GAHC020001122025 2025:GAU-NL:523-DB

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

Case No. : WA/1/2025

SMTI. MARYANGLA,
SWEEPER (RETIRED),
GOVERNMENT PRESS BRANCH,
MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
THROUGH THE CHIEF SECRETARY,
TO THE GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF NAGALAND

PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT

NAGALAND
KOHIMA

3:THE HOME COMMISSIONER
TO THE GOVERNMENT OF NAGALAND

PRINTING AND STATIONERY BRANCH

NAGALAND
KOHIMA

4:THE FINANCIAL COMMISSIONER

NAGALAND

KOHIMA

5:THE DIRECTOR

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

6:THE ASSISTANT DIRECTOR

PRINTING AND STATIONERY

MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : I. IMTI LONGCHAR, MOAKSUNG KICHU,KAMONGLA LONGKUMER,OBANGNENLA LONGCHAR,VIKHONO KISO

Advocate for the Respondent : GOVT ADV NL,

Date of Hearing : **08.10.2025.**

Date of Judgment : **28.10.2025**

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT AND ORDER (CAV)

(Rajesh Mazumdar, J.)

Heard Mr I Imti Longchar, learned counsel appearing on behalf of the petitioner. Also heard Mr Moa Imchen, learned Government Advocate for the State respondents.

2. The present writ appeal has a history of litigation. In her own expression as per the writ appeal, the appellant/writ petitioner was appointed as a contingency sweeper in the Office of the Assistant Director

Technical in the Government Press Branch at Mokokchung by an order dated 26th of October 1988 on a fixed pay against a post sanctioned by order dated 09.06.1988. The order appointing the writ petitioner had been passed by the Director of Printing and Stationery, Nagaland, Kohima. In the year 2000, the petitioner had represented to the Director of Printing Press, Kohima, Nagaland, for being granted the scale of pay and for regularization of her services. The petitioner alleges that the Director had granted the petitioner the scale of Rupees 600/-to 1475/- per month to the petitioner with effect from the 1st of March 2000, however, the said order granting scale of pay was not given effect to and the petitioner filed another representation on the 2nd of February 2001.

3. When the petitioner failed to get any relief from the respondent authorities, she preferred a writ petition bearing WP(C) No. 141(K) of 2018, praying for regularization of her services from 26.10.1988. By the order dated 3rd of August 2018, the writ petition was disposed of by the Court, directing the petitioner to file a representation to the appropriate authority and also directing the respondent authorities to dispose of the representation by a speaking order.

4. The petitioner represented to the Director of Printing and Stationery, Nagaland on 10th of August 2018, but her prayers were rejected by the respondent through his order dated 28th of September, 2018. Challenging the aforesaid rejection, the petitioner preferred WP(C) 215 of 2018 and prayed for directions to the respondents to grant the scale of pay and to regularize her services in the post of Sweeper against the post which was earlier sanctioned by the order dated 09.06.1988.

5. By the order dated 3rd of February 2020, this Court came to a finding that the case of the petitioner for regularization of her services should be considered by the respondents as a special case. The alleged ground of "non availability of vacancy in the post of sweeper" as taken up in the impugned order was found to be not sustainable and it was held that it would be incumbent upon the respondents to create a supernumerary post to accommodate the petitioner for her regularization, if so required.

6. When the order dated 3rd of February 2020 was not complied with by the respondent authorities, the petitioner preferred a contempt petition and during the pendency, the Court was informed that the respondents had complied with the order dated 3rd of February 2020, by creating a supernumerary post and by regularizing the services of the petitioner with effect from 14.6.2022. The contempt petition was thereafter closed.

7. It is, thereafter, that the petitioner had filed WP(C) 206 of 2022, where the petitioner had prayed that the regularization was required to be given effect from 26th of October, 1988 with regular scale of pay.

8. By the impugned order dated 28th of August 2024, the Learned Single Judge dismissed the writ petition. The relevant portion of the order is quoted below for a ready reference:

> "*12. From the pleadings exchange between the parties, the materials available on record and the submissions made by the learned counsel for the parties, it is abundantly clear that the Government by issuing the order dated 26/10/1988 appointed the petitioner as a sweeper in the department on contingency basis on a fixed pay and the*

petitioner continued to work in that capacity till she was regularised in service w.e.f. 14/06/2022 by the order dated 28/06/2022.

13. The petitioner, therefore, cannot claim regularisation in service w.e.f. the date of initial appointment i.e. 26/10/1988 till the date of her regularisation in service, only on the ground that the appointment was made against a sanction post. The petitioner was regularised in the service of the department only w.e.f. 14/06/2022 and prior to that the petitioner was not borne in the regular service of the department although appointed on contingency basis w.e.f 26/10/1988. Therefore, the case of the petitioner to retrospectively regularise the contingency service of the petitioner is not only sustainable but also not legally tenable. The order dated 28/06/2022 issued by the department regularising the service of the petitioner w.e.f 14/06/2022 has also clearly and correctly spelt that the seniority of the petitioner in service shall be counted only w.e.f. the date of regularisation i.e. 14/06/2022. The law is well settled that a person cannot claim retrospective regularisation and/or seniority in service even before being borne in the regular service/cadre. The petitioner's claim for retrospective regularisation in service commencing from the date of initial appointment therefore, is liable to be rejected."

9. This order dated 28th of August 2024, dismissing the petition of the petitioner is being assailed in the present appeal.

10. The facts leading to the institution of WP(C) No. 206 of 2022 have already been depicted hereinbefore. The only issue that remains to be decided in this appeal is, as to whether the learned Single Judge had committed any error when it was held that the petitioner would not be

entitled to regularization of her service on and from 26th of October 1988 and that the respondents had not committed any error in regularizing the service of the petition prospectively by allowing her past services to be counted for the purposes of allowing her to draw pension under the old pension scheme.

11. A reference to the order passed by the respondent authorities while regularizing her services would need a perusal by this Court. For the sake of convenience, the order is quoted below in verbatim:

GOVERNMENT OF NAGALAND
DIRECTORATE OF PRINTING AND STATIONERY
NAGALAND:KOHIMA.

NO.NGP/EST/330/2017-18/312 Dated Kohima, the 28th June, 2022

ORDER

NO.NGP/EST/330/2017-18/: Consequent upon the approval of Government for creation of 1 (one) supernumerary post for regularization vide Finance deptt concurrence No.RFC/ESTT No.29/5, dayed 18-08-2020, P&AR clearance vide U.O No. 117, dated 08-06-2020, Cabinet Secretariat (Cabinet Cell) Letter No. CAB-2/2013 dated 14-06-2022 and Home deptt. Letter No. PSTY-14/2018/291, dated 15-06-2022 Smti. Maryangla appointed as contingency sweeper is hereby regularized **w.e.f 14-06-2022** at Mokokchung Branch Press Office, under the Directorate of Printing & Stationery Department in Pay Level-1(15500-49000) of the Pay-Matrix plus all other allowances as are admissible under the rules in force from time to time w.e.f 14-06-2022. Her service shall be regulated in the old pension scheme with the period rendered on fix paid basis counting towards qualifying service for the purpose of pension benefits as per the details given below

Sl. No.	Name	Date of Appointment as fixed paid	Date of Regularization	Effective date of qualifying service
1.	Smti Maryangla, Sweeper	26-10-1988	14-06-2022	26-10-1988

2. Her post shall be automatically wasted out as and when it is vacated by Smti. Maryangla.
3. **The seniority shall be counted from the date of regularization.**
4. The regular retention in the service is subjected to verification of character and medical fitness.

Your faithfully,
Sd/-
(NEITUOLIE PHEWHUO)
Director
Printing & Stationery
Nagaland, Kohima.

NO.NGP/EST/330/2017-18/ Dated Kohima, the th June, 2022

12. Thus, through the order dated 28th of June 2022, which was complained of in WP(C) 206 of 2022, the service of the petitioner as a sweeper was regularised w.e.f. 14/06/2022 at Mokokchung Branch Press Office under the Directorate of Printing & Stationary Department, in Pay

Level-1 (15500-49000) of the Pay Matrix plus all other allowances as are admissible under the rules in force from time to time. The order dated 28th of June 2022 also provided that the service of the petitioner shall be regulated in the old pension scheme with the period rendered on fixed-pay basis counting towards qualifying service for the purpose of pension benefits as per details given in the order itself. The order further provided that the seniority of the petitioner shall be counted from the date of regularization.

13. Mr. I. Imti Longchar, the learned counsel for the appellant has submitted that the petitioner was appointed on contingency basis as a sweeper on 26/10/1988 against a clear sanctioned post and had continued to serve the respondents till the date of her superannuation, therefore, the service of the petitioner was liable to be retrospectively regularised in that post from the date of initial appointment i.e. from 26/10/1988. Mr. Longchar, learned counsel has laid emphasis on the argument that the petitioner has been denied "parity of pay" when other persons, similarly situated, have been afforded a scale of pay from the date when they had joined their services while the petitioner, working in similar situation, has been afforded fixed pay till the time the orders for her regularization was passed. He has referred to the judgment and order of the Apex Court in the case of ***Surinder Singh and another –vs- Engineer in Chief, CPWD and others***, reported in **(1986)1SCC 639**, to stress the mandate of equality enshrined in Article 14 of the Constitution, which declares that there should be equality before law and equal protection of law and that implicit in it, is the further principle that there must be equal pay for equal work of equal value and that it makes

no difference whether a person is appointed in a sanctioned post or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as class IV employees. The Learned Counsel has thereafter submitted that the respondents are liable to be directed to pay the same salary and allowances to the petitioner, as was paid to regular and permanent employees with effect from the date when she was employed. Referring to the judgment of the Apex Court in ***Uttar Pradesh Land Development Corporation and Another –Vs- Mohammed Khurshid Anwar and Another***, reported in **(2010) 7 SCC 739**, the Learned Counsel has submitted that the petitioner/ appellant was entitled to be paid the minimum of Pay Scale prescribed for the post from the date of her appointment, till she continued in the employment of the Corporation. By referring to the decision of the Apex Court in ***State of Punjab and others –vs- Jagjit Singh and others***, reported in **(2017) 1 SCC 148,** the Learned Counsel submitted that the Court had reaffirmed the decision rendered in ***State of Punjab -vs Rajinder Kumar*** with the modification that the employees concerned would be entitled to the minimum of the pay scale of the category, to which they belong but would not be entitled to allowances attached to the posts held by them. The learned counsel has, therefore, submitted that negation of prayers by the learned Single Judge in the writ petition deserves an interference in the present appeal and that respondents are liable to be directed to afford the regular scale of pay to the petitioner from the date of her joining of her service.

14. Per contra, Mr Moa Imchen, the Learned Senior Government Advocate has submitted that the petitioner was originally appointed

temporarily in the post of sweeper on contingency basis at a fixed pay and it was only in compliance of the order dated 3rd of February, 2020, passed by this Court in the earlier round of litigation that the supernumerary post of Sweeper was created to accommodate the petitioner and by order dated 28th of June 2022, the contingency service of the petitioner had been regularized. Mr Moa Imchen, learned counsel submits that regularization of services, as that of the petitioner, can only be prospective in nature, that is the effective date of regularization of service and it cannot be given a retrospective effect from the date of initial appointment. The learned Senior Government Advocate has submitted that there is no record of the creation of the post on which the petitioner had been initially appointed and it was only in compliance of the orders of this Court that Petitioner has been regularized in a supernumerary post created solely for that purpose. The learned Senior Government Advocate has further stated that the petitioner had approached this Court only in the year 2020, praying for her regularization. He further submits that in view of the settled position in law regarding the prospective nature of orders requiring regularization of services of persons who were appointed in an irregular manner, the claim of the petitioner for grant of pay scale from the initial date for joining and the prayer for grant of seniority to her are not sustainable in the eyes of law. The learned Senior Government Advocate has further submitted that the services of the petitioner even in her fixed pay period has been taken into account for calculating her dues on her superannuating from service and that she has not suffered any prejudice. The Learned Senior Government Advocate, accordingly, prays for dismissal of this writ appeal.

15. The submissions made on behalf of the learned Council for both the parties have received the due consideration that they deserve. The issue which requires adjudication in this writ appeal is as to whether the respondents were under an obligation to have regularized the services of the petitioner on and from the initial date of her appointment and as to whether such a regularisation, in the event it was permissible in law, would give the benefit of fixation of her with pay scale from the date of her initial appointment and of other consequential benefits such as seniority from the date of her initial appointment.

16. In order to appreciate the rival contentions of the parties with regard to the entitlement for payment of salary in the regular scale of pay from the date of initial appointment, this Court notices that the order dated 3rd of February, 2020, passed by the learned Single Judge had required the respondents to consider the case of the petitioner for regularization as a special case, keeping in mind the peculiar facts and circumstances. The respondents were required to create a supernumerary post to accommodate the petitioner on her regularization, if so required. In the absence of any specific provision in the judgment and order as regards payment of salary in the regular scale of pay to the petitioner from the date of initial appointment or from the date of judgment, this Court has to proceed on the basis that ordinarily in service jurisprudence, the concept of retrospective regularization or payment of a regular scale of pay from a date prior to the regularization is unacceptable. Incidentally, the Hon'ble Supreme Court in the case of ***State of Punjab & Others –vs- Jagjit Singh and others (supra),*** which has also been relied upon by the counsel for the petitioner, has noticed at Paragraph-42.6 that for

placement in the regular pay scale, the claimant has to be a regular appointee, having been selected on the basis of a regular process of recruitment and an employee appointed on a temporary basis cannot claim to be placed in the regular pay scale.

17. From the above, it is discernible that the petitioner would not be entitled to a regular scale of pay from the date of her initial appointment. It is also to be noticed that the learned Single Judge, in order dated 3rd of February, 2020, had directed that the services of the petitioner, pending consideration for regularization, should not be varied to her disadvantage. Thus, the learned Single Judge had directed for regularization in view of the peculiar facts and circumstances.

18. It is a settled position of law that employees engaged on temporary basis cannot be regularized with retrospective effect in a manner that would have the effect of disturbing the seniority of regularly appointed employees in the same cadre. Regularization, if any, of temporary or adhoc employee ought to be done only with prospective effect and there can be no issue of granting a retrospective effect to an order of regularization in service law. In the present case, this Court notices that though the regularization has been given a prospective effect in the case of the petitioner, the respondents have also directed that the effective date of qualifying service for the petitioner for the purposes of pension shall be taken to be the initial date of her entry into service, i.e., 26.10.1988, and that her service would be regulated in the old pension scheme.

19. In the case of ***Surinder Singh and Another (supra),*** relied upon by the appellant/writ petitioner, the Hon'ble Supreme Court was seized with the issue as to whether two different categories of employees, one who was regularly appointed and the other who was appointed on daily rated basis, would be entitled to the same scale of pay. The issue with regard to retrospective regularization was not under consideration of the Hon'ble Apex Court. Similarly, in the case of ***Uttar Pradesh Land Development Corporation and Another (supra),*** the issue was the entitlement of persons employed on contract basis to the minimum of pay scale of the post and it did not discuss the effect of regularization orders with regard to temporary or adhoc employees. The reliance placed by the learned counsel for the petitioner in the case of ***State of Punjab and Others (supra)***, also does not help the cause of the petitioner, in view of what has already been discussed hereinabove. It is, without any doubt, the settled position of law that a person appointed on temporary or adhoc basis is entitled to draw the minimum of the pay scale of the said post to uphold the mandate of the principles of equality, however, in cases of present nature, the specific relief that is required to be granted to a particular employee upon his regularization has to be decided on its own merits. In the present case, we do not find any ground to interfere with the conclusions and decisions arrived at by the learned Single Judge, while rejecting the prayers made in the writ petition. Under similar circumstances, this Court in ***State of Assam and Another –Vs- Mrs Usha Rani Goswami and 5 Others*** *(Writ Appeal No. 131/2018, disposed of on 24.05.2023),* has held as follows:-

"22. In the instant writ appeal, the present respondents/writ petitioners were not only regularized but also were adjusted in posts lying vacant in various schools and were also given the regular time pay scale along with the pensionery benefits, as applicable and being so, their regularization of service had a prospective effect of gaining entry into the cadre and getting regular scale of pay.

23. In view of the above observations, we find that the learned Single Judge ought not to have allowed the claim of the respondents for arrear salary. There are sufficient and justifiable grounds to interfere in the Judgment & Order dated 10.03.2011, passed in WP(C)No.5286/2004 as well as order dated 16.05.2017 passed in Review Petition No.81/16, and accordingly, the same are reversed and set aside"

20. The writ appeal is accordingly, dismissed. Parties to bear their own cost(s).

JUDGE **JUDGE**

Comparing Assistant