

GAHC020004862023



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

Case No. : WP(C)/202/2023

SHRI GHONITO
S/O PHUZHETO,
R/O VIYITO,
DISTRICT DIMAPUR 797112, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY/
SECRETARY,
DEPARTMENT OF PUBLIC HEALTH DEPARTMENT (PHED),
GOVERNMENT OF NAGALAND,
KOHIMA, NAGALAND

2:THE COMMISSIONER AND SECRETARY/ SECRETARY

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS

GOVERNMENT OF NAGALAND

KOHIM
NAGALAND

3:THE CHIEF ENGINEER

DEPARTMENT OF PUBLIC HEALTH ENGINEERING

GOVERNMENT OF NAGALAND

KOHIMA
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI

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 Ms. Lhousino, the learned counsel appearing on behalf of the petitioner and Ms. V. Soukhrie, the learned Additional Advocate General, Nagaland appearing on behalf of the respondents.

2. The petitioner herein has approached this Court being aggrieved by the inaction on the part of the respondent authorities in regularizing the services of the petitioner in terms with the Office Memorandum dated 17.03.2015. The case of the petitioner herein is that the petitioner was appointed vide an order dated 09.05.1990 as a work-charged labour in the Office of the Executive Engineer (PHED), Rural Division, Dimapur, Nagaland. After serving for about 26 years vide an order dated 05.09.2016, the petitioner's services were upgraded from work-charged labour to work-charged Jugali and was granted a scale of pay. It is the case of the petitioner that the petitioner ought to have been considered in terms with the Office Memorandum dated 22.09.2004. But the petitioner was not considered by the concerned respondent authorities. However, as the petitioner had already completed 30 years of service and had been also granted the scale of pay, the case of the petitioner ought to have

been considered in terms with the Office Memorandum dated 17.03.2015. It is against the inaction on the part of the respondent authorities in not considering the case of the petitioner for regularization, the petitioner has therefore approached this Court seeking regularization and other reliefs.

3. It is seen from the affidavit-in-opposition filed by the respondent Nos.1, 2 & 3 and more particularly at paragraph No.4 that it is admitted that the petitioner has already completed 30 years of service as work-charged employee in the scale of pay and it is also admitted that the petitioner's case comes within the purview of the Office Memorandum dated 17.03.2015. It has also been mentioned that the case of the petitioner has also been put up to the Government on 19.04.2021 in the 13th phase and clearance has already been given by the P&AR Department on 06.07.2022. Further to that, the case of the petitioner has also been referred to the Finance Department for concurrence. However, the Finance Department has sought for more clarification and the Department is now in continuous correspondence by supplying necessary documents as required by the Finance Department. It is also mentioned that once the Finance Department gives the concurrence, it will be placed before the Manpower Rationalization Committee for its recommendation and thereafter it would be placed before the Cabinet for its approval.

4. This Court finds that in the instant writ petition, the petitioner had sought for other reliefs. However, taking into consideration, that the petitioner having already completed 30 years and the stand of the Respondents the scope of the writ petition have substantially narrowed down.

5. I have heard the learned counsels appearing on behalf of the petitioner as well as the respondents and have also perused the Office Memorandum dated 17.03.2015. Clause 1 (ii) of the Office Memorandum dated 17.03.2015 being relevant, is reproduced herein under:-

1. Regularization in service:

(ii) In respect of those work-charged and casual employees in scale pay and who have completed or will complete 30(thirty) years of continuous service after 01.01.2015, their cases for regularization will be taken up subsequently in two batches as on 1st July and 1st January every year. The procedures and terms and conditions will be the same as laid down in this O.M.

6. From a perusal of the above Clause, it is seen that work-charged and casual employees in the scale pay who have completed or will complete 30 years of continuous service after 01.01.2015, their cases for regularization would be taken up subsequently in two batches as on 1st July and 1st January every year. The procedure and terms and conditions will be same as laid down in Clause 1 (i) of the said Office Memorandum.

7. From the above facts, it transpires that the petitioner herein admittedly had completed 30 years of service and the respondents are in active consideration of the case of the petitioner for regularization. At this stage, this Court finds it relevant to take note of Section 3 (2) of the Nagaland Retirement from Public Employment Act, 1991 which stipulates that a person under public employment shall retire on the afternoon of the last day of the month in which he attains 60 years or in which he completes 35 years of public employment, whichever is earlier. In the said backdrop, if this Court takes note of the service rendered by the petitioner,

it would be seen that the petitioner as on the date of the instant judgment had already completed 34 years since 09.05.1990. Delay in granting the benefits under the Office Memorandum dated 17.03.2015 would not only be depriving the petitioner of the benefits of the regularization but would also result in creating difficulties if the petitioner retires pending the process of regularization being finalized. Under such circumstances, this Court is of the opinion that this is a fit case for passing appropriate directions for completion of the regularization process of the petitioner within a time frame.

8. Under such circumstances, this Court disposes of the instant writ petition with a direction to the respondent authorities to complete the process of regularization at the earliest and preferably within 2 (two) months from the date a certified copy of the instant order is served upon to the respondent No.3.

9. In view of the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant