



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

KOHIMA BENCH

Case No. : WP(C)/301/2021

SHRI. WHICHETSU
S/O SHRI YISUTU,
W/C KHALASI (SUPERANNUATED),
BEARING CODE NO.PHK-0624,
UNDER SUB DIVISIONAL OFFICER, PHED,
MELURI SUB-DIVISION, PHEK,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA 2:THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND

PHED
NAGALAND
KOHIMA

3:THE CHIEF ENGINEER

PHED
NAGALAND
KOHIMA

4:THE EXECUTIVE ENGINEER

PHED
PHEK DIVISION

PHEK
NAGALAND

5:THE ACCOUNTANT GENERAL

NAGALAND
KOHIM

Advocate for the Petitioner : SENTIYANGER,
CHUBA IMCHEN AND
VESUTOLU THERIE.

Advocate for the Respondent : GOVT ADV NL,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

19.11.2024

Heard the learned counsel Mr. Sentianger appearing for the petitioner. Also heard Ms. S. Mere, the learned counsel representing Respondent Nos.1, 2, 3 and 4 as well as Ms. Lily Swu, the learned counsel appearing for Respondent No.5.

2. This is an application under Article 226 of the Constitution of India for enforcement of the petitioner's constitutional and legal rights guaranteed under Part-III of the Constitution of India, particularly Articles 14, 16 and 21.

3. On 23.05.1984, the petitioner was appointed as Work-Charged Khalasi bearing Code No.Phek-0624 in the scale of pay of Rs.300/- per month in the establishment of SDO (PHE), Phek, Nagaland. After 35 years of continuous service, the petitioner was released from service on 22.05.2019. But he never received any pensionary benefits after release from service.

4. The petitioner submits that after he joined the service as Work-Charged Khalasi, some other people also joined the service on

subsequent occasions. Out of them, except the present petitioner, 380 employees were subsequently upgraded and scale pay was provided to them. It meant that they were regularized in services.

5. After his release from service, on 10.08.2021, the petitioner filed a representation before the Chief Engineer, PHED, Nagaland, Kohima praying for regularization of his service so that he would get pension and other pensionary benefits. The same was not considered till date.

6. The petitioner has referred to the Office Memorandum No.AR-3/GEN-201/2009 dated 17.03.2015, which is titled as "Scheme for regularization and absorption of Work-Charged and Casual Employees and Revision of Pay/Wages". This scheme says that all existing Work-Charged and Casual Employees of various Departments who are enjoying scale of pay and who have completed 30 years of service or more than continuous service as on 01.01.2015, will be regularized by conversion of their posts into regular ones.

7. Under the aforesaid factual scenario, the petitioner prayed that a direction need be issued directing the State respondents to regularize his service against the lowest scale of pay permissible for Grade-IV employees within the PHE Department, Government of Nagaland.

8. The State Respondent Nos.1, 2, 3 and 4 pleaded that there are no rules or guidelines framed by the Government for giving scale of pay to fixed pay employees and thereafter regularization of their services. It also pleaded that in his entire service life, the petitioner never applied for seeking scale of pay and for regularization. If he had done so, the Government of Nagaland would have considered his case.

9. Mr. Sentianger has relied upon a decision of this Court that was delivered in *State of Manipur and Ors. -vs- KSH. Ibobal Singh*, reported in *1997 (II) GLT 209*. In paragraphs 11 and 12 of the said judgment this Court has held as under:

“11. We are being disturbed that the petitioners were compelled to go on superannuation after putting in 28 and 29 years of service respectively without any pensionary and other retiral benefits. In a welfare State like ours, committed to a socialistic pattern of society, it is unconscionable that employer compels the employee to go on retirement without any retiral benefits after putting in 28 and 29 years of service on the pretext of contract service. It will be hit by equality clause as enshrined in Article 14 of the Constitution. The writ petitioners/respondents have spent the entire youthful life to the service of the State rendering valuable services to the State as an Artist. It will be too cruel to allow them to go empty handed when they are aged, old and infirm and incapable of earning by themselves. It is common knowledge that Government servants work for future security. The argument that the writ petitioners accepted the appointment with full knowledge of terms and conditions laid down in the contract and therefore, their services cannot be regularized and they are not entitled pension and other retiral benefits would amount to exploitation of labour. May be the petitioners have knowing fully well the terms and conditions of contract accepted the employment because of compelling circumstances. State, being a model employer are not permitted to use method of exploitation against the weaker section of people.

12. We, unequivocally of the view that the term “contract appointment” must be terminable at some stage of their service. But if contract appointment continued uninterruptedly till the age of superannuation as is happened in the case at hand, the character of contract appointment automatically changes and the employee has to be treated under the normal Government service rules, entitling them pensionary benefits. In the instant case, the stand taken by the appellant Government that the respondents were on contract service and therefore, even if they retire on attaining the age of superannuation they will not be entitled to pension and other retiral benefits is unacceptable. If they are on contract service their services could have been terminated

when they are still youthful and they could have gainfully employed in some other avocation. But then, after using their entire services, drained out their energy and when they are aged, old and infirm and incapable of functioning, allowing them to go empty handed is an invasion of mandate of Articles 14 and 21. Right to live has been interpreted as right to live with dignity. Unless citizens have means for sustenance right to live with dignity will have no meaning. The contention of the learned counsel for the appellant are therefore rejected as untenable in law.”

10. Mr. Sentianger has further relied upon another judgment of this Court that was delivered in WP(C) No.21/2021. In this judgment, this court had held that since the petitioner had served the Department, without any break for some years, he should have been given the same benefit when he had asked for it. The court further held that even without asking, the State as a model employer and under a democratic form of Government and being a welfare State, should have done it. The court had held that having not done so amounts to exploiting its own citizen for 35 years and releasing him empty handed.

11. The learned counsel Ms. Mere has relied upon a judgment of the Hon’ble Supreme Court that was delivered in the *State of Nagaland and Ors. -vs- Nishevi Achumi* in *Civil Appeal No.4223 of 2022*.

12. In this case, the State of Nagaland filed appeal against a Division Bench judgment of this Court dated 19.04.2021 in Writ Appeal No.21 of 2019 by which the Division Bench dismissed the said appeal and confirmed the judgment and order of the learned Single Judge directing the State of Nagaland to regularize services of the deceased husband of a woman one day earlier to his death and thereafter, to pay the family pension to the said woman.

13. The Hon’ble Supreme Court dismissed the said civil appeal. The Apex Court has held as under:

“Paragraphs 4.1. It is required to be noted that the deceased employee

died in the year 2005. During his lifetime, he never claimed any regularization. That the respondent herein-original writ petitioner-wife of the deceased employee claimed the regularization after a period of 12 years from the death of the deceased employee. 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 worked charge employees whose services were to be regularized. Under the regularization policy the services of the work-charge employees were required to be regularized as per the seniority and as and when the vacancy arises. The services of the other work-charge employees even who were senior to the deceased employees were regularized in the year 2009 i.e. after the death of the deceased employee. Despite the above, the High Court has directed the State to regularize the services of the deceased employee one day prior to his death, which otherwise his services were not required to be regularized as his turn had not come and he was much below in the seniority list.

4.2 Considering the aforesaid facts and circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.”

14. In reply to that, Mr. Sentiyaenger has relied upon a decision of the Hon’ble Supreme Court that was delivered in the *State of Gujarat and Ors. -vs- Talsibhai Dhanjibhai Patel*, reported in *2022 Live Law (SC) 187*. In this case, the Hon’ble Apex Court has held as under:

“It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondents are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continuous service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.”

15. I have considered the submissions made by the learned counsel of both sides.

16. The present petitioner had served the State of Nagaland for a long continuous period of 35 years. It can be said that he had devoted his entire life in the service of the State. So, it was a duty on the part of the State to regularize his service while he was still in service. In fact, the case of the petitioner is an unfortunate incident.

17. There is a Scheme for regularization and absorption of Work-Charged and Casual Employees and Revision of Pay/Wages dated 17th March, 2015. According to this scheme, all existing Work-Charged and Casual Employees of various Departments who are enjoying scale of pay and who have completed 30 years of service or more than continuous service as on 01.01.2015, will be regularized by conversion of their posts into regular ones presently to them and subject to fulfillment of conditions.

18. The petitioner joined service on 23.05.1984 and was released from service after completion of 35 years of continuous service on 22.05.2019. Under the said circumstances, the State on its own should have considered his case for regularization. But the State did not do so. It was wrong on the part of the State.

19. In view of the above circumstances, the State Respondent Nos.1 to 4 are directed to regularize the service of the present petitioner one day prior to 22.05.2019 as a Grade-IV employee under the Government of the State of Nagaland.

With the aforesaid direction, the present writ petition is allowed and disposed of accordingly.

cJUDGE

Comparing Assistant