

GAHC020005342022



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

Case No. : WP(C)/206/2022

SMTI. MARYANGLA
SWEEPER, GOVERNMENT PRESS BRANCH,
MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
NAGALAND
KOHIMA

3:THE HOME COMMISSIONER TO THE GOVERNMENT OF
NAGALAND

PRINTING AND STATIONERY BRANCH
NAGALAND
KOHIMA

4:THE FINANCIAL COMMISSIONER

NAGALAND
KOHIMA

5:THE DIRECTOR

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

6:THE ASSISTANT DIRECTOR

PRINTING AND STATIONERY
MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : I. IMTI LONGCHAR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

Date of hearing : **06/08/2024**

Date of judgment : **28/08/2024**

JUDGMENT & ORDER (CAV)

Heard Mr. I. Imti Longchar, learned counsel for the petitioner and Mr. Moa Imchen, learned Sr. Government Advocate for the State respondents.

2. The limited issued raised in the writ petition is for retrospective regularisation of the service of the petitioner with regular scale of pay.

3. The facts of the case in brief are as under;

i) That by the order 26/10/1988 issued by the Director of Printing & Stationary, Nagaland, Kohima, the petitioner was temporarily appointed as a sweeper in the office of the Assistant Director (Tech) Government Press Branch, Mokokchung, on contingency paid basis @ Rs. 375/- P.M. w.e.f the date of the petitioner joining duty. The appointment was made against the post sanctioned vide order No. PSTY-26/79(Pt) dated 09/06/1988.

ii) That the petitioner on 16/02/2000 submitted the representation to the Director of Printing Press, Nagaland, Kohima for regularisation of service and for the scale of pay as paid to the regular sweeper.

iii) That vide order No. NGP/EST/1/90 dated 29/02/2000, the petitioner

was temporarily appointed as the sweeper in the Directorate of Printing & Stationary, Nagaland, Kohima, in the scale of pay of Rs. 600-16-690-20-1090-25-1475/- plus special compensatory (Remote locality) allowances @ 15% of basic pay subject to a minimum of Rs. 125/- and a maximum of Rs. 1200/- P.M and all other allowances as are admissible under the rules from time to time in the State of Nagaland w.e.f 01/03/2000. The appointment was not made against any vacancy. A similar order, of the same date, was passed with only the difference in the scale of pay of Rs. 800-16-890-20-1050-25-1475/- P.M.

iv) That thereafter, the petitioner again made the representation dated 10/02/2021 to the Director, Printing & Stationary, Nagaland, Kohima, for regularisation of service as well as for the scale of pay.

v) That subsequently, by the order dated 30/04/200 issued by the Director, Printing & Stationary, Nagaland, Kohima, the contingency service of the petitioner at the fixed pay of Rs. 750/- P.M was extended for a period of 6(six) months w.e.f. 01/04/2001.

vi) The petitioner filed the W.P.(C) No. 215 of 2018 for regularisation of her service which was disposed by this Court by the judgment & order dated 03/02/2020. The operative portion of the said judgment read as follows;

“13. Upon due consideration of the case in its entirety, I am of the view that the case of the petitioner for regularisation should be considered by the respondents as a special case keeping in mind the peculiar facts and circumstances of the case. Non availability of vacancy in the post of sweeper presently cannot be the ground not to consider her regularisation. It will be incumbent upon the respondents to create a supernumerary post to accommodate the petitioner for her regularisation, if so required. The post so created will be a personal post and shall cease to exist once a regular vacancy occurs and the petitioner adjusted against such regular vacancy.

15. The respondent No. 5, within a period of 3(three) weeks from the date of receipt of a certified copy of this order, shall initiate the process of regularisation in terms of the direction given herein above, if necessary, by obtaining the approval of the administrative department. All the respondents shall co-operate with the process and the entire exercise be completed within a period of 3(three) months from the date of receipt of a certified copy of this order. Pending such consideration, the services of the petitioner should not be varied to her disadvantage in any manner.”

vii) That pursuant to the order passed by this Court, the Government of

Nagaland, Home Department, Printing & Stationary Branch wrote the letter dated 15/06/2022 to the Director, Printing & Stationary, Nagaland, Kohima, conveying the approval of the Cabinet for creation of a supernumerary post for regularising the service of the petitioner.

viii) Consequent thereto, by the order No. NGP/EST/330/2017-18/ dated 28/06/2022, issued by the Director, Printing & Stationary, Nagaland, Kohima, the contingency service of the petitioner as a sweeper was regularised w.e.f. 14/06/2022 at Mokokchung Branch Press Office under the Directorate of Printing & Stationary department, in Pay Level-1 (15500-49000) of the Pay Matrix plus all other allowances as are admissible under the rules in force from time to time. The order dated 28/06/2022 also provided that the petitioner service shall be regulated in the old pension scheme with the period rendered on fixed paid basis counting towards qualifying service for the purpose of pension benefits as per the following details;

<i>Sl. No</i>	<i>Name</i>	<i>Date of Appointment as fixed pay</i>	<i>Date of Regularisation</i>	<i>Effective date of qualifying service</i>
1	<i>Smti. Maryangla Sweeper</i>	<i>26-10-1988</i>	<i>14-06-2022</i>	<i>26-10-1988</i>

The order further provided that the seniority of the petitioner shall be counted from the date of regularisation.

xi) However, despite the order dated 28/06/2022, issued by the Government creating a supernumerary post of sweeper and regularising the contingency service of the petitioner in the said post w.e.f. 14/06/2022, the petitioner has filed the present writ petition seeking for retrospective regularisation of service from 26/10/1988 till 13/06/2022 and for payment of regular scale of pay for the said period.

4. Mr. I. Imti Longchar, the learned counsel for the petitioner, in support of his submission submits that the petitioner was appointed as a sweeper on 26/10/1988 against a clear sanctioned post and continued in that post without any interruption, till she was regularised in service, therefore, the service of the

petitioner should be retrospectively regularised in that post from the date of initial appointment i.e. from 26/10/1988. It may be stated that the petitioner was regularised in the post w.e.f 14/06/2022. Mr. I. Imti Longchar however submits that the date of regularisation i.e. 14/06/2022 reflected in the order dated 28/06/2022 is an artificial date and cannot be reckoned for regularising the service of the petitioner and the petitioner's service must be regularised w.e.f. 26/10/1988 with regular scale of pay.

5. Mr. I. Imti Longchar also submits that although by the order dated 29/02/2000, issued by the Director, Printing & Stationary, Nagaland, Kohima, the petitioner was granted the scale of pay however such a benefit was never extended to the petitioner for reasons best known to the State respondents.

6. The learned counsel for the petitioner further submits that the petitioner has been serving as the lone sweeper in the office of the Mokokchung Press Branch office since the date of her initial appointment i.e. 26/10/1988 and as such, there is no reason, as to why the regular scale of pay should not be paid to the petitioner as paid to the regular sweepers in the department from 26/10/1988 to 13/06/2022 i.e. the date immediate prior to the regularisation of the service of the petitioner.

7. In support of his submission, the learned counsel for the petitioner has relied on the following cases;

a) **Surinder Singh & Another -versus- Engineer-in-Chief CPWD & Others**, reported in **(1986) 1 SCC 639**.

b) **Uttar Pradesh Land Development Cooperation & Another -versus- Mohd. Khursheed Anwar & Another**, reported in **(2010) 7 SCC 739**.

c) **State of Punjab & Others -versus- Jagjit Singh & Others**, reported in **(2017) 1 SCC 143**.

d) The order dated 26/04/2017 passed by a Division Bench of this Court in **W.A No. 14(K) 2012 (State of Nagaland -versus- Smti. Noghila Wanth)** and,

e) **Karuna Sarmah -versus- State of Assam & Others**, reported in

1995 (1) GLT 161.

8. Mr. Moa Imchen, the learned Sr. Government Advocate on the other hand referring to the order dated 26/10/1988 submits that the petitioner was only temporarily appointed to the post of sweeper on contingency basis @ Rs. 375/- p.m fixed w.e.f. the date of the petitioner joining the duty. It is also submitted that it was only in compliance to the order dated 03/02/2020 passed by this Court in W.P.(C) No. 215(K)/2018 that a supernumerary post of sweeper was created by the Government and by the order dated 28/06/2022 issued by the Government of Nagaland, Directorate of Printing & Stationary, Nagaland, Kohima, the contingency service of the petitioner was regularised w.e.f. 14/06/2022 at Mokokchung Branch Press office under the Directorate of Printing & Stationary in Pay Level-1 (15500-49000) of the Pay Matrix plus all other allowances as are admissible under the rules in force from time to time w.e.f. 14/06/2022. Mr. Moa Imchen accordingly submits that the regular service of the petitioner as a sweeper, in the department, has to be counted only from 14/06/2022 i.e. the effective date of regularisation of the service and not from the date of initial appointment i.e. 26/10/1988. Mr. Moa Imchen therefore submits that the case of the petitioner for regularisation in service from the date of initial appointment and to pay the regular scale of pay, for the said period, is not sustainable in law.

9. Heard the learned counsel for the parties.

10. By the order dated 26/10/1988, the petitioner was appointed as a contingency sweeper on fixed pay basis, in the office of the Assistant Director (Tech), Government Press Branch, Mokokchung although, the order stated that the appointment was made against a sanction post. The service of the petitioner was regularised only w.e.f 14/06/2022 by issuing the order dated 28/06/2022, consequent to the order dated 03/02/2022 passed by this Court in W.P.(C) No. 215/2018 directing the State respondents to consider the regularisation of the service of the petitioner keeping in mind the peculiar facts and circumstances of the case.

11. It is also seen that though subsequently by the order dated 29/02/2000

passed by the Director, Printing & Stationary, Nagaland, Kohima, the petitioner was temporarily appointed as sweeper in the scale of pay, the Director, Printing & Stationary, Nagaland, Kohima, has thereafter again issued the order dated 30/04/2001 extending the contingency service of the petitioner @ Rs. 750/- p.m for a period of 6(six) months w.e.f. 01/04/2001. There is nothing on record as regards the fate of the order dated 29/02/2000 nor has the petitioner made any further submission on the said order except making a bald statement that she was never granted the scale of pay as reflected in the order dated 29/02/2000.

12. From the pleadings exchange between the parties, the materials available on record and the submissions made by the learned counsel for the parties, it is abundantly clear that the Government by issuing the order dated 26/10/1988 appointed the petitioner as a sweeper in the department on contingency basis on a fixed pay and the petitioner continued to work in that capacity till she was regularised in service w.e.f. 14/06/2022 by the order dated 28/06/2022.

13. The petitioner, therefore, cannot claim regularisation in service w.e.f. the date of initial appointment i.e. 26/10/1988 till the date of her regularisation in service, only on the ground that the appointment was made against a sanction post. The petitioner was regularised in the service of the department only w.e.f. 14/06/2022 and prior to that the petitioner was not borne in the regular service of the department although appointed on contingency basis w.e.f 26/10/1988. Therefore, the case of the petitioner to retrospectively regularise the contingency service of the petitioner is not only sustainable but also not legally tenable. The order dated 28/06/2022 issued by the department regularising the service of the petitioner w.e.f 14/06/2022 has also clearly and correctly spelt that the seniority of the petitioner in service shall be counted only w.e.f. the date of regularisation i.e. 14/06/2022. The law is well settled that a person cannot claim retrospective regularisation and/or seniority in service even before being borne in the regular service/cadre. The petitioner's claim for retrospective regularisation in service commencing from the date of initial appointment therefore, is liable to be rejected.

14. In **Shitla Prasad Shukla -versus- State of U.P & Others**, reported in **1986 (Supp.) SCC 185**, the Hon'ble Supreme Court has held that;

“10. An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bonafide and acted on principles of fairness and fair play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner) and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High Court is unexceptionable.”

15. In **Secretary, State of Karnataka & Others -versus- Umadevi (3) & Others**, reported in **(2006) 4 SCC 1**, the Constitution Bench of the Hon'ble Supreme Court, has held that;

“14. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad case¹ all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of

appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

18..... While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made there under concerning public employment.

34. In [A. Umarani v. Registrar, Coop Societies](#)¹⁷ a three Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed there under and by ignoring essential qualifications, the appointments would be illegal and cannot be regularized by the State. The State could not invoke its power under [Article 162](#) of the Constitution to regularize such appointments.....”

39. There have been decisions which have taken the cue from the Dharwad case¹ and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in [Workmen v. Bhurkunda Colliery](#) of Central Coalfields Ltd.²⁴ though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent.

43. The High Courts acting under [Article 226](#) of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly

and in terms of the constitutional scheme.....”

46. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of [Articles 14](#) and [16](#) of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in [Dr. Rai Shivendra Bahadur \(Dr.\) v. Governing Body of the Nalanda College](#)³⁴. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees

cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

16. In Uttaranchal Forest Rangers' Assn (Direct recruit) & Others -versus- State of U.P. & Others, reported in **(2006) 10 SCC 346**, the Hon'ble Supreme Court held that;

"38. This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime....."

40. The High Court, in the impugned judgment dated 26.11.2001 has proceeded on the basis that vacancies arose in 1987-88 and, therefore, should be given retrospective effect. The said submission, in our opinion, has no force and import. In our view, the date on which vacancies arose cannot without more be made a basis of giving retrospective promotion and seniority....."

17. In Indian Drugs & Pharmaceuticals Ltd. -versus- Workmen, Indian Drugs & Pharmaceuticals Ltd., reported in **(2007) 1 SCC 408**, the Hon'ble Supreme Court held that;

"31. No doubt, there can be occasions when the State or its instrumentalities employ persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment."

34. Thus, it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In [E. Ramakrishnan v. State of Kerala](#)¹⁰ this Court held that there can be no regularization de hors the rules. The same view was taken in [Dr. Kishore \(Dr.\) v. State of Maharashtra](#)¹¹, [Union of India v. Bishambar Dutt](#)¹². The direction issued by the services tribunal for regularizing the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In [Surinder Singh Jamwal \(Dr.\) v. State of J & K](#)¹³, it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.

41. No doubt, in some decisions the Supreme Court has directed regularization of temporary or ad hoc employees but it is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues directions without laying down any principle of law, in which

case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularization of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance, if the Supreme Court directs regularization of service of an employee who had put in 3 years' service, this does not mean that all employees who had put in 3 years' service must be regularized. Hence, such a direction is not a precedent.....”

42. In J & K Public Service Commission v. Dr. Narinder Mohan²² this Court held that the directions issued by the court from time to time for regularization of ad hoc appointments are not a ratio of this decision, rather the aforesaid directions were to be treated under Article 142 of the Constitution of India. This Court ultimately held that the High Court was not right in placing reliance on the judgment as a ratio to give the direction to the Public Service Commission to consider the cases of the respondents for regularization.

47. We are of the opinion that if the court/tribunal directs that a daily rate or ad hoc or casual employee should be continued in service till the date of superannuation, it is impliedly regularizing such an employee, which cannot be done as held by this Court in Secy. State of Karnataka v. Umadevi (3)⁸ and other decisions of this Court.”

18. In **State of Rajasthan & Others** -versus- **Daya Lal & Others**, reported in **(2011) 2 SCC 429**, the Hon'ble Supreme Court held that;

“12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be

grounds for passing any order of regularization in the absence of a legal right.

(iii)"

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v)"

19. In B. Sudhakar Rao & Others -versus- U. Govinda Rao & Others, reported in **(2013) 8 SCC 693**, the Hon'ble Supreme Court held that;

"45. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two decades ago. In State of Bihar v. Akhouri Sachindra Nath¹³ it was held that retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade.

"12. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service....."

47. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in State of Uttaranchal v. Dinesh Kumar Sharma¹⁶ (followed in Nani Sha v. State of Arunachal Pradesh¹⁷, SCC p. 414, para-15) wherein it was said: (SCC pp. 691-92, para-34)

"34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa¹⁸."

20. In the case of Dani Belo -versus- State of Arunachal Pradesh & Others, reported in **(2011) 2 GLT 686**, the Hon'ble Division Bench of this Court had inter-alia held that when the appointment of the respondent No. 4 has been made without holding any selection process, such appointment was

arbitrary and illegal and the question of retrospective regularisation of such an appointee did not arise at all.

21. The learned counsel for the petitioner in support of his submission for retrospective regularisation in service has relied in the case of Smti. Noghile Wanth (supra), in which the Hon'ble Division Bench of this Court by the order dated 26/04/2017 directed the State appellant to regularise the service of the respondent/petitioner against the post of typist and to pay regular scale of pay. It is however seen that Noghile (supra) is not relevant for the present case. In the said case, the sister of the respondent/petitioner who was serving as a typist died-in-harness and consequent to which the respondent/petitioner was appointed as a typist on a fixed pay of Rs. 3000/- p.m on compassionate appointment. The Hon'ble Division Bench considering the judgment & order dated 09/06/2005 passed by the learned Single Judge in W.P.(C) No. 195(K)/2004 and the order dated 28/02/2006 passed by the State respondents came to a finding that the combine reading of the judgment & order dated 09/06/2005 and the order dated 28/02/2006 makes it abundantly clear that the respondent/petitioner was appointed under the died-in-harness scheme, against the regular sanction post of her deceased sister. The State appellant was thus directed to regularise the service of the respondent/petitioner against the post of typist earlier held by the respondent's late sister who died-in-harness and thereafter, to pay the regular scale of pay to the respondent/petitioner. It was further directed that the entire exercise shall be carried out within a period of 2(two) months from the date of receipt of the certified copy of the order.

22. The facts and circumstances in Noghile Wanth (supra) and the present case is entirely different. Moreover, even in Noghile Wanth (supra), the direction to regularise the service of the respondent/petitioner and to pay the regular scale of pay was made prospective and not retrospectively.

23. The learned counsel for the petitioner has also referred to the Karuna Sarmah (supra), wherein the Co-ordinate Bench of this Court by the judgment & order dated 10/08/1994 directed the State respondents to regularise the Muster Roll service of the petitioner either as the Forest Guard or as Plantation

Mali and/or to any other suitable vacancy within a period of 3(three) months from the date of the receipt of the order w.e.f the date on which the petitioner was initially appointed as a Muster Roll worker i.e. w.e.f. 02/12/1981. The reason cited in the said case for directing regularisation in service was on the ground that the petitioner was working in that post since the date of his appointment and belongs to the poor strata of the society and at a subsequent point of time there may be no difficulty to receive the pension at the end of his service career.

24. This Court with due respect, submits that Karuna Sarmah (supra) is not in consonance with the decisions of the Hon'ble Supreme Court as well as the Division Bench of this Court which has clearly laid down the law that retrospective regularisation and/or seniority in service cannot be given to a person before such person is borne in the regular service/cadre.

25. In the light of the discussions made above and the law laid down by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court, the relief sought for by the petitioner for regularisation of her contingency service (fixed pay) with retrospective effect from 26/10/1988 to 13/06/2022 i.e. prior to the regularisation of her service, is not sustainable in law and is accordingly rejected.

26. Secondly, the petitioner is also seeking for regular scale of pay with retrospective effect from 26/10/1988 to 13/06/2022. The grounds taken for claiming the regular scale of pay is that the petitioner, even prior to her regularisation in service, was serving as the lone sweeper in the office of the Mokokchung Branch Press, between the said period of time and was discharging the works and duties of a regularly appointed sweeper. The learned counsel therefore submits the petitioner is entitled to equal pay which is extended to the regular sweepers in the department on the principle of equal pay for equal work. In support of his submission, the learned counsel has relied in Surinder Singh (supra), Mohd. Khursheed Anwar (supra) and the Jagjit Singh (supra).

27. There is absolutely no quarrel with the law laid down by the Hon'ble

Supreme Court in different judgments that the temporary employees possessing the requisite qualification and appointed against posts which are also available in regular cadre and performing similar duties and responsibilities as has been discharged by regular employees holding the same/corresponding post were entitled to claim wages at par with the minimum pay scale of regular employees holding the same post.

28. In the instant case, the petitioner, however has only made a bald statement that being the lone sweeper in the office of the Mokokchung Press Branch she is entitled to the scale of pay as paid to the other regular sweepers in the department. It is however observed that the petitioner has not placed any material before this Court for comparison in order to apply the principle of equal pay for equal work. No averments has also been made by the petitioner to substantiate that she discharges the same/similar nature of works duties and responsibilities as discharge by other regular sweeper in the department. In the absence of such materials or averments, it will not be possible for this Court to examine the claim of the petitioner and extend the benefit of equal pay for equal work.

29. The Hon'ble Supreme Court in the case of **Orissa University of Agriculture & Technology & Another -versus- Manoj K. Mohanty**, reported in **(2003) 5 SCC 188** has held that in the absence of necessary averments and materials placed on record there was no scope to extend the benefit of equal pay for equal work to a person claiming the same. It was also held that the burden was on the person to prove that he has the right to equal pay on the principle of equal pay for equal work.

30. In **State of Punjab & Another -versus- Surjit Singh & Others**, reported in **(2009) 9 SCC 514**, the Hon'ble Supreme Court while examining the principle of equal pay for equal work has held that;

“36. With utmost respect, the principle, as indicated hereinbefore has undergone a sea change. We are bound by the decisions of the larger Benches. This Court had been insisting on strict pleadings and proof of various factors as indicated hereto before. Furthermore, the burden of proof even in that case had wrongly been placed on the State

which in fact lay on the petitioner claiming similar benefits.....”

31. Having held that the petitioner in the present case is not entitled to claim equal pay on the principle of equal pay for equal work, this Court does not find it necessary, to discuss as to whether the petitioner is entitled to regular scale of pay on the principle of equal pay for equal work with effect from the date of her initial appointment as a contingency sweeper. It may however not be out of place, to state that, the issue as to whether a temporary employee, who is subsequently regularised in service, is entitled to equal pay, as a regular employee, from the date of initial engagement has already been settled by the Hon’ble Supreme Court in Umadevi (supra), where it has held as follows;

“55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization.....”

32. In the present case too, the petitioner was regularised in service and paid the scale of pay in Pay Level-1 (15500-49000) of the Pay Matrix plus all other allowances as are admissible under the rules in force from time to time

w.e.f. 14/06/2022, consequent to the order dated 03/02/2020 passed by this Court in W.P.(C) No. 215/2018. The petitioner therefore cannot claim the regular scale of pay prior to 14/06/2022.

33. In the light of the discussion made above, there is no merit in the writ petition and the same is accordingly dismissed. No cost.

Sd/-
JUDGE

Comparing Assistant