



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

KOHIMA BENCH

WP(C) No. 314/2021

SHRI. YAMCHANTSU

S/O SHRI. RUSETSU, W/C SKILL LABOUR (SUPERANNUATED)

BEARING CODE NO.PHK.0669, UNDER SUB-DIVISIONAL OFFICER, PHED,
MELURI SUB-DIVISION, PHEK, NAGALAND.

Petitioner.

VERSUS

1. THE STATE OF NAGALAND,
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND,
NAGALAND, KOHIMA.
2. THE COMMISSIONER AND SECRETARY TO THE
GOVT. 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, KOHIMA.

Respondents.

Advocate for the Petitioner : Ms. V. Therie.

Advocate for the Respondents : Ms. Pichano, GA, Nagaland.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of Hearing : 22.03.2024

Date of Judgment : **10.06.2024**

JUDGMENT & ORDER

Heard Ms. V. Therie, learned counsel for the petitioner. And also heard Ms. Pichano, learned Government Advocate for the State respondents.

2. This Writ Petition (C) No. 314/2021, under Article 226 of the Constitution of India is preferred by the petitioner, namely, Shri Yamchantsu, for issuing direction/order to the respondent authorities to regularize his service against the lowest scale of pay permissible for Grade-IV employees within the PHE Department, Government of Nagaland for pension and pensionary benefits.

3. The background facts, leading to filing of the present petition are adumbrated herein below:-

"The petitioner was appointed as work-charged skilled labour bearing Code No.PHK-0669 against the vacancy caused by Late

Chupili W/C Skilled Labour under the establishment of S.D.O (PHE) Phek, Nagaland vide Order NO.SD/PK/2/89-90/314-46 dated 25-07-1989, without making any mention in the appointment order as to whether the petitioner was appointed on fixed pay or scale pay basis. Then W/C Identity Card was issued to him by the PHED bearing Code No.PHK.0669 wherein his date of 1st appointment is clearly entered as 25-07-1989.

Then after 29 years 8 months of his service, vide Office Order NO.SD/PHE/MLR/EST-2/2000/17-21 dated 29-03-2019 passed by the Sub-Divisional Officer, PHED, Meluri Sub-Division, Phek, Nagaland the petitioner was released from service on completion of 60(sixty) years of age.

Thereafter, the petitioner through his counsel filed two RTI Applications, on 10-02-2021 before the PIO, Office of the Chief Engineer, PHE Department, Nagaland, Kohima requesting the following information:-

- (i) "List of employees who were appointed on work-charge basis and subsequently granted scale of pay."
- (ii) "List of employees who were appointed on work-charge basis and subsequently regularized clearly indicating their date of appointment, post and date of regularization."

The petitioner had received the reply vide Office Letter NO.CE/PHE/RTI/2005 dated Nil-03-2021 a "List of WC employees under PHED Nagaland who were appointed on Fixed pay and

subsequently upgraded to Scale pay" information relating to 380 work-charge employees appointed on fixed pay and subsequently upgraded to scale pay was provided. Also, vide Office Letter NO.CE/PHE/RTI/2005 dated Nil-03-2021 a "List of WC employees under PHED Nagaland who were Regularized" information relating to 195 work-charge employees being regularized was provided.

Having received the reply the petitioner found that many other similarly situated employees have been already granted scale of pay as well as regularized. But, the department was indifferent towards the petitioner's plight, and his case has not been considered.

Thereafter, on 28-07-2021, the petitioner made a representation to the Chief Engineer, PHED, Nagaland, Kohima for regularization of his service for the purpose of pension and pensionary benefits. However, the same has not been considered till date.

The grievance of the petitioner is that despite serving the department for 29 years 8 months, he was not awarded scale of pay as was awarded to so many other similarly situated employees excluding him from the benefit of Government of Nagaland, Department of Personnel and Administrative Reforms (Administrative Reforms Branch) Nagaland, Kohima Office Memorandum No. AR-3/GEN-201/2009, dated 17-03-2015 on "Scheme for Regularisation and Absorption of Work charge and casual employees of and revision of Pay/Wages". He was

allowed to leave empty handed. He is the sole bread winner of the family and is facing untold financial hardship to support himself and his family following his superannuation as he has no alternative source of income. He is forced to live in penury and is no longer able to financially support his family. That state, being a model employer, ought not to discriminate its employees by adopting a pick and choose policy. In similarly situated cases, persons have already been regularized and given pension and pensionary benefits; however the same benefit has not been extended to the petitioner and the same is in violation of Articles 14 & 16 of the Constitution of India.”

4. The respondent No. 5 has submitted its affidavit-in-opposition and denied its role as the contentions and grievances raised in the present writ petition is between the petitioner and the State respondents and the Office of the Accountant General has no role in regularization of service and sanctioning of pension benefits. It is also stated that the role of the Office of the Accountant General is premature at this stage.

5. The respondents’ No. 1, 2, 3 and 4 have filed their affidavit-in-opposition on behalf of the Respondent No. 1, 2, 3 and 4. It is stated that as per the Office Order, the appointment is purely temporary and liable to terminate without any further notice and the order is clear and specific that the appointment is irregular appointment made on temporary basis without following due procedure and was not appointed against any sanctioned post. It is also stated that in view of the decision rendered by the Supreme Court, in the case of **State of**

Karnataka & Ors. Vs. Uma Devi & Ors reported in **(2006) 4 SCC 1**, wherein, it is clearly stated that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. And that such a person cannot be regularized. It is also stated 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 service. It is further stated with regard to Annexure-5A, annexed in the petition that the list of fixed pay employees who were given scale pay as per the Administrative approval dated 23.07.2020. And in **W.P.(C) NO.228(K)/2018, Shri Phuhton K. & 46 Ors –vs.- The State**, the Hon'ble Court by an order dated 21.11.2018, directed the respondent to consider the prayer of the petitioners to pay them at the scale of pay within a period of 3 months and the directions were forwarded to the Government and thereafter the Government through letter No. PHE-1/ESTT/81/2018(pt), dated 23.07.2020, issued the Administrative Approval for up-gradation of fixed pay to scale pay of Work charged Employees. And basing on the above government directive, all work charged employees, who are on fixed pay and who have completed 30 years of service after 1st Jan' 2020 were given scale pay. In the present case, the petitioner was released from service by order dated 22.05.2019, before the administrative approval and since the direction has specifically mentioned that 'the fixed pay employees who has retired on or before 1st Jan' 2020 shall not have the right to claim scale of pay', as such the petitioner could not be

given scale of pay since the petitioner was already released from service on attaining the age of superannuation. And with regard to Annexure- 5B, it is stated that the same are the list of employees who were regularized as per O.M. dated 17.03.2015. It may be further stated that O.M dated 23.07.2020 has specifically mentioned that all existing work charged and casual employees who are enjoying scale pay and who have completed 30 years of continuous service are eligible for regularization of the service. The present petitioner was on fixed pay till his retirement hence his case is not covered by the mentioned O.M. It is further stated that as per the Administrative Approval, dated 23.07.2020, which has specifically mentioned that 'the fixed pay employees who has retired on or before 1st Jan' 2020 shall not have the right to claim scale of pay', the petitioner having being already retired from service could not be given scale of pay, however work charged employees, who were still on service were given scale of pay as per the direction of the Government. And as such the averment of the petitioner that the department has been indifferent towards the petitioner's plight is totally false and misleading. It is further stated that the petitioner, during his 35 years of service has never made any presentation nor brought his grievances to the respondent. It may be further stated that the petitioner was released from service on 30.4.2019, and he had submitted his representation only on 28.07.2021. Further, no explanation or reasons are stated by the petitioner for the delay. It is well established Principle of Law that unreasonable delay and laches is incurable. Therefore, the present case is fit for dismissal as it is a covered case with **WA No.22(K) of 2013 (Tekatemjen Ao -Vs- The State of Nagaland & Ors.)**,

where a Division Bench held that although there is no limitation prescribed for a petition under Article 226, inordinate delay in absence of any explanation whatsoever has to result in refusal of granting the relief sought for. It is also stated that the O.M dated 17.03.2015 is clear and specific that only the work charged employee, who are on scale pay is eligible for regularization. In the present case, the petitioner retired as work charged employee (Labour) on fixed pay, hence O.M 2015 is not applicable to the present case. Further, it is stated that the petitioner in the referred case was on contract service, whereas in the present case the petitioner was appointed as work charged on a fixed pay and the appointment is purely temporary liable to be terminated at any time without notice. It is further stated that in absence of any rules or provisions issued by the State Government for giving scale of pay to fixed pay employees before the petitioner's retirement, the petitioner was released from his service without regularization. The department functions as per the direction and guidelines of the State Government; hence there is no discrimination or violation of Article 14 and 16 of the Constitution of India against the present petitioner. It is, therefore, contended to dismiss the petition.

6. Ms. Therie, the learned counsel for the petitioner submits that the petitioner was appointed as work-charged skilled labour with Code No.PHK-0669 against one vacant post under the establishment of S.D.O (PHE) Phek, Nagaland vide Order NO.SD/PK/2/89-90/314-46 dated 25-07-1989, without making any mention in the appointment order as to whether the petitioner was appointed on fixed pay or scale pay basis. Then after 29 years 8 months of his service, vide Office

Order NO.SD/PHE/MLR/EST-2/2000/17-21, dated 29-03-2019, the petitioner was released from service on completion of 60(sixty) years of age. Ms. Therie further submits that despite serving the department for 29 years 8 months, he was not awarded scale of pay and he was excluded from the benefit of Office Memorandum No. AR-3/GEN-201/2009, dated 17-03-2015 on "Scheme for Regularisation and Absorption of Work charge and casual employees of and revision of Pay/Wages" issued by the Government of Nagaland. It is the further submission of Ms. Therie that the petitioner had filed two RTI Applications, on 10-02-2021 before the PIO, Office of the Chief Engineer, PHE Department, Nagaland, Kohima requesting to furnish the list of employees who were appointed on work-charge basis and subsequently granted scale of pay and also the list of employees who were appointed on work-charge basis and subsequently regularized clearly indicating their date of appointment, post and date of regularization. Then on receipt of the reply he found that 380 numbers of work-charge employees appointed on fixed pay and subsequently upgraded to scale pay was provided and 195 numbers of work-charge employees were regularized and the said exercise was carried out on pick and choose basis. Thereafter, on 28-07-2021, the petitioner made a representation to the Chief Engineer, PHED, Nagaland, Kohima for regularization of his service for the purpose of pension and pensionary benefits, but, the same has not been considered till date. It is the further submission of Ms. Therie that despite serving the department for 29 years 8 months, he was not awarded scale of pay as was awarded to so many other similarly situated employees excluding him from the benefit of Office Memorandum No. AR-3/GEN-201/2009, and

he was allowed to leave empty handed, and forced to live in penury and the state, being a model employer, ought not to discriminate its employees by adopting a pick and choose policy and the same violates Articles 14 & 16 of the Constitution of India.

7. Referring to a decision of this court in **WP(C) 21/2021 (Shri Angphei Konyak vs. State of Nagaland and 2 others.)**, Ms. Therie submits that the case of the present petitioner is squarely covered by the decision in said case and a division bench of this court, vide judgment and order dated 06.02.2024, in Writ Appeal No. 35/2022 (**The State of Nagaland and 2 Others vs. Shri Angphei Konyak**) has upheld the said judgment and order. Ms. Therie has also referred to another **decision of a division bench of this court in W.A. No.12(K) of 2009**, in the case of **The State of Nagaland & Anr. vs. Ramaswami**, wherein, similar relief, being sought for in this petition, was granted by a learned single judge of this court in W.P.(C) No. 194(K)/06. Being covered by the judgment and order of this court in **WP(C) 21/2021 (Shri Angphei Konyak vs. State of Nagaland and 2 others.)**, Ms. Therie has contended to grant similar relief in this petition also.

8. Whereas, Ms. Pichano, learned Government Advocate, submits that the appointment of the petitioner was purely temporary and liable to terminate without any further notice and that the appointment was irregular appointment made on temporary basis without following due procedure and was not appointed against any sanctioned post, and in view of the decision rendered by the Supreme Court, in the case of **Uma Devi & Ors** (supra) his service, being irregular, cannot be

regularized. Ms. Pichano further submits that the O.M dated 23.07.2020 has specifically mentioned that all existing work charged and casual employees who are enjoying scale pay and who have completed 30 years of continuous service are eligible for regularization of the service. The present petitioner was on fixed pay till his retirement hence his case is not covered by the mentioned O.M. It is further stated that as per the Administrative Approval, dated 23.07.2020, which has specifically mentioned that 'the fixed pay employees who has retired on or before 1st Jan' 2020 shall not have the right to claim scale of pay', the petitioner having being already retired from service could not be given scale of pay. Further, it is submitted that the petitioner was released from service on 30.04.2019, and he had submitted his representation only on 28.07.2021 and there is no explanation for the delay, which is incurable. Ms. Pichano also submits that there is no discrimination or violation of Article 14 and 16 of the Constitution of India against the present petitioner. It is, therefore, contended to dismiss the petition. Mr. Pichano has referred following case law in support of her submission:-

(i) WA/27/2022 (The State of Nagaland and 5 Others vs. Shri Alemba)

9. In view of the statements and averments made by the parties in their respective pleadings and also in view of the submissions of learned counsel for respective parties, the issue to be answered by this court is:-

Whether the petitioner, namely, Shri Yamchantsu, is entitled to be regularized in his service against the lowest scale of pay permissible for Grade-IV employees, of the PHE Department, Government of Nagaland for pension and pensionary benefits ?

10. Having heard the submissions of learned Advocates of both sides I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by learned Advocates of both sides.

11. It is not in dispute that the petitioner was appointed as work-charged skilled labour with Code No.PHK-0669, against the vacancy caused by Late Chupili W/C Skilled Labour under the establishment of S.D.O (PHE) Phek, Nagaland with effect from the date of his joining to the post, vide Order NO.SD/PK/2/89-90/314-46 dated 25-07- 1989, vide **ANNEXURE-1**. It is also not in dispute that W/C Identity Card (**ANNEXURE-2**) was issued to the petitioner by the PHED bearing Code No.PHK.0669, wherein his date of appointment is clearly entered as 25-07-1989. It is also not in dispute that after 29 years 8 months of his sincere service to the Department, vide Office Order NO.SD/PHE/MLR/EST-2/2000/17-21 dated 29-03-2019 (**ANNEXURE-3**) passed by the Sub-Divisional Officer, PHED, Meluri Sub-Division, Phek, Nagaland he was released from service on completion of 60(sixty) years of age.

12. It is also to be noted here that while allowing the **WP(C) 21/2021 (Shri Angphei Konyak vs. State of Nagaland and 2 others.)**, this court in judgment and order dated 11.04.2022, has observed as under:-

"6. I have considered the submission of both the learned counsels. Keeping in view the facts and circumstances which have not been disputed; (i) The pay of 380 Work-Charged employees, majority of whom were junior to the petitioner were upgraded to scale of pay by the Department, leaving aside his case, inspite of the application submitted to respondent No.3. (ii) The service of 195 persons, who were all junior to the petitioner, were regularized, and that too without meeting the requirements of the provisions of the Office Memorandum referred to by the learned Government Advocate; (though all these happened after retirement of the petitioner) I am of the view that the petitioner has been discriminated. Since the petitioner had served the Department without any break for so many years, he should have been given the same benefit when he had asked for it. 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. Having not done so, amounts to exploiting its own citizen for 35 years and releasing him empty handed. The fact that his service was utilised till he completed 35 years of service, by which any person serving under the Government of Nagaland is to retire, shows that his service was not only required but fully utilised. If a person's service is required and utilised he should have been given what he deserved.

7. It has been submitted by the learned counsel for the petitioner that the petitioner, when he retired enjoyed only Rs.3450/ per month as pay. It is difficult to imagine how he

would have struggled all his life to look after his family members. After having lead such a life, to let him go empty handed cannot be reasonable. Slavery and forced labour are things of the past, but it appears that for some people they still suffer from such practices. Therefore, in similar cases i.e. WP(C) 241/2021, WP(C) 242/2021, WP(C) 243/2021, WP(C) 244/2021, WP(C) 245/2021, WP(C) 246/2021, WP(C) 247/2021, WP(C) 248/2021, WP(C) 249/2021, this court on 24.03.2022 had allowed the prayer of the persons who are similarly situated as the petitioner, and directed the State Government to consider regularisation of their services for pension and pensionary benefits.

8. Taking into view the order passed in those nine Writ Petitions and the Order of the Hon'ble Supreme Court given above, this court is of the view that the case of the petitioner, praying for regularisation of his service so that he may enjoy pension and pensionary benefits is a legitimate prayer.

9. In view of all that has been stated above, the Writ Petition is hereby disposed of with a direction that the respondents should regularise the petitioner's service within a period of four months from the date of receipt of a copy of this order, so that he will at least enjoy pension and pensionary benefits, after all those years of dedicated service rendered to the state."

13. Having gone through the pleadings of the parties herein this case and also in view of the submissions of learned Advocates of both

sides, this court is of the considered opinion that the case of the present petitioner is squarely covered by the aforementioned judgment and order dated 11.04.2022 in **WP(C) 21/2021 (Shri Angphei Konyak vs. State of Nagaland and 2 others)**.

14. It is also to be noted here that the respondents herein have challenged the said judgment and order dated 11.04.2022, in WP(C) No.21/2021 and a division bench of this court vide judgment and order dated 06.02.2024 in **Writ Appeal No.35/2022 – The State of Nagaland & 2 Ors. v. Shri Angphei Konyak**, has dismissed the same.

15. I have considered the submission of Ms. Pichano, the learned Government Advocate for the state respondents and also gone through the decision in **WA/27/2022 (The State of Nagaland and 5 Others vs. Shri Alemba)** so referred by her. It appears that the said decision was held to be *per incuriam* in **Writ Appeal No. 35/2022. (The State of Nagaland and 2 Others vs. Shri Angphei Konyak)** in view of the earlier decision of this court in **W.A. 12(K)/2009 (The State of Nagaland vs. Ramaswami)**, in view of the doctrine of binding precedent, so laid down in the case of **National Insurance Company Limited vs. Pranay Sethi & Ors.**, reported in **(2017) 16 SCC 680**. It is a fact that there is some delay in approaching this court by the petitioner. But, as contended by the respondent in their affidavit-in-opposition, the same cannot be termed as unreasonable delay and as such the ratio laid down in the case of **WA No.22(K) of 2013 (Tekatemjen Ao -vs.- The State of**

Nagaland & Ors.) would not be applicable in all force to the facts here in this case.

16. In the result, I find sufficient merit in this petition and accordingly, granting similar relief to the petitioner, as provided to the petitioners in **WP(C) 21/2021 (Shri Angphei Konyak vs. State of Nagaland and 2 others)**, the same stands allowed.

17. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant