. Learned counsel for the petitioners has also submitted that though the Division Bench of this Court in Writ Appeal No. 16/2018 has upheld the judgment passed by the Single Judge in WP(C) No. 145(K)/2017 on ground that the office memorandums were found to be not in conformity with the law laid down by the Apex Court in the case of "***State Of Karnataka And ... vs Umadevi and Others***" reported in "***(2006) 4 SCC 1***", however, the ratio of the case of the case of *Umadevi (supra)* cannot be applied mechanically without seeing the facts of a particular case and if the facts are distinguishable the ratio of *Umadevi (3) (supra)* would be inapplicable in that case.

16. It is also submitted by learned counsel for the petitioners that in the instant case the petitioners all three petitioners having completed more than 10 years of continuous service and having cleared the Suitability Test conducted by the respondent authority in pursuant to their own policy decision as per the office memorandum dated 04.08.2016, hence, the case of the petitioners is clearly distinguishable from the facts in the case of "*Umadevi (3) (supra)*". In support of his submission learned counsel for the petitioners has submitted has cited the ruling of the Supreme Court of India in the case of "***U.P. State Electricity Board vs***

Pooran Chandra Pandey & Others”reported in “**2007 11 SCC 92**”.

17. To show that it is only the ratio decidendi of a judgment which act as binding or authoritative precedent and not the obiter dicta which is more or less unnecessary to the decision arrived at in a case, the learned counsel for the petitioner cited following rulings:-

1. “*Bharat Petroleum Corporation Limited and Anr. -Vs- N.R. Vairamani and Anr.*” reported in “(2004) 8 SCC 579”.
2. “*Fida Hussain and Ors. -Vs- Moradabad Development Authority and Anr.*” reported in “(2011) 12 SCC 615.
3. “*Union of India and Ors. -Vs- Dhanwanti Devi and Ors.*” reported in “(1996) 6 SCC 44”.
4. “*State of Haryana -Vs- Ranbir alias Rana*” reported in “(2006) 5 SCC 167”.
5. “*Girnar Traders -Vs- State of Maharashtra and Ors.*” reported in “(2007) 7 SCC 555”.

18. Learned counsel for the petitioner has also cited ruling of the Supreme Court of India in “**Raman Kumar and Ors. -Vs- Union of India and Ors.**” “SLP(C) No. 7898/2020” and “**Shri Basudeb Debnath and 11 Ors.**” -Vs- **Union of India and 4 Ors.**” in WP(C) No. 1162/2018 wherein the Apex Court has discussed the decision of *Uma Devi* (3) (supra).

19. Learned counsel for the petitioner has submitted that as the Office Memorandum dated 4th August, 2008 as well as Office Memorandum dated 11th August, 2016 has not been set aside or quashed and it is it still holds the field, and, therefore, the respondent authorities are liable to consider the representation filed by the petitioners in terms of the said Office Memorandum by a speaking order. It is also submitted that

unless the petitioners are communicated regarding the fate of their representation dated 22.02.2019 and 14.07.2020, they would be handicapped in pursuing further judicial remedies which may be available to them in this regard.

20. On the other hand, Mr. E. Thiba Phom, learned Government Advocate representing the State respondents has submitted that though the respondents had initiated the process of regularization of the petitioners as they were found suitable in the Suitability Test, however, in view of the judgment of this court in WP(C) No. 145(K)/2017 and Writ Appeal No. 16/2018, proposal for regularization of the petitioners could not be considered by respondent authorities as the High Court in the aforesaid judgment have clearly prohibited the state respondent from regularizing any person if he has completed only three years of continuous service on contract/*ad hoc* basis in terms of OM dated 11.08.2016 and 04.08.2008. It is also submitted by learned Government Advocate that this fact has been communicated by the Joint Secretary to the Government of Nagaland to the respondent No. 4 by letter No. DSW/ESTT-1/2003/PT-1 dated 10th March 2022.

21. Learned Government Counsel has submitted that in view of clear directions in aforesaid cases to the effect that that the state respondents are prohibited from regularizing any person who has completed only three years of continuous service the state respondents could not go ahead with the regularization with the proposal for regularization of the petitioners.

22. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

23. In the instant case all the three petitioners have completed more than 10 years of service as on contract/*ad hoc* basis as LDA-cum-Computer Assistant in the Directorate of Social Welfare, Nagaland. It also appears that proposal for their regularization in terms of Office Memorandum dated 04.08.2008 and 11.08.2016 were initiated by the respondent authorities and thereafter a Suitability Test was also conducted in that regard. It also appears that the all the above name petitioners were found suitable in the Suitability Test which was conducted on 30th November, 2016. However, as the High Court in WP(C) 145(K)/2017 had made an observation restraining the state respondent from regularizing any person who has completed only three years of continuous service on contract/*ad hoc* basis in terms of the aforesaid Office Memorandum, the respondent authorities could not go ahead with the proposal for regularization of the petitioners.

24. Though it appears that the WP(C) 145(K)/2017 was dismissed by the court on the question of maintainability, however, an observation was made therein restraining the state respondent from regularizing any person who has completed only three years of continuous service on contract/*ad hoc* basis in terms of the said Office Memorandum. It also appears that the State of Nagaland has preferred an appeal against the said judgment and in the Writ Appeal No. 16/2018, a Division Bench of this court has upheld the judgment passed by the single judge in WP(C) 145(K)/2017 with observation made by this court in the impugned judgment in order dated 03.08.2018 passed in WP(C) 145(K)/2017 by the learned Single Judge by observing that the said judgment does not call for any interference.

25. In view of the judgment passed by the Division Bench of the this court in Writ Appeal No. 16/2018, it is not open for this court to again delve upon the correctness or otherwise of the observations made in the judgment passed by the Co-ordinate Bench of this court in WP(C) 145(K)/2017. However, as the contention of the learned counsel for the petitioner is that the observation made by the Single Judge in WP(C) 145(K)/2017 was with regard to those persons who have completed only three years of continuous service and in the instant case the petitioners have completed more than 10 years of continuous service as well as the fact that the fate of the representation filed by the petitioners on 20.02.2019 and 14.07.2020 has not yet been communicated to the petitioners, this court is of considered opinion that that the petitioners are entitled to know about the fate of the representations filed by them.

26. In view of the above, the respondent Nos. 2 and 4 are hereby directed to dispose of the representation dated 20.02.2019 and 14.07.2020 by a speaking order and communicate the fate of the same to the petitioners within a period of three months from the date of receipt of certified copy of this order.

27. With the above directions, this writ petition is hereby disposed of.

JUDGE

Comparing Assistant