



THE GAUHATI HIGH COURT AT GUWAHATI

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

KOHIMA BENCH

Writ Appeal No. 35/2022.

1. THE STATE OF NAGALAND,
REPRESENTED BY THE CHIEF SECRETARY,
NAGALAND, KOHIMA.
2. THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND, PUBLIC HEALTH ENGINEERING DEPARTMENT,
NAGALAND, KOHIMA.
3. THE CHIEF ENGINEER,
PUBLIC HEALTH ENGINEERING DEPARTMENT,
NAGALAND, KOHIMA.

.....APPELLANTS.

VERSUS

SHRI ANGPHEI KONYAK,
S/O HENKA KONYAK,
W/C LABOUR (SUPERANNUATED),
CODE NO.MON - 0218,
SUB-DIVISIONAL OFFICER, PHED,
ABOI SUB-DIVISION, MON, NAGALAND.

.....RESPONDENT

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

HON'BLE MR. JUSTICE BUDI HABUNG

Appearance:-

For the Appellant :- Ms. V. Suokhrie,
Addl. Advocate General, Nagaland
For the respondent :- Mr. Sentiyanger

Date of Hearing :- 29.11.2023
Date of Judgment :- 06.02.2024

JUDGMENT AND ORDER

[Robin Phukan]

Heard Ms. V. Suokhrie, learned Additional Advocate General, Nagaland for the appellants and Mr. Sentiyanger, learned Counsel for the sole respondent.

2. This intra-court appeal, under Chapter VA, Rule 2 of the Gauhati High Court Rules, is preferred by the State of Nagaland and two others, challenging the judgment and order dated 11.04.2022, passed by the learned Single Judge, in W.P.[C] No. 21/2021.

3. It to be noted here that vide judgment and order dated 11.04.2022, learned Single Judge has directed the appellants/respondents to regularize the service of the sole respondent, namely, Shri Angphei Konyak, within a period of 4 [four] months from the date of receipt of the order for pensionary benefits.

4. The background fact leading to filing of this petition is adumbrated herein below:-

"The petitioner was appointed as work charge employee on 31.08.1984, in the department of Public Health Engineering, Government of Nagaland. Thereafter, vide order dated 03.09.2019, the petitioner was released from his service w.e.f. 30.09.2019, on completion of 35 years of service. While he was in service, he had filed one representation on 07.09.2015, for up-gradation of his salary from fixed pay to scale pay, but, the same received no consideration from the respondent authorities. Thereafter, on 08.08.2019, he had filed another representation for regularization of his service. But, due to non-consideration of the said representation, the petitioner had filed one writ petition, being W.P. [C] No. 21/2021, before this Court, praying for a direction to the appellants/respondents to regularize his service. Thereafter, hearing both the parties, the learned Single Judge was pleased to dispose of the petition by directing the State respondents to regularize the service of the petitioner within 4 [four] months from the date of receipt of the copy of the order, so that he can enjoy the pension and pensionary benefits, after all those years of dedicated service."

5. Being aggrieved, the appellants have approached this Court by filing the present appeal on the following grounds:-

- (i) that, the service conditions of work charged employees are governed by the Nagaland Work-Charge and Casual Employees Regulation Act, 2001 and Section 12 of the said Act provides for the scheme for absorption of service:- the

State Government may draw up a scheme for absorption of service of work-charged employees into regular Government service, and accordingly, the State Government brought forth the Office Memorandum (O.M.) dated 22.09.2004 and Office Memorandum dated 17.03.2015. And the OM dated 22.09.2004, provides that 50% of all regular vacancies of similar nature arising in a year is reserved for regularization of work-charged employees and such regularization is to be considered on the basis of seniority-cum-merit and there is no age bar in cases for regularization, if the work-charged employee is below the superannuation age and the OM dated 17.03.2015, provides for regularization of work charge employees who are enjoying scale of pay and who have completed 30 years or more continuous service as on 01.01.2015, and the reservation for regularization of work-charged employees stand enhanced from 50% to 67% for the next 5 years, effective from 01.01.2015;

- (ii) that, the petitioner does not come under the purview of OM dated 17.03.2015, as during the period of service he is not the senior most employee nor there was any vacancy and as such, his service could not be regularized till the date of his superannuation;
- (iii) that, the petitioner is not entitled for regularization under the policy of the Government and the learned Single Judge

despite entertained the writ petition, directed the respondents to regularize the service of the petitioner within a period of 4 [four] months from the date of the receipt of the copy of the order;

- (iv) that, the learned Single Judge failed to consider the fact that the regularization of the petitioner's service was not possible in law and the sympathy alone cannot be a ground for taking a view from what is permissible in law;
- (v) that, the learned Single Judge also failed to consider the fact that on 23.07.2020, the Government has given administrative approval for up-gradation of fixed pay employees to scale of pay in respect of 31 employees who have completed 30 years or more as on 01.07.2020, where it has been clearly mentioned that the fixed pay employees who have retired on or before 1st January, 2020 shall not have the right to claim scale of pay and the said administrative approval did not cover the case of the petitioner as he had retired on 30.09.2019;
- (vi) that, the learned Single Judge has erroneously come to the conclusion that:
 - (a) 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 the case of the petitioner, in spite of the application submitted to the respondent No.3;

- (b) The service of 195 employees, who were all junior to the petitioner, were regularized and that too without meeting the requirements of the provisions of the OM referred to by the learned Government Advocate; [though all these happened after the retirement of the petitioner], I am of the view that the petitioner has been discriminated.
- (c) Such observation is not founded on well settled principle of law as up-gradation of fixed pay to scale of pay was given after the retirement of the writ petitioner and those work charged employees who are similarly situated as that of the petitioner who had retired before the Office letter dated 23.07.2020, were not given the benefit of scale of pay. Therefore, the writ petitioner is not excluded alone. That, 195 persons, whose service were regularized, came within the zone of work charge regularization as these persons were regularized prior and after the retirement of the writ petitioner and as such the writ petitioner cannot take these persons as similarly situated with him.
- (vii) The learned Single Judge has observed that the case of the petitioner is covered by the judgment dated 24.03.2022, passed in similar cases i.e. W.P.[C] No. 241/2021; W.P.[C] No. 242/2021; W.P.[C] No. 243/2021;

W.P.[C] No. 244/2021; W.P.[C] No. 245/2021; W.P.[C] No. 246/2021; W.P.[C] No. 247/2021; W.P.[C] No. 248/2021; and W.P.[C] No. 249/2021, but, no relief was granted by this Court in the relied upon judgments;

- (viii) The direction passed by this Court in the impugned judgment to give pensionary benefits to the writ petitioner by regularizing his services is not sustainable either on facts or in law in view of the judgment dated 11.07.2022, passed by the Hon'ble Supreme Court, in **Civil Appeal No. 4223/2022 [State of Nagaland & Others vs. Nishevi Achumi]** and in that case, the Hon'ble Supreme Court has set aside the direction passed by this Court to regularize a work charge employee one day prior to his death for the purpose of granting family pension. That, no mandamus can be granted, under Article 226 of the Constitution of India, by directing the State Government to act contrary to law and as such, the impugned judgment dated 11.04.2022 passed by the learned Single Judge is irrational, arbitrary and contrary to the statutory provision.

6. The sole respondent has filed affidavit-in-opposition denying the averments made in the appeal and it is stated that :-

- (i) that, the Section 2(d) of the Nagaland Work-Charge and Casual Employees Regulation Act, 2001 provides that 'Work-Charge Employee' means an employee engaged without sanctioned post under work charge establishment and a harmonious reading of

the Section 2(d) and 12 of the said Act, it could be ascertained that the Act envisions regularization of work-charge employees without sanction posts;

- (ii) that, in the case of **Jagjit Singh vs. State of Punjab**, reported in **[2017] 1 SCC 148** as well as a Division Bench of this Court in the case of **State of Nagaland vs. Hesheni Sumi**, reported in **2023 [2] GLT 593**, held that the law is clear that there should be no discrimination with regard to award of scale pay to work-charge employees or regular employees or any other type of temporary employees;
- (iii) that, pursuant to Section 12 of the said Act, the State Government has issued one Office Memorandum No. AR-2/1/87, dated 10.07.2001, as well as Office Memorandum No. AR-3/Gen-67/2001[Pt], dated 22.09.2004, wherein it provides that regularization will be considered on the basis of seniority-cum-merit and thereafter, the Government of Nagaland has issued Office Memorandum No. AR-3/Gen-201/2009, dated 17.03.2015, wherein it provides that the work-charge employees who are enjoying scale of pay and who have completed 30 years will be regularized by conversion of their post into regular ones personal to them and that the scheme to regularize the service of work-charged employees must be read up and be interpreted liberally so as to extent its benefit to the employees;
- (iv) that, the OM dated 22.09.2004, provides for regularization on the basis of seniority-cum-merit, however, as per RTI reply as

many as 195 employees were regularized who were all junior to the writ petitioner, which indicates that work-charge employees were regularized not as per seniority-cum-merit basis, but, by adopting a pick and choose policy and as such, the action of the department is unreasonable, discriminatory and contrary to the provision of Article 14 of the Constitution of India;

- (v) that, the OM dated 17.03.2015, does not envision the existence of vacancy against sanctioned post for regularizing a work charge employee as it merely provides for regularization by conversion of their post into regular ones personal to them.
- (vi) that, a three Judges Bench of Hon'ble Supreme Court in the case of **Prem Singh vs. State of U.P., reported in [2019] 10 SCC 516**, held that an employee who has discharged the duties with a department for 3 to 4 decades is deemed to be a regular employee so as to make the said employee eligible for the grant of pensionary benefits and again in the case of the **State of Gujarat vs. Talsibhai Dhanjibhai Patel**, Special Leave to Appeal [C] No. 1109/2022, Hon'ble Supreme Court, vide order dated 18.02.2022, held that after utilizing the service of an employee for 30 years and thereafter contending that the employee shall not be eligible for pension is unreasonable in a welfare State;
- (vii) that, 195 work-charge employees, who were regularized by the department and out of 195 employees, 39 employees were regularized without completing 30 years of service and 29 of

them were below 10 years of service and 8 employees were regularized the very day of their joining the service, which indicates that the department is not following the OM dated 17.03.2015, and has adopted a pick and choose policy by applying different yardstick to similarly situated employees which has inter alia, violated the fundamental rights of the petitioner secured under Articles 14, 16 and 21 of the Constitution of India;

- (viii) that, scale of pay was granted to 380 work-charged employees, majority of whom were junior to the petitioner, were upgraded by the department, leaving aside the case of the petitioner, in spite of the application submitted to the respondent No.3;
- (ix) that, the judgment and order dated 11.04.2022, passed by the learned Single Judge in W.P.[C] No. 21/2021, does not suffer from any infirmity and as such, the instant writ appeal deserves to be dismissed with costs.

7. Ms. Suokhrie, learned Additional Advocate General for the appellants submits that the OM dated 17.03.2015, never covers the case of the respondent, inasmuch as he has been not granted scale of pay as the requirement of the aforesaid OM is that the work charge employees must be given scale of pay and he has to complete 30 years of service. Ms. Suokhrie, further submits that the OM of 2004 also does not cover the case of the respondent, inasmuch as the respondent was not senior most employee, and despite, the learned Single Judge has ordered for regularization of service of the respondent within 4 months and as the case of the respondent does

not covered by any of the OM, either 2004 or 2015 and as such, the direction so issued suffers from perversity. Ms. Suokhrie, further submits that the information obtained by the respondent by filing RTI application shows that the persons who have been regularized were senior to him and they were granted the scale of pay. Referring to Page No. 56 of the writ appeal, Ms. Suokhrie submits that vide letter dated 23.07.2020, the Deputy Secretary to the Government of Nagaland has addressed a letter to the Chief Engineer for according administrative approval for up-gradation of fixed pay labour to scale of pay in respect of 31 employees who have completed 30 years or more than 30 years in service and that the said letter provides that the fixed pay employees who has retired on or before 01.07.2020, shall not have the right to claim scale of pay and that the respondent have not challenged aforementioned letter, dated 23.07.2020, and as none of the OM covers his case, he cannot be regularized. Ms. Suokhrie also referred two case laws i.e. the **State of Nagaland and Five Others vs. Shri Alemba**, Writ Appeal No. 27/2022, dated 08.06.2023, where by a Division Bench of this court has set aside the judgment of a learned Single Judge where similar benefits were granted to the writ petitioner and another case law, in **State of Nagaland and Others vs. Nishevi Achumi [Civil Appeal No. 4223/2022]**, wherein the Hon'ble Supreme Court has set aside the judgment of a Division Bench of this Court in Writ Appeal No. 21/2019, whereby the learned Division Bench has affirmed the judgment of learned Single Judge granting similar relief under the aforementioned facts and circumstances and therefore, it is contended to allow this appeal.

8. On the other hand, Mr. Sentianger, learned counsel for the respondent has supported the judgment of the learned Single Judge. While reiterating the points mentioned in the affidavit-in-opposition, Mr. Sentianger, submits that the Nagaland Work-Charge and Casual Employees Regulation Act, 2001 is a beneficial Act and while interpreting the provision of the said Act, the object of the Act has to be kept in mind. Mr. Sentianger, further submits that while granting of scale of pay and regularization of service to the work charge employees the State appellant has adopted pick and choose policies and the information obtained by the respondent through RTI, reveals that 195 employees, who were junior to the respondent, were regularized by the State appellants. Mr. Sentianger, further submits that executive instruction can only supplement the Act, but cannot supplant the same. Mr. Sentianger, further submits that the respondent was appointed on 01.09.1984 and since thereafter he put 35 years of service, but he was neither granted the scale of pay nor he has been regularized and that the State appellants has granted scale of pay to more than 380 employees on the basis of pick and choose policy and some of them were junior to the respondent, without there being 10 years of service rendered by them. Mr. Sentianger also submits that no sanctioned post is required for regularization of service of the work charge employees as the same is personal to the work charge employee and that the action of the appellant violates Articles 14, 15 and 16 of the Constitution of India. In support of his submission, Mr. Sentianger has referred to one decision of Hon'ble Supreme Court in **E.P. Royappa vs. State of Tamil Nadu** reported

in **AIR 1974 SC 555**. Referring to the case laws, so relied upon by the learned Additional Advocate General, Nagaland, Mr. Sentianger, submits that the facts of the said cases are different from the present case and that in the referred case, being Civil Appeal No.4223/2022, the Court was approached after delay of 12 years and after demise of the husband of the petitioner and further, the Division Bench judgment of this Court, referred by learned Addl. Advocate General, is per-incurium as held by Hon'ble Supreme Court in the case of **National Insurance Company Limited vs Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680**, as long back another Division Bench has decided the issue. Moreover, the present respondent is not similarly situated with the respondent of the said case. Mr. Sentianger also referred one case law of **Prem Singh vs State of UP** reported in **(2019) 10 SCC 516**, where similar relief was granted by the Hon'ble Supreme Court and on that count, the learned Single Judge has not committed any illegality while allowing the writ petition filed by the respondent. And therefore, it is contended to dismiss the writ appeal.

The Issue before this Court:-

9. In view of the pleadings as well as the submissions of learned Advocates of both sides, the issue to be decided by this court is:-

Whether the decision of learned Single Judge, in directing the State respondents to regularize the service of the respondent/petitioner within 4 [four] months from the date of

receipt of the copy of the order, for the purpose of pension and pensionary benefits suffers from any illegality or infirmity?

Discussion:-

10. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal, the grounds mentioned therein as well as the documents placed on record and also perused the case laws, referred by learned counsel for both the parties.

11. It appears that the appellants have opposed the decision of the learned Single Judge primarily on the ground that the Office Memorandum No.AR-3/GEN-67/2001 (Pt), dated 22.09.2004, and Office Memorandum No. AR-3/GEN-201/2009, dated 17.03.2015, do not cover the case of the respondent. And also that the letter No. PHE-1/ESTT/81/2018(Pt), dated 23rd July,2020, also does not cover the case of the respondent and having not been challenged the said letter, the respondent cannot successfully claim for regularisation.

12. It is, however, not in dispute that the respondent was appointed as work charge employee on 31.08.1984, in the department of Public Health Engineering, Government of Nagaland. Then, vide order dated 03.09.2019, the he was released from his service w.e.f. 30.09.2019, on completion of 35 years of service. It is also not in dispute that on 07.09.2015, while he was in service, he had filed one representation for up-gradation of his salary from fixed pay to scale pay. But, the same received no consideration from the appellant/respondent

authorities. Thereafter, on 08.08.2019, he had filed another representation for regularization of his service, but, due to non-consideration of the said representation, he had filed writ petition, being W.P.[C] No. 21/2021, before this Court, for directing the appellants herein to regularize his service, wherein allowing the petition, the learned Single Judge had issued the direction aforesaid.

13. That, a cursory perusal of the OM of 2004 reveals that it provides for 50% of all regular vacancies of similar nature arising in a year is reserved for regularization of work charge employees and such regularization is to be considered on the basis of seniority-cum-merit and there is no age bar in cases for regularization if the work-charged employee is below the superannuation age. The service of the respondent could not be regularised under the said Memorandum as during his service tenure he was not the senior most work charged labour and also because of the fact that there was no vacancy.

14. And the OM of 2015, reveals that it provides for regularization of work charge employees who are enjoying scale of pay and who have completed 30 years or more continuous service as on 01.01.2015, and the reservation for regularization of work-charged employees stand enhanced from 50% to 67% for the next 5 years, effective from 01.01.2015. The petitioner did not come under this O.M. also as he was not enjoying scale of pay.

15. And that perusal of the letter No. PHE-1/ESTT/81/2018(Pt), dated 23rd July, 2020, it reveals that vide said letter administrative approval was given for granting scale of pay to 31 employees, who

have completed 30 years or more service as on 01.07.2020. And the letter also indicates that fixed pay employees, who have retired on or before 1st January, 2020 shall not have the right to claim scale of pay. And the said letter did not cover the case of the petitioner as because he had retired on 30.09.2019. Indisputably, the respondent had not challenged the said letter.

16. It is the categorical submission of the learned counsel for the respondent that the respondent had submitted representation on 07.09.2015, [which is being annexed with the Writ Appeal at Page No. 35] while he was in service, for up-gradation of his salary from fixed pay to scale pay, but, the same received no consideration from the appellant authorities. It also appears from the RTI reply dated Nil.-03-2021, that 380 work charges employees were awarded the scale of pay, who were all junior to the respondent, and despite filing of representation, the case of the petitioner is not considered and that 195 work charge employees were regularised by the department who were all junior to the respondent and that out of 195 work charged employees 39 of them were regularised without completion of 30 years and 29 of them have not even completed 10 years and 8 employees were regularised on the very day of their joining. Thus, it becomes apparent that the appellant authorities have not followed the O.M. dated 22.09.2004 and O.M. dated 17.03.2015, and that adoption of different yardstick to similarly situated employees is writ large and as such the action of the appellants appears to be discriminatory, arbitrary and unlawful. And as such, according to the learned counsel

for the respondent, the finding so recorded by learned Single Judge suffers from no infirmity requiring any interference of this court.

17. The contention, so made by learned counsel for the respondent, is duly supported by the RTI reply, dated Nil-03-2021, in respect of granting upgraded scale of pay to 380 employees, which is being annexed with the Writ Appeal at page 61, and regularisation of 195 employees has been annexed with the Writ Appeal at page 76. And having gone through the same, we find sufficient force in the submission of learned counsel for the respondent. It is to be noted here that the facts stated in the affidavit -in-opposition and also the submission of learned counsel for the respondent is not disputed by the appellants and no reply affidavit was filed by them. Thus, the action of the appellants i.e. granting of scale of pay or regularization of the work charge employees clearly appears to be not as per seniority, but, by adopting pick and choose policy and as such it cannot be said to have withstand the test of reasonable classification as provided under Article 14 of the Constitution of India. The policy, so adopted by the appellants, thus, clearly appears to be arbitrary, discriminatory and unreasonable. Mr. Sentianger, the learned counsel for the respondent, has rightly pointed this out during argument. Hon'ble Supreme Court, in the case of **State of West Bengal vs. Anwar Ali: reported in AIR (39) 1952 SC 75**, has held that –

"54. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities of characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable

relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia, which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them..."

18. It may be mentioned here that in the impugned judgment, the learned Single Judge 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."

19. In the given factual and legal position, it cannot be said that the finding so recorded by the learned Single Judge in paragraphs Nos. 6, 7, 8, and 9, suffers from any illegalities or infirmities requiring interference of this court.

20. Though the learned counsel for the appellants submits that the finding so recorded by the learned Single Judge is contrary to the provision of law and also to the decision of a Division Bench of this Court in Writ Appeal No. 27/2022, dated 08.06.2023, and also of Hon'ble Supreme Court in **Nishevi Achumi** (supra), this court is unable to record concurrence with the same, in as much as the factual background of both the cases, referred above, are different from the facts in present case. In the case of **Nishevi Achumi** (supra), the husband of the petitioner had died in harness. The wife, after 12 years of death of her husband approached the court for regularization of service of late husband, who was working as work charge employee, and also for extending pensionary benefit to the petitioner. Moreover, the deceased employee, during his life time, never claimed

regularisation and he was much below in the seniority list and his turn had not come for regularisation.

21. That, in respect of the decision of the Division Bench of this Court in Writ Appeal No. 27 of 2022, the learned counsel for the respondent submits that in view of decision of two earlier Division Bench of this court in **W.A. No. 12(K) 2009, dated 22.02.2011, (State of Nagaland & Ors. vs. Ramaswami)** and **State of Manipur & Ors. vs. KSH Ibobal Singh** reported in **1997 2 GLT 209**, the decision in Writ Appeal No.27 of 2022 is *per incurium* in view of the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi & Ors.(supra)**. The submissions, so advanced by Mr. Sentiyangar, received due consideration of this court and we find substance in the same. It appears that in the said two decisions, the Division Bench of this Court, having considered the length of service, so rendered by the petitioners of said two petitions, had upheld the impugned decisions of learned Single Judges, by which the respondent authorities were directed to extend pensionary and other retirement benefits. Though the decision in **KSH Ibobal Singh** (supra) was discussed and distinguished in W.A. No. 27/2022, the decisions in Writ Appeal No. 12(K)/2009, dated 22.02.2011, having not been taken into account in the decision in Writ Appeal No.27 of 2022, and having been later in point of time, the decision in Writ Appeal No. 27 of 2022 appears to be *per incurium* in view of decision of Constitutional Bench of Hon'ble Supreme Court in the case of **Pranay Sethi** (supra).

Therefore, this court is of the considered opinion that ratio laid down in the said two cases would not advance the case of the appellants.

22. The learned counsel for the appellants has also referred to another decision of Hon'ble Supreme Court in **Union of India and Others vs. Ilmo Devi and Anr.**, reported in **2021 SCC OnLine SC 899**, to contend that the respondent has no legal right to be regularised in service and that sympathy and sentiment cannot be ground for order for regularisation. Whereas, Mr. Sentianger, the learned counsel for the respondent submits that the factual background of the referred case is quite different from the present case, as in the referred case, the petitioner was part time employee, but, in the case in hand the respondent is a work charged employee who had rendered 35 years continuous service in the department. Having considered the submissions of learned counsels of both side and also considering the facts and circumstances on the record, we are in complete agreement to the submission advanced by the learned counsel for the respondent.

23. Though the learned counsel for the appellants has referred to the letter No. PHE-1/ESTT/81/2018(Pt), dated 23rd July, 2020, to contend that in view of the of the said letter, the fixed pay employees, who have retired on or before 1st January, 2020 shall not have the right to claim scale of pay and that the said letter did not cover the case of the petitioner as because he had retired on 30.09.2019, and that the respondent had not challenged the said letter, he cannot claim for regularisation, yet Mr. Sentianger, the learned counsel for

the respondent has submitted that the respondent was not privy to the said communication and that the said letter cannot stand in the way of granting relief to the respondent/petitioner. Mr. Sentianger vehemently submits that even the two O.M. dated 22.04.2004 and 17.03.2015, also cannot be impediment as the same, being executive instructions, the same can only supplement the statute i.e. The Nagaland Work-Charge and Casual Employees Regulation Act, 2001, but cannot supplant the same and that harmonious reading of section 2(d) and 12 of the said Act which envisions regularisation of work-charge employees without sanction post. Mr. Sentianger, further submits that section 12 of the said Act provides that –‘The State Government may draw up a scheme for absorption of service of work charged employees into regular Government service.’ And accordingly, the Government of Nagaland Personnel and Administrative Reforms Department (Administrative Reforms Branch) had issued O.M. dated 10.07.2001 and O.M. dated 22.09.2004 and thereafter, O.M. dated 17.03.2015, for regularisation of work charge employees and the latest O.M. dated 17.03.2015 is silent as to whether the same supersedes the former and as such all the O.Ms. have to be read harmoniously and the same have to be read up and interpreted liberally so as to extend its benefit to the employees.

24. Having considered the submissions of Mr. Sentianger, in the light of given facts and circumstances on the record we find sufficient force in the same. It is settled principles of interpretation that beneficial piece of legislation must be construed liberally so as to

achieve the object sought to be fulfilled by the legislature. And if two interpretations are possible in a particular provision, the one, which advance the object sought to be achieved by such legislation has to be adopted and benefit has to be extended to the workmen. In this regard we may gainfully refer to a decision of Hon'ble Supreme Court in **Alembic Chemical Works Co. Ltd. vs. Workmen** reported in **AIR 1961 SC 647**. Same principle was echoed in the case of **Lalappa Lingappa and Ors. vs. L.V. Textile Mills Ltd.** reported in **AIR 1981 SC 852**. It is also well settled in the case of **Employees' State Insurance Corporation vs. Union of India** reported in **(2022) 11 SCC 392**, that executive instructions can only supplement statutory provision, but, it cannot supplant the same. Thus, we are of the considered opinion that the O.M. dated 22.09.2004 and O.M. dated 17.03.2015, cannot be interpreted to defeat the legislative intent, which is being sought to be achieved by enacting the Nagaland Work-Charge and Casual Employees Regulation Act, 2001.

25. Similarly, the letter dated 23rd July, 2020, No. PHE-1/ESTT/81/2018(Pt), also, to the considered opinion of this court cannot stand in the way of granting scale of pay to the respondent as the state appellant had granted scale of pay to 380 work charged employees, majority of whom were junior to the respondent leaving aside his case, in spite of the application submitted to respondent No.3, and that the petitioner has been discriminated thereby, which is not at all permissible. It is to be noted here that the letter dated 23rd July, 2020, No. PHE-1/ESTT/81/2018(Pt), is neither a Notification nor

Office Memorandum, but a communication between two officers with regard to some petitioners in **Writ Petition No. 228/2018 (Shri Phuhton K. & 46 Others vs. State of Nagaland & 5 Others)**. Moreover, the respondent was not a party to the same. Therefore, the action of the department, limiting upgradation from fixed pay to scale of pay to only work charge employees, who retired on or before 01.01.2020, is arbitrary and unreasonable classification.

26. It is to be noted here that in the **Writ Petition No. 228/2018**, vide order dated 21.11.2018, a clear direction was given by this court to the State respondents to consider the prayer of the petitioners to grant them scale of pay. Such action/inaction only puts to clearer light the discriminatory act committed by the appellant as held by Hon'ble Supreme Court in the case of **State of U.P. vs. Arvind Kumar Srivastava** reported in **(2015) 1 SCC 347**, where it has been held as under:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

27. The learned counsel for the respondent also referred two decisions of Hon’ble Supreme Court in **Prem Singh vs. State of U.P.** reported in **(2019) 10 SCC 516**, as well as in **State of Gujarat vs. Talsibhai Dhanjibhai Patel** reported in **2022 LiveLaw (SC) 187**,

to contend that work-charge employees, who have put in 30 years of service, is entitled to pension by considering the service rendered by them from the day they entered work charge establishment as qualifying service, for pension. We find substance in his submission and the ratio laid in the case referred to by him also bolstered his submission.

28. It is to be mentioned here that in the case of **Prem Singh (supra)** it has been held the Hon'ble Supreme Court as under:-

"36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension."

29. Again in the case of **Talsibhai Dhanjibhai Patel** (supra) Hon'ble Supreme 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 respondent 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 continues 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."

30. Mr. Sentianger, the learned counsel for the respondent also canvassed before us that the petitioner, being the work charge employee, the respondent was discharging the same duty with that of the employees, who were granted the scale of pay, and with that of regular employees, and inspite of discharging the same duties, the employees, who were granted scale of pay and whose services were regularised, had drawn much higher pay than the respondent, who had drawn only **Rs.3450/** per month, as indicated in paragraph No.7 of the impugned judgment of the learned Single Judge, and by virtue of the principle of "equal pay for equal work", a right to claim wages, at par with the minimum of the pay scale of regularly engaged government employees holding the same post was vested on him, as because the said principle is applicable to temporary employees also, as held by Hon'ble Supreme Court in the case of **Jagjit Singh vs. State of Punjab**, reported in **(2017) 1 SCC 148**, and the said right

of the respondent is also violated by the State appellant. In the given factual scenario, we find substance in his submission. And this proposition is not disputed by the appellant side. It is to be noted here that in the case of **Jagjit Singh (supra)** Hon'ble Supreme Court has held as under:-

"57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarized by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarized by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situated constitutes an act of

exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

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60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any

of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.

31. A Division Bench of this court also in **State of Manipur and Ors. vs. KSH. Ibobal Singh** reported in **1997(2) GLT 209**, echoed the same principle, wherein it has been held as under:-

"12. We, unequivocally of the the view that the term contract appointment must be terminable at some stage in their service. But, if contract appointment continues uninterruptedly till the age of superannuation as it happened in the case in hand, the character of appointment automatically changes and the employee has to be treated under normal Govt. Service Rule, entitling them pensionary benefits. In the instant case, the stand taken by the appellant Govt. 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 service could have been terminated when they were youthful and they could have gainfully employed in some other avocation. But then, after using their entire services, drained out their 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 Article 14 and 21. Right to live has been interpreted as right to live with dignity will have no meaning. The contention of the learned counsel for the appellants is therefore rejected as untenable.”

32. Thus, having considered the submission of learned Advocates of both the parties in the light of the given facts and circumstances on the record and in the conspectus of decisions of Hon’ble Supreme Court and also of this court, we find the submission of Mr. Sentianger, the learned counsel for the respondent well merited and accordingly, we are inclined to accepts the same. And for reason discussed herein above, we are in respectful disagreement with the submission of Ms. V. Suokhrie, learned Addl. Advocate General, Nagaland and accordingly the same stands repudiated. We find and hold that the impugned judgment of the learned Single Judge suffers from no infirmity requiring any interference of this court.

33. In the result, we find no merit in this appeal, and accordingly, the same stands dismissed. The parties have to bear their own costs.

JUDGE

JUDGE

Comparing Assistant