

GAHC020006582022



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

Case No. : WP(C)/247/2022

SMTI. YENTSALUMI LOTHIA
FEMALE ATTENDANT, CMO OFFICE,
LONGSA SUB-CENTRE, WOKHA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2: THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3: THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

4: THE CHIEF MEDICAL OFFICER
WOKHA
NAGALAND

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Ms. Z. Zhimomi, Adv.

For the Respondents : Mr. Moa Imchen, Sr. Govt. Adv.

Date of Judgment : 07.03.2024

JUDGMENT & ORDER (CAV)

1. Heard Ms. Z. Zhimomi, learned counsel for the petitioner. Also heard Mr. Moa Imchen, learned senior Government Advocate, for the respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, Smti Yentsalumi Lotha, impugning the order dated 4th December, 2014 bearing No. DHFW-3/117/gd-IV/General/2010(Pt) issued by respondent No. 3, whereby the appointment orders of the petitioner as Female Attendant at Longsa Sub-Centre, Wokha. The petitioner has prayed for a direction for reinstatement of the service of the petitioner as Female Attendant at Longsa Sub-Centre under Chief Medical Officer, Wokha as well as a direction to release the unpaid salary of the petitioner w.e.f. 01.05.2012 till 27.04.2015 for the service already rendered by her.

3. It is pertinent to mention herein that before filing the present writ petition, the petitioner had filed another writ petition which was registered as WP(C) No. 113/2022 and it was during the pendency of the said writ petition only the petitioner came to know about the impugned order dated 04.11.2014, whereby her appointment as Female Attendant was declared as null and void by the respondent No. 3 which was never intimated to the petitioner in violation of the principles of natural justice. Under such circumstances, the petitioner prayed for allowing her to withdraw the earlier writ petition i.e., WP(C) No. 113/2022 with liberty to file afresh which was allowed by this Court and, accordingly, the instant writ petition

has been filed again by the petitioner wherein she has also impugned the order dated 04.11.2014 passed by the respondent No. 3 whereby her appointment as Female Attendant at Longsa Sub-Centre, Wokha was declared as null and void.

4. The case of the petitioner, in brief, is that on 27.11.2006 she was temporarily appointed as Female Attendant at Longsa Sub-Centre under the establishment of Chief Medical Officer, Wokha by the Additional Director, Directorate of Health and Family Welfare by the order bearing No. DHS-3/117/F-ATT/WKA/83-96 dated 27.11.2006. It is also contended by the petitioner that subsequently her service was regularized by order of the Principal Director, Directorate of Health and Family Welfare by order bearing No. DHFW3/117/F-ATTD/WKA/83-96 dated 26th November, 2007.

5. In the year 2010, a show cause notice dated 08.09.2010 was issued to 73 employees under the establishment of Chief Medical Officer, Wokha alleging that their appointments were made without sanctioned post and/or on suspected forged signatures and the said employees were asked to show cause as to why their appointment should not be cancelled/terminated. However, later on, by letter dated 4th March, 2011 bearing No. CMO/Wok/Estt-1/17/2009-10/2223 dated 4th March, 2011, the aforesaid show cause notice was kept in abeyance by the Deputy Commissioner, Wokha and the matter was referred to the Vigilance Commissioner for conducting an inquiry into the appointments made. Thereafter, by letter No. R.C-6/2011 dated 14.10.2011, the Chief Medical Officer, Wokha was asked to furnish the original appointment order of 19 employees including the petitioner on the ground that the appointment

orders of the said 19 employees were suspected to be with forged signatures. The Chief Medical Officer, Wokha (respondent No. 4) submitted all the original appointment orders of the 19 employees to the Vigilance and Anti-Corruption Police.

6. In the meanwhile, by letter bearing No. DHFW-3/117/Gd-IV/General/2010(Pt) dated 30th April, 2012, the respondent No. 3 issued a list of 159 employees who were allegedly appointed without sanctioned posts and with suspected forged signatures and directed the Chief Medical Officer of Wokha, Kiphire, Mokokchung, Zunheboto, Longleng, Mon and Dimapur to withhold the salaries of said 159 employees. The petitioner's name appeared at serial No. 16 under the suspected forged signature category. Thereafter, with effect from May 2012, the respondent stopped paying salary to 95 employees including the petitioner, though their services were utilized.

7. The Vigilance Commission summoned all the employees against whom allegations were made, to appear before it for verification of their documents and accordingly the petitioner appeared before the Vigilance Commission and gave her statements wherein she informed that she was appointed on regular basis by the then Principal Director, Directorate of Health and Family Welfare, and her appointment is genuine. Later on, by letter No. R.C-6/2011/858 dated 8th July, 2013, the Vigilance Commission submitted the progress report of the investigation to the respondent No. 2, wherein out of the 20 names mentioned in the list, the appointment orders of only one employee, at serial No. 9, was referred for expert opinion and was confirmed as forged signature and appointment letters of

other 19 employees including the petitioner were not referred for expert opinion on confirmation of their genuineness from the Principal Director, Directorate of Health and Family Welfare.

8. Thereafter, some of the aggrieved employees approached this Court and preferred writ petition which were registered as WP(C) No. 52(K)/2014 and WP(C) No. 63(K)/2014 and by order dated 18.09.2014, this Court disposed of the said writ petitions with a direction that the investigation/inquiry be completed preferably by 31.01.2015 and depending on the outcome of the investigation/inquiry, the authority in the government should pass an appropriate order and no adverse order should be passed against the against the said writ petitioners without offering them an opportunity of being heard.

9. Subsequently, similarly situated three other persons also preferred similar writ petitions which were registered as WP(C) No. 204(K)/2014, WP(C) No. 205(K)/2014 and WP(C) No. 206(K)/2014 and said writ petitions were also disposed of by order dated 31.10.2014 and 04.11.2014 in the terms of order dated 18.09.2014 passed in earlier writ petitions. However, in spite of the aforesaid directions by this Court, the respondent authorities issued order No. DHFW-3/117/Gd-IV/General/2010(Pt) dated 27th April, 2015 whereby the respondent authority dismissed and declared as null and void the services of 29 employees including the aggrieved person who had approached this Court earlier by preferring the aforesaid writ petitions under suspected forged signature category with retrospective effect from 30.04.2012. However, it is pertinent to mention that in the said order of dismissal the name of the

present petitioner did not figure.

10. Thereafter, 13 numbers of aggrieved persons who were situated similarly to that of the present petitioner approached this Court by filing writ petition which were registered as WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015 challenging their dismissal from service and this Court by a common order dated 25.10.2017 allowed the said writ petitions and directed the respondent authorities to reinstate the said aggrieved persons in service with back wages w.e.f. May 2012 till 27.04.2015. Accordingly, the respondent authority by issuing order No. DHFW/3/Gr-IV.Wokha-APPTT/2017-18 dated 4th June, 2018 reinstated the aforesaid 13 numbers of writ petitioners in service.

11. It is contended by the petitioner that the present petitioner could not join the aforesaid writ petitioners who were situated similarly to the present petitioner due to communication gap and, thereafter, due to outbreak of COVID pandemic. It is also stated that being illiterate the petitioner lost track of the aforesaid writ petitioners who got the relief by approaching this court. Moreover, as the petitioner's name did not figure in the dismissal list issued by the department on 27.04.2015, she was hopeful that respondent authority would release her salary and would allow her to continue to work. It is also contended by the petitioner that when she approached the Chief Medical Officer, Wokha she was told to bring court's order similar to that of the other writ petitioners to whom the court has given relief when they approached this court by preferring writ petitions. It is stated that the petitioner came to know about the impugned order dated 4th December, 2014 only when she preferred the

earlier petition as WP(C) No. 113(K)/2022 when during the pendency of the said writ petition, on 04.07.2022, learned government counsel produced the impugned order dated 4th December, 2014.

12. Ms. Z. Zhimomi, learned counsel for the petitioner has submitted that the impugned order dated 04.12.2014 has been issued by the respondent authorities in violation of the principles of natural justice without any intimation to the present petitioner and it was only during the pendency of the earlier Writ Petition(Civil) No. 113(K)/2022 the petitioner came to know for the first time regarding the impugned order dated 04.12.2014. It is also submitted by the learned counsel for the petitioner that when the Vigilance Commissioner in the progress report, which was submitted by the Vigilance Commissioner by letter No. R.C-6/2011 dated 8th July, 2013, the documents of the appointment letters of the petitioners were not forwarded to the expert for its opinion, the respondent authorities were wrong in coming to the conclusion that the appointment order of the petitioner is forged and void. It is also submitted by the learned counsel for the petitioner that only one employee out of 20 employees mentioned in the list whose appointment orders were suspected have forged signatures, was referred for expert opinion and was found to be confirmed as forged signature. The appointment orders of remaining 19 employees, including the present petitioner, were never referred for expert opinion, which itself shows that their appointment orders were not forged.

13. Learned counsel for the petitioner has also submitted that the impugned order dated 4th December, 2014 has been issued on the ground

that the petitioner along with two others similarly situated persons have failed to produce their original documents despite receipt of notice dated 5th May, 2014. However, it is also submitted by the learned counsel for the petitioner that the respondent No. 4 by his letter dated 03.04.2011 mentioned that he has already submitted the appointment orders, in original, of 19 employees to the Vigilance Commission. Further, in the progress report dated 08.07.2013 also the Vigilance and Anti-Corruption has specifically mentioned that the appointment orders both in original and photocopies of the 37 employees which are with suspected forged signatures were collected for scrutiny. It has also been mentioned therein that 20 numbers of employees mentioned in the list, including the present petitioner at Serial No. 19, reported for inquiry.

14. Learned counsel for the petitioner has submitted that the case of the present petitioner is covered by the common judgment of this court dated 25.10.2017 passed in WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015 whereby the 13 numbers of the writ petitioners of the aforesaid writ petitions were directed to be reinstated in service with back wages w.e.f. May, 2012 till 27.04.2015.

15. Learned counsel for the petitioner has also submitted that under the above circumstances, by issuing the impugned order dated 04.12.2014, the respondent authorities have violated the fundamental rights of the petitioner guaranteed under Articles 14 and 16 of the Constitution of India as well as also violated the principles of natural justice. It is further submitted by the learned counsel for the petitioner that as the case of present petitioner is covered by the judgment passed

by this court in WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015, the impugned order dated 04.12.2014 is liable to be set aside and the petitioner is entitled to get the salary for the period when she had actually worked as Female Attendant at Longsa Sub-Centre, Wokha.

16. On the other hand, Mr. Moa Imchen, learned Senior Government Advocate appearing for the state respondents has submitted that the petitioner was terminated by order dated 04.12.2014 on the ground that she failed to produce her original appointment order in compliance with notice dated 05.05.2014. However, the petitioner had approached this court after a long delay of seven years without satisfactorily explaining the delay in approaching this court and, therefore, the petition filed by the petitioner is liable to be dismissed on the ground of inordinate delay and laches only.

17. Learned Senior Government Advocate for the state respondents has also submitted that merely because similarly situated persons were given relief by this court in WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015 in itself would not entitle the petitioner in getting the similar relief unless he is able to show as to why she has approached this court after a long delay. It is submitted by learned Senior Government Advocate for the state respondents that as the relief in the writ petition is discretionary in nature, the petitioner by her conduct of approaching this court after an inordinate delay of seven years has made herself disentitled for getting the said relief. In support of his contention, learned Senior Government Advocate has cited a ruling of the Supreme Court of India in “**A.P. Steel Re-Rolling Mill Ltd. vs State of Kerala**” reported in “**(2007) 2 SCC**

725”wherein it was observed as follows:-

“40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.”

18. Learned Senior Government Advocate for the state respondents has submitted that the petitioner has failed to make out a case for invoking extraordinary writ jurisdiction by this court and, therefore, the writ petition filed by the petitioner is liable to be dismissed with cost.

19. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record very carefully.

20. On a careful scrutiny of the materials available on record, it appears that the respondent No. 3 had categorized the list of employees in two categories. Firstly, those employees who were allegedly appointed without any sanctioned post and secondly, those employees whose appointment orders were allegedly with forged signature. It also appears that the allegation against the petitioner is that she falls within the second category i.e., where her appointment orders were made with alleged forged signature.

21. On perusal of Letter No. R.C-6/2011 dated 14th October, 2011

written by the Superintendent of Police, Vigilance and Anti-Corruption, Nagaland to the Chief Medical Officer, Wokha, Nagaland (*respondent No. 4*), it appears that names of 19 employees under the establishment of Chief Medical Officer, Wokha have been listed therein were suspected of having forged appointment orders. The Vigilance and Anti-Corruption Department requisitioned the original appointment orders of the employees whose names are mentioned in the said letter including the petitioner at Serial No. 16. In response to the said letter, the communication dated 03.11.2011 written by the Chief Medical Officer, Wokha to the Superintendent of Police, Directorate of Vigilance and Anti-Corruption, Nagaland clearly shows that the appointment orders in original of the 19 employees, whose names were listed in the said letter, were submitted to the Superintendent of Police, Vigilance and Anti-Corruption, Nagaland. Moreover, from the progress report dated 8th July, 2013 submitted by the Director, Vigilance and Anti-Corruption, Nagaland to the respondent No. 3, it transpires that the appointment order of the present petitioner was never sent to the expert for their opinion. The investigation being not conclusive, the state respondent could not have taken a decision to issue the impugned order dated 04.12.2014, whereby the appointment order of the petitioner was declared as null and void, merely on the basis of suspicion of same having forged signatures of the appointing authority. Regarding this aspect, the judgment dated 05.10.2017 passed by this court in WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015, squarely covers the case of the present petitioner as the facts of both the cases are similar.

22. As regards the submission of the learned Senior Government Advocate regarding the plea of delay and laches taken by him in the affidavit-in-opposition filed by respondent Nos. 1 to 4, it appears that in paragraph No. 11 of the writ petition, the petitioner has categorically stated that it was during the pendency of WP(C) No. 113(K)/2022, on 04.07.2022, when the learned Senior Government Advocate produced the impugned order dated 04th December, 2014 before the court, the petitioner came to know for the first time that her appointment letter has been declared as null and void by the respondent No. 3 and, therefore, she took leave of the court to withdraw the WP(C) No. 113(K)/2021 with leave to file afresh and, thereafter, again filed the instant writ petition impugning the order dated 04th December, 2014. The said contention has been simply denied in paragraph No. 9 of the affidavit-in-opposition filed by the respondent Nos. 1 to 4. Apart from the submission of the learned Senior Government Advocate that at Serial No. 7 of the memo portion of the impugned order, the copy of the said impugned order was also marked to the person concerned, nothing could be produced by the state respondents to show that the impugned order dated 04.12.2014 was, in fact, served on the petitioner and that she had knowledge of the impugned order prior to the date when it was first produced by the learned Senior Government Advocate for the respondent in WP(C) No. 113(K)/2022.

23. As the petitioner has contended that it was for the first time during the pendency of WP(C) No. 113(K)/2022, she came to know about the impugned order for the first time, it cannot be said that the petitioner had

chosen to sit over the matter as she has immediately, thereafter, filed the instant writ petition challenging the order dated 04.12.2014 by which her appointment order was declared to be null and void by respondent No. 3.

24. In view of the facts and circumstances of this case, this court is of considered opinion that the petitioner cannot be faulted in approaching this court merely on the ground of delay and laches as the respondent authorities have acted arbitrarily in declaring the appointment order of the petitioner as null and void without conclusively determining the allegations that the same contained forged signatures. Moreover, 13 numbers of other aggrieved persons, who were similarly situated like that of the present petitioner, who had approached this court earlier by filing the WP(C) No. 157(K)/2015 and WP(C) No. 158(K)/2015 have already been reinstated by the state respondents in pursuant to the directions given by this court. This court is, therefore, of the considered view that the petitioner may not be deprived of what is legitimately due to her, only because of the fact that it appears that she approached this court belatedly, as this would only perpetuate injustice.

25. This court is, therefore, of the considered opinion that under the facts and circumstances as discussed hereinabove, the petitioner has made out a case calling for interference by this court, accordingly, the impugned order dated 4th December, 2014 is hereby set aside and quashed.

26. The respondent authorities are directed to forthwith reinstate the petitioner in service as Female Attendant. As regards the back wages of

the petitioner are concerned, the respondent authorities are directed to conduct an inquiry to find out the actual period for which the petitioner had rendered her service as Female Attendant and was not paid any salary and after completion of the said inquiry, the respondent authorities shall release the salary for the said period to the petitioner. The direction issued hereinabove shall be given effect to by the respondent authorities within a period of three months from the date of this judgment.

27. With the above observation, this writ petition is hereby disposed of.

JUDGE

Comparing Assistant