

GAHC020005242020



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

Case No. : WP(C)/189/2020

SURJIT SINGH
S/O SHRI S.P SINGH
PRESENTLY WORKING AS UDA (OFFICIATING),
O/O OF THE ADVOCATE GENERAL, NAGALAND,
GAUHATI HIGH COURT, GUWAHATI
PIN 781001

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA 797004

2:THE SECRETARY TO THE GOVERNMENT OF NAGALAND
DEPARTMENT OF LAW AND JUSTICE

KOHIMA
NAGALAND
PIN 797004

3:THE SECRETARY TO THE GOVERNMENT OF NAGALAND
DEPARTMENT OF FINANCE

KOHIMA
NAGALAND
PIN 797004

4:THE ADMINISTRATIVE OFFICER

GOVERNMENT OF NAGALAND

DEPARTMENT OF LAW AND JUSTICE

KOHIMA
NAGALAND
PIN 79700

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

Date of hearing and judgment : 09.05.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Tongpok Pongener, learned counsel for the petitioner and Ms. S. Mere, learned Senior Government Advocate for the State respondents.

2. By filing this present petition the petitioner has sought for the following reliefs:-

"In the premises aforesaid it is most respectfully prayed that your Lordship may be pleased to admit this petition, call for the record of the case, issue a rule calling upon the respondents to show cause as to why a writ in the nature of mandamus/certiorari or any other writ of like nature should not be issued:

(i) To direct the respondent authorities to grant the petitioner the benefit of the two Office Memorandum No. FIN/ROP-19/2001 dated 28.02.2002 and FIN/ROP-19/2001 dated 12.10.20210, issued by the Finance Department, to the Government of Nagaland, relating to Assured Career Progression Scheme for Employees of Nagaland Government since the petitioner's regularization dated 03.03.1993.

(ii) To direct the respondents to grant the petitioner the benefit of financial upgradation under the Assured Career Progression Scheme (ACPS) with effect from 03.03.2005, on which date the petitioner complete 12 years of regular service, and to pay/release the arrears thereof up to 07.03.2006 on which date he was granted officiating promotion to the post of UDA, and further grant the petitioner the benefit of the 2nd financial upgradation under the Modified Assured Career Progression Scheme (MACPS) with effect from 03.03.2013, on which date he completed 20 years of service and to pay/release the arrears thereof with interest acquired thereon.

(iii) For granting the benefit of Assured Career Progression Scheme for Employees of Nagaland Government under the Secretariat pay scale, be calculated since his regularization w.e.f. 03.03.1993, in view of the Judgment & Order dated 02.11.2018 passed in WP(C) No. 75(K)/2017."

3. By the Order dated 02.08.1988, issued by the Additional Secretary to the Government of Nagaland, Department of Law & Justice, the petitioner was temporarily appointed as LDA-cum-Typist on contract basis for a period of 4 (four) months w.e.f. 20.06.1988 in the Office of the Advocate General, Nagaland, Guwahati. The contract service of the petitioner was extended from time to time. Thereafter, by the Order dated 13.12.2002, issued by the Under Secretary to the Government of Nagaland, Department of Law & Justice, the petitioner was regularized in service in the post of LDA-cum-Typist w.e.f. 03.03.1993.

4. That thereafter, by the Order dated 07.03.2006, issued by the Principal Secretary to the Government of Nagaland, Department of Law & Justice, the petitioner was given officiating promotion to the post of UDA. The officiating promotion was made subject to regularization by the

Departmental Promotion Committee (DPC). It is, however, the case of the petitioner that despite serving the Department for more than 27 (twenty-seven) years since regularization of service on 03.03.1993, the petitioner has not been regularly promoted till the time of filing of the present petition.

5. That the Government of Nagaland in the Finance Department has issued the Office Memorandum (OM) dated 28.02.2002 introducing the Assured Career Progression Scheme (ACPS) for the Employees of Nagaland Government *inter alia* providing for two financial upgradation to Group-B and Group-C employees on completion of 12 (twelve) years and 24 (twenty-four) years provided no regular promotion has been given to an employee during the above period. It is submitted that the Scheme was introduced to avoid genuine stagnation and hardship that may be faced by the State Government Employees due to lack of adequate promotional avenues.

6. That thereafter, Modified Assured Career Progression Scheme (MACPS) was issued by the Government replacing the existing ACP Scheme and *inter alia* providing to grant three financial upgradation under the MACPS at an interval of 10, 20 and 30 years of continuous regular service as indicated in the Scheme.

7. It is, however, the case of the petitioner that he has not been extended the financial upgradation/benefits as provided in the OM dated 28.02.2002 nor the OM dated 12.10.2010, though the petitioner was in the regular service of the Department w.e.f. 03.03.1993.

8. From the affidavit filed by the State respondents it is seen that the

DPC in its meeting, held on 25.09.2019, had recommended the regularization of the officiating promotion of the petitioner as UDA w.e.f. the date of officiating promotion to the post of UDA as per the clearance of the P&AR Department dated 15.04.2019. The Department has, however, issued the Order dated 27.09.2019 regularizing the officiating promotion of the petitioner from LDA to UDA only w.e.f. 25.09.2019, i.e. the date on which the meeting of the DPC was held but not from the date of the officiating promotion, i.e. 07.03.2006. Furthermore, from the affidavit filed by the State it is discernible that the Department had not taken up the case of the petitioner for extending the financial benefit under the ACPS nor the MACPS.

9. Today, in the course of hearing of the case, Ms. S. Mere, learned Senior Government Advocate has placed a copy of the Corrigendum dated 05.09.2023, issued by the Government of Nagaland, Department of Law & Justice, regularizing the promotion of the petitioner to the post of UDA from the date of the officiating promotion in that post. The learned Senior Government Advocate accordingly submits that in terms of the Corrigendum dated 05.09.2023, the Department will work out and release the financial benefits due to the petitioner under the Scheme as provided in the OM dated 28.02.2002 and the OM dated 12.10.2010. In so far, as to the question, as to whether the petitioner is entitled to receive the pay scale at par with the State Secretariat Employees, the learned Senior Government Advocate submits that the same direction as ordered by this Court on 25.04.2024 in WP(C)/131/2023 may be passed in the instant case. Mr. Tongpok Pongener, learned counsel for the petitioner is in agreement to the submission made by the learned State counsel.

10. In view of the submissions made by the learned counsel for the parties and upon considering the facts and circumstances of the case, the present writ petition is disposed of with a direction to the State respondents to work out and pay/release the financial upgradation due to the petitioner under the ACPS as provided in the OM dated 28.02.2002 and the MACPS as provided in the OM dated 12.10.2010 along with all the arrears, if any, within a period of 90 (ninety) days from the date of receipt of a copy of this Order.

11. In so far as to the entitlement of the petitioner to receive the pay scale at par with the State Secretariat Employees is concerned, the State respondents shall take up the case and pass necessary orders as directed by this Court by Order dated 25.04.2024 in WP(C)/131/2023.

12. Writ petition stands disposed of.

Sd-
JUDGE

Comparing Assistant