

GAHC020005252022



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

Case No. : WP(C)/200/2022

SMTI.WENYIPE-U RITSE
SWEEPER CUM MALI,
ADDITIONAL DEPUTY COMMISSIONER,
OFFICE PFUTSERO, DISTRICT - PHEK,
NAGALAND, R/O PFUTSEROMI VILLAGE,
PHEK, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, NAGALAND, KOHIMA 2:THE HOME COMMISSIONER

NAGALAND
KOHIMA

3:THE COMMISSIONER

NAGALAND
KOHIMA

4:THE DEPUTY COMMISSIONER

PHEK
NAGALAND

5:THE ADDITIONAL DEPUTY COMMISSIONER(HQ)
NAGALAND
KOHIMA

6:THE ADDITIONAL DEPUTY COMMISSIONER

PFUTSERO
NAGALAND

7:SHRI. ZEKOTE VENUH

MULTI-TASKING STAFF(MTS)

DEPUTY COMMISSIONER OFFICE
PHEK
NAGALAN

Advocate for the Petitioner : WATI JAMIR, P. N. PHOM

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

08.11.2024

Heard Mr. Wati Jamir, learned counsel for the petitioner. Also heard Ms. Bichano Kithan, learned Government Advocate for the State and Ms. Nancy Lotha, learned counsel for the respondent No.7.

2. The writ petition has been filed by the petitioner praying for direction to the respondent department to consider her long standing claim so being appointed under the Compassionate Scheme in terms of the policy for appointment under Compassionate Scheme followed by the State of Nagaland.

3. The petitioner's husband Lt. Wetenyi Ritse was working as D.B. Grade-II under the establishment of the Additional District Commissioner, Pfutsero and during his service he expired on 11th

September, 2013 leaving behind the petitioner and 6(six) minor school going children. The petitioner's late husband was the sole bread earner for the family and after his demise the petitioner was left in pecuniary with no source of income. Left with no option she applied to the competent authority seeking her appointment under the Compassionate Scheme in a suitable post in the department in which the petitioner's late husband was working at the time of his demise. The said application was forwarded by the Additional Deputy Commissioner, Pfutsero to the Additional Chief Secretary and Commissioner, Nagaland, Kohima recommending that the petitioner be appointed under the Compassionate Scheme. Subsequently, another recommendation was made by the Additional Deputy Commissioner, Pfutsero. It is mentioned here that Pfutsero is Sub-Division under the District of Phek. Subsequently by communication dated 30th July, 2014 the Additional Deputy Commissioner (HQ), Office of the Commissioner, Nagaland, Kohima informed the Deputy Commissioner, Phek that the Commissioner of Nagaland has approved the proposal of the petitioner for appointment of Sweeper-cum-Mali on contingency basis in the Office of the Additional Deputy Commissioner, Pfutsero. It was also mentioned that her work to be taken up for regularization under Compassionate Scheme in Group D post, and if vacancies are available through the DLRB. Thereafter, the petitioner was appointed as Sweeper-cum-Mali in the Office of Additional Deputy Commissioner, Pfutsero at a fixed salary of Rs. 3,000/- per month w.e.f. 05th of August 2014. The petitioner is still employed as a fixed pay employee. Subsequently, she made another application in the year 2018 for Grade IV post which was forwarded by the Additional Deputy Commissioner, Pfutsero to the Deputy

Commissioner, Phek. Since no action was taken subsequent application dated 9th August, 2021 was also submitted which also came to be forwarded to Deputy Commissioner, Phek by forwarding letter from the Office of the Additional Deputy Commissioner, Pfutsero. Subsequently, by communication dated 6th June, 2022 the Office of the Commissioner, Nagaland, Kohima conveyed the approval. However, while the petitioner awaited for appropriate orders from the competent department to her surprise she found that the respondent No. 7 was considered for compassionate appointment and the approval for his appointment was communicated by communication dated 6th June, 2022 by the Office of the Commissioner, Nagaland, Kohima. Pursuant to the confirmation received the respondent No.7 was appointed in the said post by order dated 10th June, 2022. The petitioner being aggrieved preferred representations before the Commissioner, Nagaland, Kohima as well as the Deputy Commissioner, Phek. However, she did not receive any response in respect of the representations preferred. Thereafter her advocate issued legal notice to the Commissioner, Nagaland, Kohima and Deputy Commissioner of Phek seeking employment on compassionate ground for the petitioner. However, instead the respondent No.7 was appointed as MTS in the Office of the Deputy Commissioner, Phek. Aggrieved by the appointment of respondent No. 7 as the petitioner approached this Court by filing the present writ petition praying for setting aside the order No. GAB-1/PHEK/ESTT/1/2018/424 dated 24th May, 2022 issued in respect of respondent no.7 together with the appointment order No. CNE-17/COM-APPT/PHEK dated 6th of

June, 2022 appointing the petitioner on Compassionate Scheme in the post of Multi Tasking Staff. It is the further prayer of the writ petitioner that the authorities be directed to regularize the service of the petitioner under the Compassionate Scheme against the regular Grade IV post and Multiple Tasking Staff sanctioned post.

4. Learned counsel for the petitioner has referred to the Office Memorandum No. AR-8/8/78 dated 17th September, 2015 which revised the Compassionate Appointments Scheme for the State Government employees who died in harness. It is submitted that in terms of the said scheme the compassionate appointments are to be considered for Group C or D posts. It is submitted by the learned counsel for the petitioner that in terms of the scheme the petitioner is equally covered for being considered as there was no surviving member of the family who owns any regular post in the State Government. It is further submitted that pursuant to the death of her husband Lt. Wetenyi Ritse there was no other earning member in the family to provide for the petitioner and her 6(six) minor children. However, without consideration of the prayers made by the petitioner, her case for appointment in Group C or D Post under the Compassionate Appointments Scheme was ignored by the Department and instead she was appointed in contingency service as Sweeper-cum-Mali in the Office of the Additional Deputy Commissioner, Pfutsero in the district of Phek. It is further submitted by the learned counsel for the petitioner by placing a copy of the Addendum No. AR-8/8/78 dated Kohima, the 9th April, 2019, that for compassionate appointment made in the Group C and D post under the scheme shall be strictly followed in order of death of the

Government Servant and first preference shall always be given to those who died earlier and who fulfill all the criteria. Learned counsel for petitioner submits that this addendum is still in force and is required to be followed by the department as the same was brought with the effect from 9th April, 2019 which is prior to the date of appointment of private respondent No.7.

5. The learned counsel for the petitioner on the submissions made has therefore prayed before the Court that a Writ be issued directing the respondents to appoint the petitioner in any suitable Grade IV post under the Compassionate Appointments Scheme. To the best of his information there are sufficient vacancies still available and the Department can consider the case of the petitioner without interfering with the appointment already made to respondent No.7.

6. The learned Government Advocate disputes the contentions raised by the counsel for the petitioner. She submits that the Government has contested the case by filing an affidavit. It is submitted that the Government had considered the appointment of private respondent no.7 in terms of the seniority of claims and accordingly as his name was placed higher than the present writ petitioner, he was appointed in the vacancy which arose. She submits that there was no infirmity to the appointment made to respondent No. 7 and the case of the petitioner could not be considered as the petitioner had made a claim only in the 2018 as per the records available with the office.

7. The learned counsel for the respondent No.7 submits that his father Lt. Selie Venuh who was working as the Dak Runner under

the establishment of the office of the Deputy Commissioner, Phek who died in harness on 4th July, 2017 leaving behind the petitioner, his mother and two younger brothers who have no sources of income and were solely dependent on the income of his late father. Consequently, an application for appointment under the Compassionate Scheme was made and the private respondent's claim was duly considered and he was appointed by the order dated 10.06.2022 and since then he has been working and rendering his services in the post appointed. The learned counsel for the petitioner denies the claims made by the respondent No.7 and the petitioner could not establish any ground as to why the appointment made to the respondent No.7 should be interfered with and set aside and quashed. It is submitted that the claims made by the petitioner are not supported by the official records and therefore, her claim has not been substantiated. The writ petition therefore has no merit and same should be dismissed.

8. The learned counsel for the parties have been heard and pleadings available on record have been carefully perused. Upon perusal of the writ petition, it is seen that the petitioner's case was recommended by Additional Deputy Commissioner, Pfutsero for appointment in any Grade IV post on compassionate ground. This is evident from the communication dated 27th of November 2013 issued by the Additional Deputy Commissioner, Pfutsero to the Additional Chief Secretary and Commissioner, Nagaland, Kohima. The said letter had forwarded the application filed by the writ petitioner. Although the date of the application is not mentioned, it appears that since the petitioner's husband expired on 11th

September, 2013, and the forwarding letter is dated 27th November, 2013, the application referred to in the said forwarding letter appears to have been made between 11th September, 2013 and 27th November, 2013. What is also noticed that in the affidavit in opposition filed by the respondent State Department there is no specific denial about the correctness of the communication No. ESTT-5/Cont/2010-11 dated 27th November 2013 issued by the Additional Deputy Commissioner, Pftusero. During the course of hearing also learned Government Counsel has also not denied the existence of the said communication or the correctness of the said communication. Although strict Rules of Civil Procedure are not applied in writ proceedings, the basic principles of the pleadings are required to be adhered to while deciding these issues even by a writ Court. When there is a specific averment made in the writ petition and the same is not denied or disputed by the respondents in their affidavit in opposition filed, then such averment will have to be accepted to be correct and not denied by the respondent. Such specific denial is necessary in order to dispute any such specific averments made in the writ petition. In the context reference may be made in the *Bharat Singh vs. State of Haryana reported in (1988) 4 SCC 534*.

9. If the communication dated 27th November, 2013, issued by the Government is to be accepted then it is apparent that not only the death of the petitioner's husband but her application seeking compassionate appointment also was submitted before the Government at an earlier point in time as compared to respondent No.7.

10. During the course of the hearing and upon the submission of the counsel for the petitioner it appears that as per his instructions there are sufficient vacancies available and therefore, direction can be issued by the Court to appoint the petitioner without having the need to interfere with the appointment made to the respondent No.7. The learned Government Advocate was requested to obtain specific instructions with regard to the number of vacancies.

11. Today when the matter is called up, the learned Government Advocate has placed before the Court a copy of a communication receipt from the Deputy Commissioner, Phek No. DEP/ESTT/DLRB/2010(Vol-II)/1217, dated Phek, the 3rd October, 2024 where the vacancy position under the establishment of Deputy Commissioner, Phek is shown to be 6(six). The particulars showing the vacancy position available however does not reflect that any of the vacancies are marked to be filled up by compassionate appointment. The respondents in their counter affidavit has also not disputed the procedure prescribed under the Office Memorandum No.AR-8/8/78 dated, Kohima, the 16th of January, 2012 as well as the amendment brought in through the Addendum No. AR-8/8/78 dated: Kohima, the 9th April, 2019, whereby it was provided that compassionate appointment made to Group C and D posts shall be strictly in the order of the date, date of death and the first preference shall be given against those who had died earlier and fulfills the other criteria.

12. Since the Office Memorandum and the Addendum are relevant for the purpose of this writ petition the same are extracted below:

OFFICE MEMORANDUM

Sub:- *Compassionate Appointment Scheme for State Government employees who die in harness.*

In partial modification of the State Government O.M on compassionate appointment as notified by the State Government dated 13/02/2002, the Governor of Nagaland is pleased to notify the following guidelines on compassionate appointment as detailed below.*

- 2. Appointment on compassionate grounds shall be given only to a:
 - a) spouse, or*
 - b) son, or*
 - c) daughter, only**
- 3. Appointment on compassionate grounds shall be made only on a regular basis to direct recruitment posts and only if regular vacancies meant for that purpose are available in that Department where the deceased Government employee was serving. Applicants shall have no claimed to appointment under this scheme in any other Department other than that where the deceased employee was serving. However, for the NCS officers, the appointment may be considered under the establishment of the Commissioner, Nagaland, or the Nagaland Civil Secretariat.*
- 4. Compassionate appointments may be made upto a maximum of 5% of total posts falling under the combined direct recruitment quota of Group-C or D. The appointment against posts for direct recruitment in Group-C should be in the entry grade only. Further appointments against any posts for direct recruitment in Group-C should be only against those posts which are outside the purview of NPSC for recruitment.*
- 4. The posts in Group-C will be taken as one service/category for calculation of 5% of total posts. Like wise the posts in Group-D will also be taken as one service/category for determining the vacancies. The total appointments under the compassionate appointments shall not exceed 5% of the total posts in Group-C and D in the Department, and*

shall take into account all such appointments already made. Appointments will not be restricted to a Group-D post provided the applicant is educationally qualified and a vacancy exists in a Group-C post.

5. The inter-se seniority of person appointed under this scheme shall be fixed with reference to their date of appointment and their interpolation with the direct recruits/promotees shall be made with reference to their dates of appointment without disturbing the inter-se seniority of direct recruits/promotees.

6. The benefit of such appointment shall be available to only one relative. The scheme will be applicable only to dependents of deceased Government servants appointed and serving on regular basis at the time of death and will not be applicable to those who were working on daily wage or casual or ad-hoc or contract or re-employment/extension/consultant basis. A spouse once appointed under this scheme shall be allowed to continue in service even after re-marriage. Appointments made under this scheme shall not be transferable to any other person under any circumstances and any request for the same shall be invariably rejected.

7. Applicants under this scheme should be eligible and qualified for the posts in all respects under the provisions of the relevant Recruitment Rules. No relaxation in eligibility will be made under any circumstances, except to the extent provided under this scheme. Date of joining by a person appointed under this scheme shall be treated as the date of his/her regular appointment. All Departments shall maintain a waiting list in chronological order for appointments under the category, An applicant will be given the waiting list number of receipt of the application, if there are no regular posts available.

8. The upper age limit of applicants under this scheme may be relaxed in exceptional cases up to a maximum of 5 years in addition to existing relaxation, if any. The lower age limit shall, however, in no case be relaxed below 18 years of age.

9. *Appointments under this scheme, irrespective of the appointing authority specified under the rules, shall be made only with the approval of the respective Heads of Administrative Departments with the prior clearance of the Department of P& AR.*

10 *All Departments shall amend their respective Service Rules/Recruitment Rules to make a provision for compassionate appointment. Any dispute arising out of the provisions of this scheme or any clarification shall be referred to the Department of P&AR for decision of the Government.*

Sd/- LALTHARA

Chief Secretary to the Govt. of Nagaland.

A D D E N D U M

No. AR-8/8/78

Dated:

Kohima, the 9th April, 2019

Sub:- Compassionate Appointment Scheme for State Government employees who die in harness and Addendum thereof.

In continuation to this Department's Office Memorandum of even number dated 17th September, 2015, the following conditions are added under the Compassionate Appointment Scheme as under:

1. Insertion of Para 11. Compassionate Appointment made to Group -C and D posts under this Scheme shall be strictly in order of date of death and first preference shall always be given against those who have died earlier and who fulfills all other eligibility criteria.

2. Insertion of Para 12. The responsibility of completing application forms of the next of kin of the deceased shall be with the

Department as per the prescribed format.

Sd - TEMJEN TOY, LAS

Chief Secretary to the Government of Nagaland

NO.AR-8/8/78

Dated: Kohima, the 9th April, 2019

Copy to:-

- 1. The Commissioner & Secretary to the Governor of Nagaland, Raj Bhavan, Kohima.*
- 2. The Principal Secretary to the Chief Minister, Nagaland Kohima.*
- 3. The P.S. to the Speaker/Deputy Speaker, Nagaland Legislative Assembly, Kohima.*
- 4. The P.S to all Ministers, Nagaland, Kohima.*
- 5. The OSD to the Chief Secretary, Nagaland Kohima.*
- 6. All Additional Chief Secretaries/ Principal Secretaries/Commissioner & Secretaries/Secretaries/ Additional Secretaries, Nagaland Kohima.*
- 7. The Commissioner & Secretary, Nagaland Legislative Assembly*
- 8. The Secretary, (NPSC/Nagaland Lokayukta/NIC*
- 9. All Heads of Department, Nagaland*
- 10. All Nagaland Houses*
- 11. The Publisher, Nagaland Gazette for publication in the official gazette.*
- 12. Office copy.*

(AKUNU S. MEYASE)

13. Perusal of the office memorandum reflects that appointments on compassionate ground are to be made on the regular basis to

the direct recruitment post and only if regular vacancies meant for that purpose are available in the department where the deceased Government employee was serving. It is also provided that the applicants shall have no claim to appointment under the scheme in any other department other than that where the deceased employee was serving.

14. As discussed during the course of hearing the learned Government Advocate has placed before the Court the vacancy position available under the Deputy Commissioner, Phek, Nagaland by way of communication date 3rd October, 2024. The chart showing the vacancy position is extracted as under:

	Total No. of vacancy	Details of the vacancy			Whether reserved for In-service/Compassionate Appointment/Land Owner	Remarks
		Name	PIMs No	Date of Retirement/Death		
1	6	Late Samuel Aier, Office Peon	ADM01760	21-07-2019	In-Service	Smt. Wetshotso-u Mero, Sweeper (ADM03402) is recommended for regularization
2		Late Wepuchu Kapfo, Cook-cum-Bearer	ADM03386	19/08/2021	In-Service	Shri. Shezonu, Chowkidar (ADM04573) is recommended for regularization
3		Late Vekhoyo, Mali	ADM01771	20/08/2021	In-Service	Smt. Setolu Khusoh, Sweeper (ADM01690) is recommended for regularization
4		Shri Kedolhou, Office Peon	ADM03381	31-05-2024		Claim by Landowner
5		Shri Kewetsolo, Handyman	ADM01768	31-05-2024		
6		Shri Chilo Mero,	ADM03380	30-06-2024		Claim by Landowner

		Peon				
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Note: The vacancy caused due to the retirement of Shri. Ratsiepa, Office Peon (ADM01801) on 31-07-2022 is not forwarded for approval as the matter pertaining to Compassionate Appointment is sub-judice in the High Court

(JOHN TSULISE SANGTAM) NC

Deputy Commissioner,
Phek, Nagaland

15. In terms of the note appearing in the said communication there is another vacancy available which however, was not forwarded to as it is stated that the matter is subjudiced before this Court.

16. Having perused the documents available in the pleadings and also placed before the Court it is seen that the claim made by the petitioner appears to be at an earlier point of time than the claim made by the private respondent No.7. The Office Memorandum read with the addendum clearly lays down the procedure that the compassionate appointments made to Group C and D under the scheme shall be strictly in order of death and first preference shall be given against those who dies earlier and fulfills all the eligibility criteria. Once the policy has been framed by the Government, the Government is expected to adhere through the terms prescribed and in case of any deviation therefore, there must be plausible and sufficient explanation or as to why the procedure prescribed and notified earlier by the Government has not been followed. Under such circumstances this Court is of the considered view that the prayer made in the writ petition has to be allowed to the extent that the case of the petitioner should be considered fairly by the respondent authorities taking into consideration that her claim was made way back into 2013 and which is evident from the

communication dated 27.11.2013 issued by the Additional Deputy Commissioner, Pfutsero and which fact has not been denied by the respondents. From the vacancy position placed before the Court, it appears that there are 6(six) vacancies available in the establishment of the Deputy Commissioner, Phek and since the petitioner is presently serving as Sweeper-cum-Mali under the establishment of Additional Deputy Commissioner, Pfutsero, the respondent No. 3. namely the Commissioner of Nagaland, Kohima and the respondent No.4 namely Deputy Commissioner, Phek will consider the case of the petitioner's claim for compassionate appointment under the Office Memorandum dated 16th January, 2012 read with the Addendum dated 9th April, 2019 and pass necessary orders towards her appointment if she is found to be suitable for the post of Multiple Tasking Staff in terms of the vacancy position produced before this Court by the learned Government Advocate. Considering the vacancy available this Court has refrained from passing any order interfering with the appointment of the respondent No.7. The respondents shall consider the claim of the petitioner against the available vacancies shown in the vacancy position in terms of the Office Memorandum dated 16.01.2012 read with the addendum without any further delay. The entire exercise be completed within a period of 60 days from the date of the receipt of the certified copy of this order and any such order that is passed, a copy there will be served to the petitioner.

17. While considering the case of the petitioner any exemption that may be available and applicable to the petitioner should be allowed to be applied while considering the case of the petitioner.

18. The writ petition is accordingly allowed and disposed of to the extend indicated above.

JUDGE

Comparing Assistant