GAHC020002862022 2025:GAU-NL:511

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

Case No. : WP(C)/110/2022

SHRI. KEWEPFU MERO AND 5 ORS
DRIVER, CONTENGENCY (FIXED), SUB-TREASURY OFFICER,
PFUTSERO, PHEK NAGALAND

2: SHRI. GOPAL MONDAL
DRIVER CONTINGENCY (FIXED)
DIRECTORATE OF TREASURIES AND ACCOUNTS
NAGALAND
KOHIMA

3: SHRI. Y. HONGPE KONYAK
DRIVER CONTINGENCY (FIXED)
SUB-TREASURY OFFICERS
PEREN NAGALAND

4: SHRI. ALEMBA JAMIR
DRIVER CONTINGENCY (FIXED)
DIRECTORATE OF TREASURIES AND ACCOUNTS
NAGALAND
KOHIMA

5: SHRI. NITENLO
DRIVER CONTINGENCY (FIXED)
DIRECTORATE OF TREASURIES AND ACCOUNTS
NAGALAND
KOHIMA

6: SHRI. YANGTSABA SANGTAM
DRIVER CONTINGENCY (FIXED)
SR. TREASURY OFFICER
KIPHIRE NAGALAN

VERSUS

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF NAGALAND
P AND AR DEPARTMENT NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
DIRECTORATE OF TREASURIES AND ACCOUNTS
NAGALAND KOHIMA

4:THE FINANCIAL COMMISSIONER
NAGALAND KOHIM

Advocate for the Petitioner : SUPONGWATI WALLING, R ATSULA KIPS

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 07.08.2025
Date of Judgment : 23.10.2025

JUDGEMENT AND ORDER (CAV)

Heard learned counsel Ms. R. Atsula Kips for the petitioners and learned Government Advocate Mr. V. Zhimomi for respondents.

2. The petitioners No. 1. Shri Kewepfu Mero, 2. Shri Gopal Mondal, 3. Shri Y. Hongpe Konyak, 4. Shri Alemba Jamir, 5. Shri Nitenlo and 6. Shri Yangtsava Sangtam, were serving as contingency fixed paid drivers under the Department of Treasuries and Accounts. On 21.02.2022, the petitioners submitted a representation for regularization to the respondents, but no action was taken. Again, a reminder office letter dated the

21.05.2022 written by the Principal Director, Directorate of Treasuries & Accounts, Nagaland, Kohima, was submitted before the Government, but the respondents had not yet taken any necessary steps. Aggrieved by the inaction of the respondents, the petitioners have filed this application with prayer for

(i) Compliance of Office Letters dated 16.07.2021 and 21.05.2022,

(ii) To consider the petitioners' case as per O.M. dated 17.03.2015 and O.M. dated 22.09.2004,

(iii) To pass similar orders as per this Court's order dated 17.11.2014 in connection with WP(C) No. 174 (K)/2013.

(iv) To pass any such order as this Court deems fit and proper.

3. The respondents in this case are the State of Nagaland, the Commissioner & Secretary to the Government of Nagaland, the Principal Director and the Financial Commissioner, Nagaland.

4. All the petitioners were appointed by the Directorate of Treasuries and Accounts, Nagaland, Kohima on contingency/fixed pay basis vide orders dated 13.09.2010, 29.10.2009, 01.11.2010, 26.05.2011, 01.02.2012 and 05.04.2012 respectively, to be paid Rs.3000/- (Rupees Three Thousand) per month.

5. It is submitted that the petitioners' services were extended from time to time and, at present the petitioners are serving like any other regular employees. RTI dated 16.08.2017 was filed before the Public Information Officer (PIO for short), Department of Treasuries and Accounts, Nagaland, Kohima, seeking information regarding contingency fixed paid drivers and by RTI reply dated 14.09.2017, the petitioner's RTI query at Serial No. 7 is as follows:-

"Nature and duties performed by regular and fixed drivers?

- **Regular and fixed drivers perform the same duties as per their driving license."**

6. It is further submitted that six posts of driver fell vacant by way of

promotion/retirement during the year 2019-2021 under the Department of Treasuries and Accounts, Nagaland and therefore, the Principal Director, Directorate of Treasuries & Accounts, Nagaland, Kohima by Office Letter No.DTA/ESTT-65/04(Pt-I)Vol-III dated 16.07.2021 written to the Additional Chief Secretary & Finance Commissioner, Nagaland, Kohima on the **"Subject:- Proposal for regularization to the post of driver"** forwarded names of 6 (six) applicants for regularization of fixed paid contingency drivers in the Pay Level-3 in Pay Matrix 18000-56900 against the resulting vacancies on retirement/promotion. A statement showing the names of fixed paid drivers for regularization against retirement/promotion was forwarded.

7. Despite proposal (Office Letter) submitted by the Director, no steps have been taken and therefore, the petitioners submitted representation dated 21.02.2022 to the Finance Commissioner, Nagaland, Kohima and the Principal Director, Directorate of Treasuries and Accounts, Nagaland, for regularization of their services, but no response could be evoked.

8. Another Office Letter No. DTA/ESTT-65/04(Pt-I)vol.-III, dated 21.05.2022 written by the Principal Director, Directorate of Treasures and Accounts, Nagaland, Kohima was forwarded to the Additional Chief Secretary & Finance Commissioner, stressing on the subject regarding the regularization of the petitioners' services, stating that the Department is facing acute shortage of drivers, creating hindrances for carrying out official duties and also highlighting this Court's order dated 17.11.2014 in WP(C) No.174(K)/2013 where fixed paid drivers were regularized.

9. By relying on the decision of this Court in WP(C) No. 174(K)/2013, the petitioners have highlighted the decision of this Court on 17.11.2014 in Sri Bendangtemjen & 6 Ors. –vrs- the State of Nagaland, wherein this Court directed the respondents to consider the case of the petitioners for regularization strictly in conformity with seniority maintained in the Department. Relying on the decision, the petitioners have submitted that they have a right to be regularized to the post of driver as per policy and scheme for regularization of service of work charged employees vide Office Memorandum No.AR-3/Gen-67/2001 (Pt), dated 22.09.2004. It is submitted that

as per the Scheme for regulation and absorption of Work Charge Employees, vide Office Memorandum dated 17.03.2015 issued by the Chief Secretary to the Government of Nagaland, Personnel and Administrative Reforms Department, the petitioners have a right to be regularized in the post of driver either in the Directorate or in the District.

10. It is further contended that the petitioners who have a right to be regularized as per the Government Memorandum has been deprived of their right. The petitioners have prayed for this Court's intervention for the right deprived to them by the respondents. They have prayed for a direction to the respondents to comply with the Office Letter dated 16.07.2021 and the Office Letter dated 21.05.2022.

11. *Per contra*, all the respondents have jointly filed an affidavit-in-opposition. The Commissioner Secretary to the Government of Nagaland has filed an affidavit-in-opposition on behalf of all the respondents. It is not disputed by the respondents that the petitioners have been inducted into service on fixed pay basis and from time to time their services were extended. It is specifically submitted by the respondents that vide P & AR OM dated 22.04.2020, the P & AR had issued a specific instruction whereby all Departments have been restrained from all fresh appointment when there was a time of state lockdown, owing to outbreak of the COVID-19 pandemic. Similarly, it was extended for freezing all appointments vide P & AR Department's OM dated 18.06.2020. Subsequently, from 31.08.2019 up to 31.05.2021, six vacancies referred to by the petitioners had fallen vacant after the Government had issued the aforementioned Office Memoranda. Thus, regularization as well as fresh appointments could not be made till date, despite proposal dated 16.07.2021, representation submitted by the petitioners dated 21.02.2022 and letter dated 21.05.2022 forwarded by the Principal Director, Directorate of Treasuries and Accounts, Nagaland.

12. It is also averred that the petitioners are appointed on contingency fixed pay basis and there is no Government standing order stating that all the vacancies in respect of Grade IV employees in a department should be filled by way of regularizing the contingency fixed paid employees and therefore, the petitioners have no right to

claim for regularization against the vacancies mentioned by them in the writ petition.

13. It is further contended that the petitioners' appointment and extension orders, marked as an Annexures- 1, 2, 3, 4, 5 and 6 of the writ petition, clearly indicates that their appointments were purely on fixed pay basis/ contingency basis and thus, could be terminated without any notice. The petitioners, who are well aware of the fact that their appointments were purely on fixed pay basis, cannot claim that the vacancies caused should be filled up by their regularization.

14. Additionally, a conjoint reading of the OM No. AR-3/Gen-67/2001 (Pt) dated 22.09.2004 marked as Annexure-14 of the writ petition and of OM No. AR-8/8/78 dated 17.03.2015, more particularly, Annexure-15 of the petition, issued by the Department of Personnel & Administrative Reforms, Government of Nagaland, clearly indicates that the policy and scheme for regularization of service of work-charged employees, whereas the petitioners are appointed on contingency/fixed pay basis and therefore, they cannot claim regularization either under the Office Memorandum dated 22.09.2004 or the OM dated 17.03.2015.

15. The respondents have vehemently denied that they are sitting over the representations and on the contrary, they have submitted that they have adhered to the existing Government guidelines and regulations in matter of appointment and regularization.

16. It is submitted by the respondents that the contingency/fixed paid employees are appointed to meet exigencies of work for which no regular posts exist. There is no Office Memorandum regarding any scheme or policy for regularization of contingency/fixed paid employees. Respondents have thus submitted to dismiss the petition.

17. In reply, it has been submitted on behalf of the petitioners that earlier fixed contingency drivers under the Department were regularized on the basis of seniority when regular vacancies arose. Immediately prior to the present case, seven petitioners in WP(C)/ 174(K)/2013, who were serving as drivers on fixed contingency basis under

the same Department were regularized strictly in conformity with the seniority maintained in the Department. It is further submitted that the petitioners were appointed on contingency/fixed pay basis in the year between 2009-2019. They were all performing similar duties and functions as their regular counterparts. It is further averred that there are no Rules/Memorandum/Notification and Standing Government Orders to govern the petitioners' regularization in service. However, in absence of the same, and on the principles laid down by this Court in WP(C)/174(K)/2013, the respondent Director forwarded a proposal for regularization of the petitioners in absence of any Rules/Memorandum/Notification and Standing Government orders to govern the petitioners' regularization in service, but the same did not derive any positive response from the respondents. It is also contended that there are no work charged or casual employees under the respondent Department but only contingency fixed pay drivers such as the petitioners who have been serving the Department for several years and they have been discharging similar duties as the regular drivers. Thus, in absence of rules, it is obligatory on the part of the respondents to follow the principles laid down by this Court in WP(C)/174(K)/2013.

18. It is further submitted that **"the right against exploitation"** and **"equality before law"** are constitutional guarantees that protects the petitioners as *bonafide* citizens of India. It is further submitted that the petitioners cannot be subjected to exploitation by indefinitely receiving fixed payments of only Rs.6000/- (Rupees Six Thousand) per month in lieu of their services as drivers. The petitioners have also relied on the directions of this Court in WP(C)/33/2020 in the case of Smt. Chubamobgla Ao –Vrs- The State of Nagaland and 5 ors., wherein vide order dated 16.10.2023 it has been held that:-

> *"24. It is not disputed by the State Respondents that the state has utilized the services of the present petitioner continuously for last thirty three (33) years, which is a sufficiently long period, during which she had an unblemished record as a sweeper. Hence, depriving her benefit of regularization of service under such circumstances, only on the ground that her initial appointment was on contingency basis, would be expoliative, arbitrary, unreasonable and violative of her fundamental rights guaranteed by the Constitution of India.*

25. Though, directions for regularization of employees should not ordinarily be issued in absence of any Office Memorandum, Rules, Regulations or a Government Policy to that effect, however, in the instant case for the reasons discussed in foregoing paragraphs, depriving the present petitioner the benefit of regularization of service similar to that of those temporary workers who are covered under the Office Memorandum of 17.03.2015 would be exploitative, arbitrary, unreasonable and violative of her fundamental rights guaranteed by the Constitution of India as State cannot be permitted to take benefit of its own wrong after having utilized the services of the petitioner continuously for thirty three (33) long years."

19. It is further submitted that the State is a model employer and it should not be allowed to exploit its employees.

20. I have considered the submissions at the bar with circumspection.

21. It is submitted on behalf of the petitioners that they have been serving the Department for last 13/18 years as contingent drivers. Initially, in the year 2019/2020-2021, six posts of drivers fell vacant. The petitioners have emphasized their stance through Annexure - 7, which is an application by one of the petitioners to the PIO under the Right to Information Act. The petitioners have also drawn the attention of this Court to Annexure - 8, Query No. 7 and the answer to the Query No. 7, which clearly reflects that "Regular and fixed drivers perform the same duties as per their Driving License."

This was the answer by the PIO to the petitioner who had filed an application under the RTI Act relating to type of duties performed by drivers on contingent basis at par with the drivers who have been regularized or who are regular drivers.

22 Annexure -9 is the letter dated 16.07.2021 by the Principal Director to the Additional Chief Secretary and Finance Commissioner with the proposal for regularization of the petitioners to the post of driver, forwarding six applications of the petitioners for regularization of fixed pay/contingency drivers in pay level 3 in pay matrix 18000- 56900 under the Directorate of Treasuries and Accounts, Nagaland.

23. It is further contented that the letter dated 21.05.2022 marked as Annexure - 12 of the petition, clearly reflects that the Principal Director made a proposal for

service regularization to the post of Driver to the Additional Chief Secretary & Finance Commissioner, Kohima, Nagaland, as the Department was facing acute shortage of drivers creating hindrances for carrying out official duties. The petitioners have relied on the decision of this Court in WP(C) No. 174(K)/2013 and has submitted that the present case is of a similar nature. It is also a case covered by WP(C) No. 174(K)/2013. The respondent authorities who were directed to consider the case of the petitioners for regularization strictly on seniority basis submitted that a similar order may be passed in this case.

24. The petitioners have drawn the attention of this Court to OM dated 22.09.2004, marked as Annexure - 14 of the petition wherein it has been specifically mentioned that work charged employees will have to be considered first for regularization against 50% of all future vacancies of similar nature in the Department on seniority cum merit basis. The petitioners have also drawn the attention of this Court to the OM No. AR-3/GEN-201/2009 dated 17.03.2015 which is also a scheme for regularization and absorption of Work-Charged and casual employees and Revision of pay/wages.

25. This OM is marked as Annexure - 15 of the petition. The clause 1 (h) (ii) and (iii) of the Scheme for Regularization, indicates:-

> *"1. Regularisation in service:*
>
> *(h) The period of service rendered as work-charged/casual employees shall not be counted for the purpose of MACP.*
>
> *(ii) In respect of those work-charged and casual employees in scale pay and who have completed or will complete 30(thirty) years of continuous service after 01.01.2015, their cases for regularization will be taken up subsequently in two batches as on 1st July and 1st January every year. The procedures and terms and conditions will be the same as laid down in this O.M.*
>
> *(iii) The existing scheme for regularization of work-charged employees against normal vacancy is being modified and the quota for work-charged employees stands enhanced from 50% to 67% for the next 5(five) years effective from 01.01.2015. This existing scheme will also be applicable for the casual employees appointed on full time basis.*

26. The petitioners have thereafter highlighted the additional affidavit filed on 24.09.2024. Through the additional affidavit it is submitted by the petitioners that while pending disposal of this writ petition, as many as 8 (Eight) posts of drivers are

lying vacant under the Department of Treasuries at present. The total vacancies are at present 8 + 6 = 14.

At this juncture, it is pertinent to mention that there is not even an iota of doubt that at present there are 14 vacancies. The Annexure-17 series of the additional affidavit, clearly reflects the names and the dates when 8 posts of drivers fell vacant.

27. The petitioners have also relied on another additional affidavit filed on 28.05.2025 through which the petitioners have stated that during the pendency of this writ petition, the petitioners who were initially engaged on fixed pay basis have subsequently been granted minimum scale of pay by this Court in another proceeding vide judgment and order dated 20.7.2023 in WP(C) No. 130/2022. Subsequently, by OM dated 05.03.2025 and Notification dated 05.03.2025 issued by the Government, it has been explicitly stipulated that all work-charged and casual employees receiving fixed pay, shall be granted scale of pay and all contingency, fixed and wage paid employees appointed on or before 06.06.2016 shall be eligible for regularization of their services under 1 (i) and h (iii) of the O.M. dated 17.03.2015, which is also marked as Annexure - 15 of the writ petition. It is further submitted that the petitioners are within the quota reserved under 1 (h) (iii) of the O.M. dated 17.03.2015 as their names have been duly registered in PIMs.

28. It is further submitted that contouring, the above submission the present petitioners are wholly covered by the aforesaid O.M. dated 05.03.2025 as per their PIMs registration and also according to the principles laid down by this Court in WP(C) No. 174(K)/2023 and also OM dated 17.03.2015.

29. It has been observed by this Court in WP(C) No. 130/2022 vide order dated 20.7.2023, that :-

> *"38. In view of the discussions made above and in the light of the law laid down by the Hon'ble Supreme Court, this Court has no hesitation in holding that the petitioners who discharges the same nature of work and duties as that of the regular drivers/bus conductors in sanctioned post are entitled to the pay parity on the principle of equal pay for equal work.*

39. This Court accordingly directs the State respondents to pay to the petitioners the minimum scale of pay which is paid to the regular drivers and or bus conductors appointed against sanction post along with the arrears from the date of filing of the present writ petition. All exercise for carrying out the directions of this Court shall be completed within a period of 90(ninety) days from the date of passing of the order."

30. In view of my foregoing discussions, it is thereby held that there appears to be no hurdle in considering the petitioners' prayers. Annexures - 19 and 20, are the O.Ms' dated 05.03.2025 and Notification dated 05.03.2025 respectively. The petitioners have already been serving since 2009 onwards, which clearly reflects that they were employed for at least thirteen years or more. They were inducted into service before 6th June, 2016 and thereby, they have become eligible for regularization as well as for scale of pay. They have already been granted scale of pay by the decision of this Court in WP(C) No. 130/2022. This fact has not been disputed by the respondents. Initially they were not granted scale of pay, but vide order of this Court in WP (C)/130/2022, they have also been granted 'scale of pay'.

31. The argument on behalf of the respondents No. 1 to 4 that the petitioners were initially inducted on contingency basis and they are not work-charged and casual employees and are not entitled for regularization holds no water. The petitioners are at present enjoying scale of pay. The respondents have drawn the attention of this Court to the Nagaland Work Charged and Casual Employees Regulation Act, 2001 (Act of 2001 for short), wherein the casual employees are described in 2.c. as employees engaged without sanctioned post and a work charge employee means an employee engaged without sanctioned post under work charge establishment.

Under clause 2.d. of the Act of 2001, the present petitioners were employed on contingency basis and they are not work-charged employees and they are not entitled to regularization under the Act of 2001.

32. Learned counsel for the respondents has laid stress in her argument that Annexure - 5 of the writ petition at page - 20 clearly reveals that the appointments of

the petitioners were purely on contingency basis and subject to termination without any notice from either side. It is further submitted that when the petitioners have accepted their appointment on contingency basis, which is subject to termination without any notice, the petitioners cannot claim for regularization at this juncture. This stance of the respondents can be safely brushed aside.

33. I find force in the argument of the learned counsel for the petitioners that the petitioners are covered by clause 1(h)(iii) of the O.M. data 17.03.2015 as the scheme has been made applicable for casual employees appointed on full-time basis. The present petitioners are casual employees appointed on full-time basis. Thus, the argument of the learned counsel for the respondents that the petitioners are not covered by clause 1(i) of the O.M. dated 17.03.2015 can be ignored or safely brushed aside.

34. The Annexure-8 of the writ petition which also consists of the answer of the PIO at Query Number 7 that the drivers were performing the same duties as per their driving license and they are regular and fixed drivers clearly indicates that the drivers were full-time appointees. They have been discharging duties at par with their regular counterparts

35. In view of my foregoing discussions, it is thereby held that the principle of equal pay for equal work, the petitioners' prayer for regularization can be taken into consideration by the Department. It is not a disputed fact that the petitioners' prayer for regularization has not been disposed of. The respondent authorities are directed to consider the petitioners' prayer for regularization. The seniority of the petitioners is one of the criterion for regularization. The respondent authorities are hereby directed to consider the Office Letters dated 16.07.2021 and 21.05.2022, which includes the petitioners' prayer for regularization, subject to the existing rules or newly incorporated rules and regulations.

36. The order dated 16.06.2022, restraining the Department from filling up the six (6) vacant posts stands vacated.

37. In terms of the above observation, this petition stands disposed of.

JUDGE

Comparing Assistant