



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

Case No. : WP(C)/299/2021

SHRI.BENDANGNUKSHI
WORK-CHARGED KHALASI,
PWD (R AND B), MOKOKCHUNG DIVISION,
MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE COMMISSIONER AND SECRETARY,
WORKS AND HOUSING DEPARTMENT,
GOVERNMENT OF NAGALAND 2:THE COMMISSIONER AND SECRETARY TO
THE GOVERNMENT OF NAGALAND

PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT

NAGALAND
KOHIMA

3:THE CHIEF ENGINEER

NAGALAND PWD (R AND B)

KOHIMA
NAGALAND

4:THE EXECUTIVE ENGINEER (PWD)

MOKOKCHUNG DIVISION

MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

08.02.2024

Heard Mr. Moa Jamir, learned counsel for the petitioner and Ms. S. Chang, learned Govt. Advocate appearing for the State respondents.

[2.] By filing this writ petition, the petitioner prays for regularization of his service in the post of Khalasi. It is the case of the petitioner that he was appointed as Work-Charged Khalasi vide Office Order dated 30.06.1992 in the establishment of the Executive Engineer, Public Works Department, Mokukchung Division. Since his appointment as such, he is working as Work-Charged Khalasi till date and therefore, he is entitled to be regularized in service in terms of the Office Memorandum dated 22.09.2004, issued by the Department Personnel and Administrative Reforms (Administrative Reforms Branch), Govt. of Nagaland wherein, a Work-Charged employee can be regularized as per seniority against available vacancy. According to the petitioner, despite his seniority position and there being available vacancies, he was not regularized in service and the State respondents have otherwise regularized as many as 544 employees.

[3.] The further case of the petitioner is that the State respondents have come up with another Office Memorandum dated 17.03.2015

issued by the Department Personnel and Administrative Reforms (Administrative Reforms Branch), Govt. of Nagaland wherein, the existing Work-Charged and Casual employee under various departments enjoying Scale of Pay and who have completed 30 years or more continuous service as on 01.01.2015 or thereafter are to be regularized by conversion of their post into regular ones personal to them, subject to fulfillment of conditions laid down in the said O.M. According to the petitioner, he has completed 30 years of continuous service as Work-Charged Khalasi as on 30.06.2022 and therefore, he is also entitled to be regularized as per the said O.M dated 17.03.2015.

[4.] Mr. Moa Jamir, learned counsel for the petitioner has drawn the attention of this Court to the seniority list of all Work-Charged employees as on April, 2018 under the establishment of Executive Engineer, PWD (R&B), Mokokchung Division, Mokokchung wherein, the petitioner is placed at Sl.No. 2 in the seniority list amongst the Khalasis. The learned counsel has also drawn the attention of this Court to the reply made to the RTI query made by the petitioner regarding his seniority under the Executive Engineer, PWD (R&B), Mokokchung Division where he has been shown to be at Sl.No. 2 amongst the Work-Charged Khalasis. The learned counsel therefore submits that a direction may be given to the respondent to regularize the service of the petitioner either in terms of the O.M dated 22.09.2004 or under the O.M dated 17.03.2015.

[5.] Ms. S. Chang, learned Govt. Advocate has drawn the attention of this Court to the counter affidavit filed by the respondents and submits that as there is no vacancy available, the case of the

petitioner will be considered as and when his turn comes. The learned Govt. Advocate has also produced a Communication dated 04.09.2023 addressed to the Government Advocate by the Engineer-in-Chief, NPWD wherein, it is stated that all existing work-charged and casual employees of various departments enjoying Scale of Pay and who have completed 30 years or more continuous service as on 01.01.2015 will be regularized by conversion of their post into regular ones personal to them, subject to fulfillment of the conditions. The case of the petitioner is also under verification and will be taken up as and when the similarly situated cases are endorsed to the Head Office of the District Level establishment.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The respondents have filed two (2) affidavit-in-opposition, one on 08.12.2022 and the other on 24.03.2023. The first affidavit was filed by the Engineer-in-Chief, NPWD wherein, at paragraph No. 4 it is stated that the petitioner is at Sl.No. 2 of the tentative seniority list and his case could not be taken up for regularization since there is no vacancy in his Division to accommodate his service into regular cadre. In the second affidavit filed on 24.03.2023 by the Under Secretary, Works & Housing Department it is stated at paragraph No. 4 that the petitioner is in Sl.No. 24 of the tentative seniority list among work-charged Khalasi employees under the Executive Engineer, PWD(R&B), Mokokchung Division. Therefore his case could not be considered till date since there is no vacancy in his division to accommodate his service into regular cadre. Further, it is stated that his case will be considered as and when his turn comes.

[7.] From a perusal of the two (2) affidavits, it is seen that the seniority position of the petitioner in the tentative seniority list under the establishment of Executive Engineer, PWD (R&B), Mokokchung Division is not consistent. However, considering the provisions of the O.M dated 17.03.2015 as well as the Communication dated 04.09.2023 produced by the learned Govt. Advocate, it appears that the service of the petitioner can be regularized by converting his post into a regular one personal to him, subject to him fulfilling the conditions laid down in the said Office Memorandum. The Service Book of the petitioner annexed to the writ petition at page No. 25 of the writ petition shows that the service of the petitioner was verified and found to be genuine by the District Level Verification Committee. The said document is duly signed by the Executive Engineer, PWD (R&B), Mokokchung Division, Mokokchung and checked by the Accounts Officer, Chief Engineer, PWD (R&B), Nagaland, Kohima. Therefore, having regard to the stipulation of the O.M dated 17.03.2015, it appears that the petitioner is eligible to be considered for regularization by way of conversion of his post.

[8.] As already noticed herein above, the respondent department has already initiated the process of verification as was informed to the learned Govt. Advocate vide Communication dated 04.09.2023 by the Engineer-in-Chief, NPWD, Nagaland, Kohima. Therefore, upon hearing the learned counsels for the rival parties and upon perusal of the materials available on record, including the Communication dated 04.09.2023, this writ petition is disposed of with a direction to the respondents to complete the verification process, if not already done within a period of two (2) months from the date of receipt of a certified copy of this Order. Upon such

verification, if the petitioner is found to be eligible as per the prescription of the O.M dated 17.03.2015, the respondents shall regularize his service accordingly without any further delay.

[9.] Writ Petition accordingly stands disposed of. The Communication dated 04.09.2023 produced by the learned Govt. Advocate shall be retained in the record and marked as 'X' for identification.

Sd/-

JUDGE

Comparing Assistant