

GAHC020006002021



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

Case No. : WP(C)/312/2021

SHRI. MOAKABA
WORK-CHARGED MECHANIC HELPER, MECHANICAL SUB
DIVISION, WOKHA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, WORKS
AND HOUSING DEPARTMENT, GOVERNMENT OF NAGALAND,
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND
DEPARTMENT OF P AND AR
NAGALAND KOHIMA

3:THE CHIEF ENGINEER
PWD (MECHANICAL)
NAGALAND KOHIM

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

Date of hearing and judgment : **27.05.2024**

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER (ORAL)

Heard Mr. Moa Jamir, learned counsel for the petitioner as well as
Mr. Moa Imchen, learned Senior Government Advocate for all the State

respondents.

2. The facts projected in the petition is that *vide* the Order dated 17.02.1997, the petitioner was temporarily appointed as Work-charged Mechanic Helper for a period of one year in a scale pay. However, the said tenure was extended from time to time and at present, the petitioner has completed about 27 (twenty-seven) years in his service.

3. So far as the State of Nagaland is concerned, a policy was adopted *vide* Office Memorandum (OM) dated 22.09.2004 on the aspect of regularization of the service of Work-charged Employees. Under the said policy 50% of the regular vacancies were reserved for Work-charged Employees. The State had also subsequently formulated another policy *vide* OM dated 17.03.2015 whereby it has been laid down that Work-charged Employees receiving scale pay and working for a minimum 30 (thirty) years would be entitled for regularization. However, the petitioner has been given the benefit of regularization.

4. Mr. Moa Jamir, learned counsel for the petitioner has submitted that so far as the OM dated 17.03.2015 is concerned, technically speaking the petitioner may not be held to be eligible as he has not completed 30 (thirty) years of service. However, since the balance period is minimal, the petitioner can still be considered.

5. Alternatively he submits that so far as OM dated 22.09.2004 is concerned, there is no dispute that the petitioner is eligible for consideration. The learned counsel has categorically submitted that the earlier scheme of 2004 is still in operation and in fact 11 (eleven) numbers of persons who are junior to the petitioner have been given benefit and the petitioner has been left out. The learned counsel accordingly prays for

a suitable direction for a consideration and regularization of the services of the petitioner.

6. Mr. Moa Imchen, learned State counsel has submitted that the policy of 2015 would not be applicable to the petitioner as the same contemplates the minimum length of 30 (thirty) years of service. The State counsel has, however, fairly submitted that the policy of 2004 is still in operation as both the policies are on different footing. It is also submitted that though it is a fact that 11 (eleven) numbers of persons were regularized who appears to be junior to the petitioner, the reason of such regularization is not known to him. The learned State counsel, however, does not dispute that the petitioner fulfills the requirement of the 2004 policy.

7. After hearing the learned counsel for the parties and on perusal of the materials on record, this Court is of the considered view that the policy of 2015 would not be applicable to the petitioner. It is a settled position of law that a cut-off date or a minimum length of service prescribed cannot be held to be arbitrary only because some of the persons are left out. This Court is of the further view that such minimum period/cut-off date are to be meticulously followed as otherwise it would lead to a floodgate.

8. Having said that, this Court is, however, of the view that the petitioner appears to have fulfilled all the requirements and eligibility under 2004 policy whereby 50% of the regular vacancies arising in a year are reserved for the Work-charged Employees.

9. In view of the aforesaid position, the writ petition is disposed of directing consideration of the case of the petitioner in the vacancies

arising in the present year as per the policy dated 22.09.2004 whereby 50% are reserved for such Work-charged Employees. The fact that 11 (eleven) numbers of incumbents have been given the benefit of such terms who are stated to be junior to the petitioner is also to be kept in mind while making the aforesaid exercise. The exercise is to be carried out immediately when the vacancies in the present year arises depending on the availability under the reserved quota. In case such vacancies do not arise in this year, the petitioner is to be considered in the subsequent year and given the benefit of the policy.

10. Writ petition accordingly stands disposed of.

Sd/-
JUDGE

Comparing Assistant