

GAHC020005112023



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

Case No. : WP(C)/212/2023

SMTI. KEVISE-U ANGAMI
W/O LT. NCE THEYAIECHULIE ANGAMI,
R/O SOVIMA VILLAGE,
DISTRICT CHUMOUKEDIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT OF NAGALAND,
HOME DEPARTMENT, NAGALAND, KOHIMA

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

3:THE DIRECTOR GENERAL OF POLICE
PHQ
NAGALAND
KOHIMA

4:THE INSPECTOR GENERAL OF POLICE (NPTO)
NAGALAND
KOHIMA

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 21-03-2024

Heard Mr. Limawapang, learned counsel for the petitioner and Ms. S. Mere, learned Senior Government Advocate, Nagaland for all the respondents.

2. The petitioner was the wife of one Late Theyiechulie Angami. Vide an Order dated 01.08.1995, the Superintendent of Police [Wireless], Kohima, Nagaland appointed Theyiechulie Angami as Sweeper in the pay scale of Rs. 800/- – Rs. 1475/- per month plus all other allowances from time to time w.e.f. 01.08.1995 against an existing vacancy. As per the Order dated 01.08.1995, the appointment was on ad-hoc basis and would be terminated with one month notice if his performance was not found satisfactory. By the same Order, Theyiechulie Angami was posted at 1st NAP Bn., Chumukedima till further order. By an Order dated 01.09.2000 passed by the Deputy Inspector General of Police [Telecommunication], Nagaland, the ad-hoc service of Theyiechulie Angami was converted into temporary service w.e.f. 01.01.2000.
3. The case projected in this writ petition can be expounded as follows :-
 - 3.1. While Theyiechulie Angami was in active service, the Inspector General of Police [Crime], Nagaland served a Show Cause Notice dated 27.11.2001 to 462 nos. of employees including Theyiechulie Angami, to show cause as to why their appointments should not be cancelled due to various illegalities/irregularities, mentioned therein. The petitioner's husband, that is, Theyiechulie Angami was a member of the Nagaland Police Wireless Employees Association. Aggrieved by the Show Cause Notice dated 27.11.2001 served on its members, the Nagaland Police Wireless Employees Association taking up the cause of the noticees, being employees under the Nagaland Police Telecommunication Organisation

[NPTO], preferred a writ petition, W.P.[C] no. 221[K]/2001 challenging the Show Cause Notice dated 27.11.2001. The writ petition, W.P.[C] no. 221[K]/2001 was, however, dismissed by a Judgment and Order dated 12.08.2003, with observation that it would not make any comment about consideration of the cases of the members of the petitioner Association by a Commission constituted for the purpose of regularization under the Nagaland Work-Charged and Casual Employees Act, 2001, which recommended retention of 391 employees and retrenchment of 71 employees.

- 3.2. Aggrieved by and dissatisfied with the Judgment and Order dated 12.08.2003, the petitioner, the Nagaland Police Wireless Employees Association carried the matter before the Division Bench by way of an intra-court appeal, Writ Appeal no. 371/2003 [Later on, renumbered as Write Appeal no. 15[K]/2007]. During the pendency of the Writ Appeal no. 15[K]/2007, the Department of Home decided to conduct fresh recruitment test among the alleged excess appointees. Aggrieved by such decision of the Department to hold fresh recruitment test, the Nagaland Police Wireless Employees Association had again preferred a writ petition, W.P.[C] no. 7463/2005 [renumbered, later on, as W.P.[C] no. 250[K]/2006]. The State respondents filed an affidavit in the writ petition, W.P.[C] no. 250[K]/2006 taking a stand that the number of members of the petitioner association were 417 and regularization of such 417 members at one go would be burdensome for the State respondents. A stand was taken to the effect that regularization could be considered only in phased manner.
- 3.3. On 17.11.2009, the writ petition, W.P.[C] no. 250[K]/2006 and the writ appeal, Writ Appeal no. 15[K]/2007 came up for consideration. The writ petition, W.P.[C] no. 250[K]/2006 was disposed of with a direction that the State respondents shall proceed in the manner indicated as per the stand taken in the affidavit-in-opposition, filed on 02.03.2009 therein. It needs iteration that in the said affidavit-in-opposition, the State respondents had taken a stand that the regularization of the members of the petitioner association, 417 in nos., could

only be taken up in phased manner. In view of the Order passed on that day, that is, on 17.11.2009 in the writ petition, W.P.[C] no. 250[K]/2006, the writ appeal, Writ Appeal no. 15[K]/2007 was not pressed and the same stood accordingly disposed of.

3.4. With the disposal of the writ petition, W.P.[C] no. 205[K]/2006 and the writ appeal, Writ Appeal no. 15[K]/2007 in the afore-stated manner on 17.11.2009, the petitioner's husband was under legitimate expectation that his services would be regularized in due course, as the process for regularization of all the members, 417 in nos., of the Nagaland Police Wireless Employees Association by the State Government in the Nagaland Police Telecommunication Organisation [NPTO] was being progressed. Unfortunately, Theyiechulie Angami died-in-harness on 17.06.2011.

3.5. It was after the death of Theyiechulie Angami, the Home Department, Government of Nagaland issued a Notification dated 14.11.2012, which was in compliance of the Orders dated 17.11.2009 passed in the writ petition, W.P.[C] no. 250[K]/2006 and in the writ appeal, Writ Appeal no. 15[K]/2007. By the said Notification, the State Government regularized the services of 357 nos. of employees in the Nagaland Police Telecommunication Organization [NPTO] w.e.f. 01.06.2012, as per the details furnished therein. Vide Annexure-A thereto, services of 9 nos. of employees were regularized in the posts of Hawildar [Signal] whereas vide Annexure-B thereto, the services of 316 nos. of employees were regularized in the posts of Constable [Signal]. The services of 32 nos. of employees were regularized vide Annexure-C thereto in the posts of Non-Combatant Employee [NCE] [Signal].

3.6. After the demise of Theyiechulie Angami on 17.06.2011, the petitioner approached the respondent authorities with the prayer to regularize the services of her deceased husband, Theyiechulie Angami so as to enable her to avail family pension. At first, the respondent no. 2, that is, the Principal Secretary,

Personnel and Administrative Reforms Department, Nagaland examined the claim of the petitioner and requested to the respondent no. 3, that is, the Director General of Police, Nagaland vide his Communication bearing no. POL/ESTT/MISC/7/2021 dated 17.08.2022 to examine the matter of regularization of personnel, who expired in between the period of the Orders passed by this court on 17.11.2009 and the issuance of the Notification dated 14.11.2012. After consideration, it was found that 8 [eight] employees out of original 417 nos. of employees, expired during the said period, that is, before regularization of their services. Theyiechulie Angami was one of such 8 [eight] employees, who expired prior to issuance of the Notification dated 14.11.2012. The case for regularization of Theyiechulie Angami posthumously was, at first, considered by the Personnel and Administrative Reforms Department and after examination, the Personnel and Administrative Reforms Department had requested the Home Department to identify a vacant sanctioned post against which posthumous regularization of Theyiechulie Angami could be facilitated. Accordingly, the Home Department, Government of Nagaland wrote to the Director General of Police, Nagaland vide its Communication bearing no. POL/ESTT/MISC/7/2021 dated 17.08.2022 to take further necessary action. On 15.11.2022, the Home Department, Government of Nagaland vide its Communication bearing no. POL/ESTT/MISC/7/2021/470 dated 15.11.2022 conveyed to the respondent no. 3, that is, the Director General of Police, Nagaland to the effect that after examination of the matter of posthumous regularization of Theyiechulie Angami, it was found that it would not be possible to regularize the services of Theyiechulie Angami posthumously in view of the Hon'ble Supreme Court of India's Judgment in *Civil Appeal no. 4223/2022 [the State of Nagaland and others vs. Nishevi Achumi]*, decided on 11.07.2022, and in *W.P.[C] no. 232/2006 [Ekta Shakti Foundation vs. Government of NCT of Delhi]*, decided on 17.07.2006.

- 3.7. Aggrieved by the denial of the prayer for regularization contained in the Communication dated 15.11.2022, the petitioner submitted a Representation

before the respondent no. 1 on 09.01.2023 with the request to re-examine her prayer. The office of the respondent no. 1 vide a Letter dated 25.01.2023 forwarded the petitioner's Representation to the respondent no. 3, the Director General of Police, Nagaland seeking his views/comments in the matter. In response, the Deputy Inspector General of Police, O/o the Director General of Police, Nagaland vide its Communication bearing no. PHQ[B-X]/MISC-I/2018/1102 dated 06.02.2023, addressed to the respondent no. 1, conveyed the decision that the Judgment of the Hon'ble Supreme Court of India in *Nishevi Achumi* [supra] would cover the case of Theyiechulie Angami while admitting the fact that services of similarly situated deceased employees in the NPTO were regularized for pensionary benefits prior to the pronouncement of the Judgment in *Nishevi Achumi* [supra] on 11.07.2022.

4. Assailing the decision contained in the Communication dated 15.11.2022 and the Communication dated 06.02.2023, whereby, the prayer of the petitioner for posthumous regularization of the services of her husband, Theyiechulie Angami has been rejected, the petitioner has approached this Court by the instant writ petition.
5. Mr. Limawapang, learned counsel for the petitioner has submitted that the facts and circumstances of the case in *Nishevi Achumi* [supra] are different from the facts and circumstances of the present case. It is submitted by him that the State respondents in the writ petition, W.P.[C] no. 250[K]/2006 had taken a stand that services of the members of the petitioner association, the Nagaland Police Wireless Employees Association, numbering 417, could not be regularized at one go, but their cases would be considered in phased manner. As such, there was an assurance from the State respondents that the services of the petitioner's husband would be regularized in the course of the regularization process, to be completed in phased manner. He has referred to a Judgment and Order dated 12.10.2020 rendered in *W.P.[C] no. 129/2019 [C. Taknyie Phom vs. the State of Nagaland and others]* to submit that the petitioner is entitled to

the same benefit. The petitioner therein was a widow of a deceased employee like the petitioner's husband and the said employee expired, prior to 14.11.2012, without his services being regularized.

6. Ms. Mere, learned Senior Government Advocate, Nagaland appearing for all the respondents has submitted that the case of the petitioner's husband for posthumous regularization cannot be considered in view of the decision rendered by the Hon'ble Supreme Court of India in *Nishevi Achumi* [supra]. Ms. Mere has sought to draw similarity of the case of the petitioner with that in *Nishevi Achumi* [supra] and has contended that the decision in *C. Taknyie Phom* [supra] is not applicable, as the same was passed prior to 11.07.2022. It is submitted that the petitioner's husband died prior to issuance of the Notification dated 14.11.2012 and as such, there is no question of regularization of the services of a deceased employee.

7. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the decisions of the Hon'ble Supreme Court of India in *Nishevi Achumi* [supra], *Ekta Shakti Foundation* [supra] and *C. Taknyie Phom* [supra].

8. The events which have led the petitioner to institute the writ petition have already been adverted to in the preceding paragraphs. There is no dispute to the fact that the petitioner's husband, Theyiechulie Angami was one of the members of the Nagaland Police Wireless Employees Association, which preferred the writ petition, W.P.[C] no. 250[K]/2006 and the said fact was also admitted by the State respondents in the affidavit filed in the writ petition, W.P. [C] no. 250[K]/2006. The name of Theyiechulia Angami figured at Serial no. 5 in the list of employees [Category-NCE(Signal)] sent by the Deputy Inspector General of Police [HQ], Nagaland, Kohima vide Letter no. PHQ[B-VI]/WIRELESS/2001/2771 dated 07.09.2012, in response to a letter of the

Home Department requesting to provide the list of excess employees, who were eligible for regularization of the services in the order of seniority. The State respondents in the writ petition, W.P.[C] no. 250[K]/2006 had taken a stand admittedly to the effect that the matter of regularization of 417 nos. of members of the Nagaland Police Wireless Employees Association would be considered in phased manner. After disposal of the writ petition, W.P.[C] no. 250[K]/2006 on 17.11.2009, the matter of regularization was processed by the State Government during the subsequent period. In view of such stand of the State Government, there was clearly a legitimate expectation on the part of those 417 nos. of employees including the petitioner's husband, that their services would be regularized in due course of time and in course of time, everyone of those 417 nos. of employees would be regularized. Unfortunately, Theyiechulie Angami expired on 17.06.2011 when the matter of regularization of his services was being processed by the State respondents. It was only on 14.11.2012, the State respondents finalized the matter of regularization of services of 357 nos. of surviving employees out of 417. It was specifically mentioned in the Notification dated 14.11.2012 that the regularization of the services were in pursuance of the Orders dated 17.11.2009 passed in the writ petition, W.P.[C] no. 250[K]/2006 and the writ appeal, Writ Appeal no. 15[K]/2007.

9. The deceased husband of the respondent in Civil Appeal no. 4223/2022, Nishevi Achumi was working as an work-charged Jugali, who died-in-harness on 28.08.2005. It was in the year 2017, that is, after elapse of a period of 12 years from the death of her husband, the respondent widow-original writ petitioner preferred a writ petition before the High Court claiming that the services of her late husband ought to have been regularized and therefore, she would be entitled to the family pension. The writ petition was allowed by the learned Single Judge directing the State to regularize the services from one day prior to the date of his demise. When the State preferred a writ appeal, Writ Appeal no. 21/2019 before the Division Bench, the Division Bench by a Judgment and

Order dated 19.04.2021 dismissed the writ appeal. When the State preferred the appeal, Civil Appeal no. 4223/2022, the same was allowed and the original writ petition was dismissed. Before the Supreme Court, the State had contended, *firstly*, that during his lifetime, the deceased employee never claimed for regularization; *secondly*, that the original petitioner, that is, the widow of the deceased employee claimed for regularization after a period of twelve years from the date of death of the deceased employee; and *thirdly*, that even otherwise, the deceased employee was not entitled to regularization even on the date of his death as he was much below in the seniority list and his turn had not come up for regularization. The Hon'ble Supreme Court took note of the facts that during his lifetime, the deceased employee never claimed for regularization and the original petitioner, that is, the wife of the deceased employee claimed for regularization after a period of twelve years from the date of death of the deceased employee. Notice was taken on the fact that 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 seniority of work-charged employees whose services were to be regularized. The Hon'ble Supreme Court had observed that as per the policy of regularization, the services of the work-charged employees were required to be regularized as per the seniority list and as and when the vacancy arose. The services of the other work-charged employees, who were senior to the deceased employee, were regularized in the year 2009, that is, after the death of the deceased employee. Taking into consideration such facts and circumstances the Hon'ble Supreme Court had observed that the High Court erred in directing the State to regularize the services of the deceased employee one day prior to his death, which was not required to be regularized as his turn did not come and he was much below in the seniority list. Setting aside and quashing the decision of the High Court, the original writ petition was dismissed in *Nishevi Achumi* [supra].

10. On consideration, the facts and circumstances obtaining in the case in hand, cannot be said to be similar to the case in *Nishevi Achumi* [supra], as

contended by the State respondents. It was during the proceedings of the writ petition, W.P.[C] no. 250[K]/2006 and the writ appeal, Writ Appeal no. 15[K]/2007, the State respondents had extended an assurance that though the services of 417 nos. of employees of the Nagaland Police Wireless Employees Association would not be possible to be regularized at one go, their cases would be considered in phased manner. It goes to show that the matter of regularization of service of Theyiechulie Angami along with other employees in the Nagaland Police Wireless Employees Association in the Nagaland Telecommunication Organisation [NPTO] was considered and processed during his lifetime. In the seniority list of NCE, the name of Theyiechulie Angami found figured at Serial no. 5 with his date of appointment as 02.08.1995. By the Notification dated 14.11.2012, the services of 32 nos. of NCE [Signal] whose dates of appointments were between 01.01.1999 and 01.02.2001, were regularized. Had Theyiechulie Angami been alive, his services would have definitely been regularized w.e.f. 01.06.2012 in the post of NCE [Signal] as his seniority position was above those 32 nos. of employees regularized as NCE [Signal] w.e.f. 01.06.2012. The State respondents have not pointed out any disability/deficiency in Theyiechulie Angami which would have disentitled him from the benefit of regularization had he been alive, and that he was not similarly situated with the other thirty-two junior NCE [Signal] employees, whose services were regularized w.e.f. 01.06.2012. Thus, this Court in respectful disagreement to the contention of the State counsel that the case of Theyiechulie Angami was similar to the case of the deceased husband of Nishevi Achumi.

11. The petitioner in the writ petition, W.P.[C] no. 129/2019, was a widow of one Late Imtilong Jamir, who was appointed as a Constable in the Nagaland Police [Wireless] on ad-hoc basis with pay and allowances w.e.f. 1999. Imtilong Jamir expired before his services could be regularized. The coordinate bench took note of the Orders passed in W.P.[C] no. 250[K]/2006 and Writ Appeal no. 15[K]/2007 and the stand taken by the State respondents in Paragraphs 6, 7, 8

& 9 of the affidavit filed in W.P.[C] no. 250[K]/2006. After taking note of the same, the writ petition was disposed of by the Judgment and Order dated 12.10.2020 with a direction to regularize the services of the petitioner's husband for the purpose of pensionary benefits including the family pension, with the following observations :-

There is no dispute on the fact that the petitioner was appointed on ad-hoc basis and died before his service could be regularized. There is also no dispute on the fact that after the passing of the order dated 17.11.2009 by a Division Bench of this High Court in W.P.[C] No. 250[K] of 2006 and the order dated the same by the same Division Bench in W.A No. 15[K] of 2007, the Government of Nagaland had taken up a process for regularization of the services of several police personnel including that of the petitioner's husband and the process reached its final stage and culminated into issuance of the order dated 14.11.2012, by which the service of 349 similarly situated persons were regularized. It appears from the record and the submissions of the learned counsel that the service of petitioner's husband would have been regularized along with similarly situated persons had he not died before the issuance of the order.

Considering the above stated facts and circumstances and the fact that the petitioner's husband served in the Police force of the State for more than 10 years before he died, I am of the view that the State Government could have been more considerate and humane with its employee and his family who are none other than its own citizens. For such technical reasons, the State as a model employer that too being a welfare State could not have denied the pensionary benefits to its own employee and his family members who served for such length of time with no record showing negligence or dereliction of his duties. The process for regularization of the service of the petitioner's husband was in progress and it was on its way to fruition, and, it would have happened had it not

been for his untimely death. Therefore, it would have been just and fair had the service of the petitioner's husband was regularized for the purpose of enabling the petitioner and her children to enjoy the family pension and other pensionary benefits at least when it was requested. Taking into view the principle of law constantly followed by this Court in catena of cases including the two cases referred to by the learned counsel of the petitioner, I am of the considered view that the respondents should regularized the service of the petitioner's late husband for the purpose of enabling the petitioner and her family members to enjoy family pension and other pensionary benefits.

Accordingly, the respondents are directed to regularize the service of the petitioner's late husband for the purpose of pensionary benefits including the family pension. Further, it is also directed that the whole process should be completed within a period of 3 [three] months from the date of receipt of a copy of this order.

- 11.1. In compliance of the direction made in the Judgment and Order dated 12.10.2020 passed in the writ petition, W.P.[C] no. 129[K]/2019, the ad-hoc service of Late Imtilong Jamir, Constable in the Nagaland Police Telecommunication Organization [NPTO] was regularized posthumously for pensionary benefits only by an Order bearing no. WHQ/ESTT/36/2021-22/737 dated 02.12.2021. In reference to the Judgment and Order dated 12.10.2020 passed in the writ petition, W.P.[C] no. 129[K]/2019, the ad-hoc service of one Late L. Moa Watang, Constable in the NPTO was also regularized posthumously for pensionary benefit by an Order bearing no. WHQ/ESTT-I/36/2021-22/743 dated 16.02.2022.
12. The decision in *Ekta Shakti Foundation* [supra] was delivered in a Public Interest Litigation [PIL] in a matter relating to implementation of the Integrated Child Development Service [ICDS] Programme. From the Communication bearing no. AR-5/COURT-10/2022[Vol. II] dated 19.09.2022 of the Personnel

and Administrative Reforms Department, Government of Nagaland, it can be discerned that the ratio in *Ekta Shakti Foundation* [supra] has been sought to be applied in the case of the petitioner by applying the observation made in *Ekta Shakti Foundation* [supra] to the effect that a wrong judgment in favour of one person would not entitle any other person to claim benefit on the basis of the wrong decision. The principle, in the considered view of this Court, is not found applicable in the present case.

13. By the Communication bearing no. POL/ESTT/MISC/7/2021/470 dated 15.11.2022, the State Government in the Home Department had conveyed that posthumous regularization of the services of Theyiechulie Angami could not be made in view of the decision in *Nishevi Achumi* [supra] and *Ekta Shakti Foundation* [supra]. When the petitioner submitted a Representation against the Communication dated 15.11.2022, the impugned Communication bearing no. PHQ[B-X]/MISC-1/2018/2203 dated 06.02.2023, reiterating its earlier decision, has been issued by the respondent no. 3, the Director General of Police. In the said impugned order also, the decisions in *Nishevi Achumi* [supra] and *Ekta Shakti Foundation* [supra] were referred to observe that the case of the present petitioner was covered by the said decisions.
14. On going through the facts and circumstances involved in the cases, this Court is of the considered view that neither the decision in *Nishevi Achumi* [supra] nor the decision in *Ekta Shakti Foundation* [supra] is found directly applicable to the case of Theyiechulie Angami. A decision is an authority for what it decides and not what can logically be deduced therefrom and even a slight distinction in fact or an additional or different type may make a lot of difference in the decision making process. It can be noticed that in *Nishevi Achumi* [supra], the case of the deceased husband of the petitioner was never considered for regularization during his lifetime whereas in the case in hand, it was the State respondents themselves, who had given assurance by taking a stand that the case of Theyiechulie Angami and other employees, who were

members of the Nagaland Police Wireless Employees Association, would be considered for regularization in a phased manner and towards implementation of such decision for regularization, the State respondents had regularized the services of 357 nos. of employees in the Nagaland Police Telecommunication Organization [NPTO], who were members of the Nagaland Police Wireless Employees Association, on 14.11.2012. Merely because that the husband of the petitioner, Theyiechulie Angami unfortunately expired before he could enjoy the benefit of regularization, it is unjust on the part of the State respondents to deny pensionary benefits on that pretext, more so, Theyiechulie Angami was senior to all the 32 nos. of employees whose services were regularized as NCE [Signal] on 14.11.2012. Taking into accounts all such obtaining facts situations of the case in hand, the decision contained in the Communication dated 15.11.2022 and the Communication dated 06.02.2023 is found unjust, unreasonable and arbitrary and therefore, the impugned decision is set aside and quashed.

15. With the setting aside and quashing of the impugned decision, the writ petition is disposed of with a direction to the State respondents to take the necessary steps to regularize the services of the petitioner's husband, Late Theyiechulie Angami for the purpose of only pensionary benefits including family pension. The entire exercise shall be undertaken and completed within a period of 3 [three] months from the date of receipt of a certified copy of this order at the office of the respondent no. 3.
16. With the findings arrived at, the observations made and the direction given above, the writ petition is disposed of. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant