

GAHC020001252021

2025:GAU-NL:512



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

Case No. : WP(C)/50/2021

MR. RHANLAMO LOTH AND ANR
E.T.C COLONY, WOKHA TOWN, WOKHA, NAGALAND

2: SMTI. THUNGCHANO LOTH

E.T.C COLONY
WOKHA TOWN
WOKHA
NAGALAN

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY/
SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVT. OF NAGALAND, KOHIMA, NAGALAND

2:THE FINANCE COMMISSIONER

GOVT. OF NAGALAND
KOHIMA
NAGALAND

3:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
KOHIMA
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI, IMTI LONGJEM, ESTHER, LHOUSINO

Advocate for the Respondent : GOVT ADV NL,

WP(C)/23/2021

MR.YANRENTHUNG P. KITHAN AND 10 ORS
S/O PRUZANO KITHAN

H. KHEL DIPHUPAR

DIMAPUR
NAGALAND

2: PHYOBENI HUMTSOE
WOKHA TOWN

WOKHA NAGALAND

3: YANTHUNBENI LOTHAN
FOREST COLONY
WOKHA
WOKHA
NAGALAND

4: ZANAO LOTHAN
MOLONSU COLONY

WOKHA TOWN

WOKHA
NAGALAND

5: THERALI KITHAN
P.W.D COLONY

WOKHA TOWN

WOKHA
NAGALAND

6: Y. MHOYANI HUMTSOE
G.A/ PROJECT COLONY

WOKHA TOWN

WOKHA
NAGALAND

7: YIHANO LOTH
LIKYA COLONY

WOKHA TOWN

WOKHA
NAGALAND

8: NZANTHUNG
E.T.C COLONY

WOKHA TOWN

WOKHA
NAGALAND

9: YANPEMO LOTH
TSUMONG COLONY

WOKHA TOWN

WOKHA
NAGALAND

10: P. NYANBENI KITHAN
AIRFIELD COLONY

WOKHA TOWN

WOKHA
NAGALAND

11: CHANBEMO LOTH
MOUNT TIYI COLLEGE

WOKHA TOWN

WOKHA
NAGALAND
VERSUS

STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF NAGALAND
KOHIMA
NAGALAND

2:THE FINANCE COMMISSIONER
GOVERNMENT OF NAGALAND
KOHIMA
NAGALAND

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

Advocate for : A. ZHIMOMI
Advocate for : GOVT ADV NL appearing for STATE OF NAGALAND AND 2
ORS

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners : Shri A Zhimomi, Advocate.

For the Respondents : Shri V Zhimomi, Govt. Advocate,
Nagaland.

Date of Hearing : 27.10.2025.

Date of Judgment : 27.10.2025.

JUDGMENT & ORDER (Oral)

An order dated 27.08.2018 passed by the Principal Director, Directorate of Health and Family Welfare, Nagaland by which, conditions have been attached pursuant to the order of reinstatement of the petitioners is the subject matter of challenge in these two petitions filed under Article 226 of the Constitution of

India.

2. The facts stated in brief are that the petitioners, in these two cases, were appointed in the Department on various dates in different posts, the details of which are given below:

W.P.(C) No. 50/2021

Petitioner Nos.	Date of appointment	Post/ Establishment
1. Mr. Rhanlamo Lotha,	Order No. DHFW/47/NVBDCB/SW/06-07/Pt/3463/65 dated 23.06.2008	Surveillance Worker, Chief Medical Officer, Wokha
2. Smti. Thungchano Lotha	Order No. DHFW-3/4/117/Wak/MA/89-09/5831-34 dated 12.12.2007	Female Attendant, Chief Medical Officer, Wokha

W.P.(C) No. 23/2021

Petitioner Nos.	Date of appointment	Post/ Establishment
1. Mr. Yanrenthung P. Kithan,	Order No. DHFW/NLEP-3/2006-07 dated 11.03.2008	Para Medical Worker, Chief Medical Officer, Wokha
2. Smti. Phyobeni Humtsoe,	Order No. DHFW-4/117/DHAI/07-08 dated 25.08.2008	Dhai, Chief Medical Officer, Wokha
3. Smti. Yanthunbeni Lotha,	Order No. DHFW-3/117/WKA/MA/89-90	Medical Attendant, Chief Medical Officer, Wokha

	dated 27.09.2007	
4. Shri Zanao Lotha,	Order No. DHFW-3/117/M/ATTD/ dated 21.07.2008	Medical Attendant, Chief Medical Officer, Wokha
5. Smti. Therali Kithan,	Order No. DHFW/ NLEP-3/2006-07 dated 27.12.2007	Para Medical Worker, Chief Medical Officer, Wokha
6. Smti. Y. Mhoyani Humtsoe,	Order No. DHFW/ 3/117/Wka/MA/89-90 dated 31.08.2007	Medical Attendant, Chief Medical Officer, Wokha
7. Smti. Yihano Lotha,	Order No. DHFW/ 3/117/Wka/MA/89-90 dated 02.11.2007	Medical Attendant, Chief Medical Officer, Wokha
8. Shri Nzanthung,	Order No. DHS-46/NAMP/2001/Pt dated 28.06.2005	Surveillance Worker, Civil Surgeon, Wokha.
9. Shri Yanpemo Lotha,	Order No. DHFW/ 3/117/WAK/MA/89-90 dated 03.12.2007	Medical Attendant, Chief Medical Officer, Wokha
10. Smti. P Nyanbeni Kithan,	Order No. DHFW/ 3/117/WOK/MA/89-90 dated 07.08.2007	Medical Attendant, Chief Medical Officer, Wokha
11. Shri Chanbemo Lotha.	Order No. DHFW/ 46/NVBDCB/SW/2006-07 dated 27.02.2008	Surveillance Worker, Chief Medical Officer, Wokha.

3. It is the case of the petitioners that pursuant to such appointments, they were discharging their duties to the best of their abilities. However, in the year 2011, there was an inquiry on the aspect of appointment in the Health and Family Welfare Department and in that regard, Superintendent of Police, Vigilance & Anti-Corruption had issued a communication dated 14.10.2011 requesting the documents pertaining to such appointments. It is averred that all the original orders of appointment were duly furnished to the authorities and were verified. It is also averred that the petitioners had appeared before the authorities and had made their statements. Nevertheless, an order was passed on 30.04.2012 to withhold the salaries of the petitioners. It has been clarified that there are two categories involving such persons; the first category was where the appointments were suspected to be fraud and the other category was such appointments were made beyond the sanctioned strength. The petitioners belong to the first category. The aforesaid order dated 30.04.2012 was the subject matter of challenge in two writ petitions, namely, WP(C)/52(K)/2014 and WP(C)/61(K)/2014. Both the said two writ petitions were taken up for an analogous hearing and were disposed of by this Court vide an order dated 18.09.2014 whereby, it was directed that no adverse order was to be passed without giving the petitioners an opportunity of hearing and by holding an inquiry. After the aforesaid direction, some inquiry was held which culminated in an order dated 27.04.2015 whereby, the petitioners were dismissed from service. The ground cited in the aforesaid order of dismissal was that the appointments were fraudulently made. The said order of dismissal was the subject matter of challenge in a writ petition instituted by the petitioners which was registered as WP(C)/157(K)/2015. The said writ petition was, however, allowed by this Court vide an order dated 25.10.2017 whereby, the dismissal orders were interfered with and accordingly set aside with a further direction for reinstatement of the petitioners. Consequently, an order dated

04.06.1018 was passed reinstating the petitioners. Thereafter the impugned order has been passed on 27.08.2018 whereby, two conditions have been attached, namely, that the incumbents would not be entitled to any back wages w.e.f. 28.04.2015 to 03.06.2018 and further, the aforesaid period would not be counted for qualifying service and for increment. It is the second condition which is the specific subject matter of challenge in these two writ petitions.

4. I have heard Shri A Zhimomi, learned counsel for the petitioners. I have also heard Shri V Zhimomi, learned Govt. Advocate, Nagaland for the respondents.

5. Shri Zhimomi, learned counsel for the petitioners has submitted that the order dated 25.10.2017 passed by this Court in WP(C)/157(K)/2015 did not attach any conditions and had simply set aside the order of dismissal. Though there was an observation of giving liberty to the respondent authorities to cause an inquiry, such inquiry was not done and the impugned condition has been attached by which, the petitioners would suffer immense prejudice in their services. It is submitted on behalf of the petitioners that if there is a break in service for the period from 28.04.2015 to 03.06.2018, the petitioners would be deprived of the benefits of MACP, seniority, fitment in the proper scale and also timely promotion.

6. The learned counsel for the petitioners has fairly submitted that so far as the first condition is concerned, namely, not being entitled to back wages w.e.f. 28.04.2015, the petitioners have not raised any serious objection mainly on the principle of "no work no pay". However, the impugned condition of not counting the period from 28.04.2015 to 03.06.2018 for qualifying service and for increment would be highly prejudicial which requires interference by this Court.

The learned counsel has submitted that the benefits in service are legal rights of an employee which are required to be considered in a proper perspective. Since this Court had interfered with the order of dismissal vide the order dated 25.10.2017, it would not be proper or correct on the part of the respondent authorities to take any action which is adverse to the interest of the petitioners who have been discharging their duties to the best of their abilities. He has also tried to make out a case of discrimination and violation of Article 14 of the Constitution of India by citing that a similarly situated incumbent, namely, Smti. Ngamhai Konyak, who was a Surveyor and had also filed a separate writ petition, being WP(C)/158(K)/2015, was given all the benefits. It is submitted that the petitioners are similarly placed and therefore, there cannot be any discriminatory treatment so far as the petitioners are concerned. Reliance has been placed in a decision of a Division Bench of this Court in the case of ***Tapan Majumder Vs. State of Tripura Ors.***, reported in **2007 (3) GLT 434** wherein, it has been laid down that before declaring a period of absence as *dies non*, a disciplinary proceeding has to be conducted. For ready reference, the relevant observations are extracted hereinbelow:

“7. Upon hearing the learned Counsel for the parties, we are of the considered view that before declaring the period of absence of appellant as "Dies-non", a disciplinary proceeding has to be conducted in the facts and circumstances, more so, when the allegations of break in service are being refuted by the appellant. Therefore, the order-dated 21.1.1999 was to be passed only after resorting to proper course of disciplinary proceedings. Despite the fact that this aspect was not argued earlier before learned Single Judge of this Court, however, this legal aspect being vital on argument is being entertained by this Court at this stage, as such, the action of the Director of School Education for declaring the period from 16.3.1995 to 28.12.1995 as "Dies-non" is taken as legally

not sustainable.”

7. Shri V Zhimomi, learned State Counsel, Nagaland has, however, strenuously opposed the writ petition. He has submitted that though this Court had interfered with the dismissal order vide the order dated 25.10.2017, there were no specific conditions imposed that the reinstatement has to be done without any further condition. He has submitted that the reinstatement was initially done vide the order dated 04.06.2018 and the present order dated 27.08.2018, which is the subject matter of challenge, was passed after taking into consideration the aspect that for the said period, no duties were performed by the petitioners. He has also submitted that all the petitioners had accepted the order dated 27.08.2018 which would mean that conditions attached thereto were also accepted. He, therefore, raised the aspect that the present petition is barred by the doctrine of estoppel and waiver. He has, otherwise submitted that the impugned decision is based on the consideration that the petitioners had not, as a matter of fact, discharged their duties for the period in question and the interest of the State as well as the interest of the petitioners were taken into consideration before passing the said order. He accordingly submits that the impugned order of conditions dated 27.08.2018 is not required to be interfered with. He has also drawn the attention of this Court to a communication dated 08.06.2018 issued by the Principal Director of the Department to the Director & Deputy Inspector General of Police, Vigilance and Anti-Corruption, Nagaland to conduct a fresh inquiry. However, it appears that no such inquiry was made and in the meantime, the impugned order dated 27.08.2018 has been issued.

8. The rival submissions have been duly considered and the materials placed before this Court, including the affidavit-in-opposition, has been carefully perused.

9. It transpires that the appointments of the petitioners made in the years 2007-2008 were the subject matter of suspicion for which, the Department had taken action initially by having a preliminary inquiry done on the appointments following by an order dated 30.04.2012 to withhold the salaries. As mentioned above, there were two categories of such appointments. First category where the petitioners are connected is that the appointment orders were fraudulently issued and the second category was that the appointments were made in the posts beyond the sanctioned strength.

10. Be that as it may, the order dated 30.04.2012 was the subject matter of challenge in WP(C)/52(K)/2014 and WP(C)/61(K)/2014 wherein, this Court had passed an order dated 18.09.2014 directing that no adverse order be passed without holding any inquiry. It appears that some kind of inquiry was held leading to passing of order of dismissal on 27.04.2015. A perusal of the order of dismissal would, however, reveal that such action was being taken on the basis of a suspicion.

11. Be that as it may, the said order of dismissal was the subject matter of challenge in WP(C)/157(K)/2015 and this Court had interfered with the same by setting aside the said dismissal order vide the judgment and order dated 25.10.2017. There was also a direction for reinstatement with an observation that the respondents would be at liberty to hold an inquiry. As noted above, there was a request by the Department to the Vigilance Cell to hold an inquiry which, however, does not appear to have been done. In the meantime, the order of reinstatement was issued. The said order of reinstatement was followed by an order dated 27.08.2018 whereby, the impugned conditions were attached. The question, therefore, arises is as to whether such conditions can

be lawfully imposed following the order of reinstatement.

12. The dismissal order was set aside by this Court on 25.10.2017 with a liberty to hold a fresh inquiry. It, however, appears that no such fresh inquiry was held and in spite of that, the impugned conditions have been imposed. This Court is unable to accept the submission made on behalf of the Department that accepting the reinstatement order dated 27.08.2018 would preclude the incumbent to challenge the condition imposed to the same. The foremost interest of a dismissed employee would be to get reinstated and the same cannot mean that any conditions imposed in the said order of reinstatement cannot be challenged. Therefore, there will be no application of the doctrine of estoppel or waiver. This Court had noted the submission advanced on behalf of the petitioners that so far as the condition of back wages is concerned, there is no challenge. The challenge is only with regard to the condition by which the period from 28.04.2015 to 03.06.2018 would not be counted for qualifying service or for increment. The aspect of continuity of service is an important facet of the service rendered by an employee. Such continuity would not only be beneficial for an employee serving the Department but also a legal right and any tampering with such right would have to be preceded by a duly conducted inquiry which does not appear to have been done in the instant case. This Court had also taken into consideration that a similarly situated incumbent, who had filed a separate writ petition, being WP(C)/158(K)/2015 has been given all benefits without any condition attached. There is no refutation of facts on behalf of the State in the affidavit filed in this regard. Therefore, a case for discrimination is also apparent on the face of it.

13. Considering the facts and circumstances, this Court is of the opinion that a case for interference is made out. Accordingly, the impugned condition in the

impugned order dated 27.08.2018 of not counting the period from 28.04.2015 to 03.06.2018 for qualifying service or for increment is set aside. The petitioners would accordingly be entitled to have continuity in their services for the aforesaid periods and accordingly would get all the consequential benefits of the same.

14. Both the writ petitions accordingly stand allowed and disposed of in the manner indicated above.

15. No order as to cost.

JUDGE

Comparing Assistant