



2025:GAU-NL:495

THE GAUHATI HIGH COURT

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

KOHIMA BENCH

WRIT PETITION (C) NO.140/2024

Smti. Thungchanbeni Yanthan, W/o
Shri Alfred Lapon, R/o Wokha Town,
P.O. and P.S. – Wokha, District -
Wokha, Nagaland.

.....Petitioner

-VERSUS-

1. The State of Nagaland, Represented
by the Commissioner and Secretary
to The Govt. of Nagaland,
Department of Excise and
Prohibition, Nagaland, Kohima
2. The Commissioner of Excise &
Prohibition, Dimapur, Nagaland.
3. The Superintendent, Excise &
Prohibition, Wokha, Nagaland

4. Smti. Bithunglo N. Mozhui, Multi Tasking Staff, Office of the Superintendent, Excise & Prohibition, Wokha, Nagaland.

.....Respondents

With

WRIT PETITION (C) NO.141/2024

Shri Athobu Meyase, S/o Rulie Meyase, R/o Tsuuma Village, P.O.- Medzhiphema, District–Chumukedima, Nagaland.

.....Petitioner

-VERSUS-

1. The State of Nagaland,
Represented By The
Commissioner and Secretary To
The Govt. of Nagaland,
Department of Excise &
Prohibition, Nagaland, Kohima.
2. The Commissioner of Excise &
Prohibition, Dimapur, Nagaland.
3. The Superintendent, Excise &
Prohibition, Wokha, Nagaland.

4. Smti. Y. Sethrongla, Multi Tasking Staff [Office Peon], Office of the Superintendent, Excise & Prohibition, Wokha, Nagaland.

.....Respondents

Advocates :

- Petitioners : Mr. Limawapang, Advocate
Respondent nos. 1, 2 & 3 : Ms. Inaholi, Government Advocate, Nagaland
Respondent no. 4 : Mr. P. Surien, Advocate.
Date of hearing : 23.09.2025
Date of Judgment & Order : 23.09.2025

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

1. Both the writ petitions under Article 226 of the Constitution of India have been instituted by the two petitioners challenging separately the revocation of their appointments, by a common Order dated 30.10.2023, by the Commissioner of Excise, Nagaland [the respondent no. 2]. The petitioners have also challenged the appointments of the respondent no. 4 in their respective writ petition by two Orders, both dated 15.11.2023, issued under the hand of the respondent no. 2.

2. As the issues involved and the reliefs sought in both the writ petitions are common, both the writ petitions are taken up for consideration together, at the request of the learned counsel for the parties.
3. The appointments of the two petitioners were earlier made in the post of Multi Tasking Staff [MTS] and the two respondents have also been appointed in the post of Multi Tasking Staff [MTS]. The two private respondents have been appointed as Multi Tasking Staffs [MTSs] in the two vacancies created after revocation of the two petitioners' appointments by the common Order dated 30.10.2023.
4. I have heard Mr. Limawapang, learned counsel for the two petitioners; Ms. Inaholi, learned Government Advocate, Nagaland for the State respondent nos. 1, 2 & 3 in both the writ petitions; and Mr. P. Surien, learned counsel for both the two private respondents, impleaded as respondent no. 4 in the two writ petitions.
5. Mr. Limawapang, learned counsel for the two petitioners has submitted that when the two petitioners found about a vacancies existing in a nos. of posts in the offices under the respondent no. 2, that is, in the Commissionerate of Excise, Nagaland, more particularly, in the offices of the Superintendent of Excise, Wokha [the respondent no. 3 in W.P.[C] no. 140/2024] and in the office of the Superintendent of Excise, Dimapur [the respondent no. 3 in W.P.[C] no. 141/2024], they submitted applications for their appointment in those vacant posts on the ground of their hail from poor families. A Screening Committee, constituted for recruitment in Grade-IV posts in the Excise Department, in a Meeting held on 21.11.2022 deliberated upon the issue of filling up vacancies in the Department. The applications of the two petitioners were placed by the

Commissioner of Excise, Nagaland before the Screening Committee. After deliberation, the Screening Committee recommended the names of the two petitioners for the post of Chowkidar [MTS], O/o the Superintendent of Excise, Wokha and for the post of Office Peon [MTS], O/o the Superintendent of Excise, Dimapur respectively. The recommendations made by the Screening Committee were thereafter, forwarded to the State Government and the State Government in the Department of Excise & Prohibition, on 05.01.2023, conveyed its approval for the appointment of the two petitioners in the posts, indicated above.

- 5.1. After the Government's approval, both the petitioners came to be appointed on 07.01.2023 vide Appointment Orders issued under the hand of the respondent no. 2. It was on 30.10.2023, the respondent no. 2 by the common impugned Order dated 30.10.2023 revoked the appointments of the two petitioners with immediate effect. After the common impugned Order dated 30.10.2023, the two private respondents herein were appointed by two Orders, both dated 01.11.2023, also issued under the hand of the respondent no. 2. It is his contention that after the Appointment Orders dated 07.01.2023, both the petitioners joined their respective posts immediately thereafter, and after joining in the posts, they started discharging their duties. He has further submitted that the appointments of the petitioners were made in clear vacancies and both the posts were sanctioned posts. The common impugned Orders dated 30.10.2023 was issued without any prior notice and without affording any kind of prior opportunity of hearing to the petitioners. He has contended that the principles of natural justice have been clearly violated. Since the two petitioners were appointed against clear vacancies and sanctioned posts, the conditions of service of the two petitioners were governed by the provisions of the Nagaland Services [Discipline and Appeal] Rules, 1967 [hereinafter referred to as 'the 1967 Rules' and/or 'the Rules, 1967', for short].

If there was any kind of illegality and/or irregularity in the appointments of the two petitioners then the respondent authorities should have resorted to the only recourse available to the respondent authorities, that is, to initiate a proceeding under Rule 9 of the 1967 Rules. He has further contended that both the respondent no. 4, who came to be appointed by the Orders dated 01.11.2023, was not eligible for appointment under the scheme of compassionate ground, framed by the Government of Nagaland. He has referred to the provisions of the Office Memorandum dated 17.09.2015 to buttress his submissions. He has submitted that on the date, that is, on 01.11.2023, when the respondent no. 4 in W.P.[C] no. 140/2024 was appointed, her husband was serving in the India Reserve [IR] Battalion, Nagaland. As the respondent no. 4 in W.P.[C] no. 140/2024 was dependant of her husband on the date of her appointment on 01.11.2023, she could not have been appointed due to her father's death.

6. Ms. Inaholi, learned Government Advocate, Nagaland appearing for the respondent nos. 1, 2 & 3 has referred to the statements and averments made in the two affidavits-in-opposition filed by the State respondents. Ms. Inaholi has submitted that in both the affidavits-in-opposition, a common stand has been taken. It is submitted that in so far as the respondent no. 4 in W.P.[C] no. 140/2024 is concerned, the State respondents had processed her appointment on the ground that the application was submitted on the basis that her father, namely, Nsemo Lotha expired on 16.10.2021. An endeavour has been made by the learned State Counsel to project that the appointments of the petitioners' were stop-gap arrangements and as such, no interference is called for against their revocation of appointment. It is submitted that the petitioners' appointment were made as the process of appointment on compassionate ground got prolonged and therefore, need arose to urgently meet the requirements of day-to-day administration by appointing Multi Tasking Staff

[MTS] as stop-gap arrangements. It is submitted that both the private respondents submitted applications for their appointment on compassionate ground and their applications were duly processed as per the Scheme of Compassionate Appointment, notified by the Office Memorandum dated 17.09.2015.

7. Mr. Surien, learned counsel appearing for both the private respondents has submitted in similar lines as Ms. Inaholi, learned Government Advocate. He has submitted that there is no doubt of the fact that the respondent no. 4 in W.P.[C] no. 140/2024 was a daughter of Late Nsemo Lotha, who was serving as a Chowkidar under the respondent no. 3. Though it is true that on the date of her appointment, her husband was working in IR Battalion, Nagaland, he also expired subsequently on 02.07.2024. In such view of the matter, it cannot be said that the respondent no. 4 in W.P.[C] no. 140/2024 was or is not eligible to be appointed in a Grade-IV post on compassionate ground. Mr. Surien has further submitted that since the appointments of the petitioners were stop-gap appointments, there is no necessity for the State respondents to follow the provisions of 1967 Rules while revoking their appointments. It is further submitted by him that the processing of the private respondents' applications for their appointment on compassionate ground was initiated much prior to the recommendations made by the Screening Committee and the challenge of the petitioners to the appointments of the private respondents is not sustainable. The petitioners, Mr. Surien has contended, have not been able to make any case, much less a prima facie case, for the reliefs sought. Mr. Surien, to support his submissions has referred to Clause 9 of the Office Memorandum dated 17.09.2015.

8. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings.
9. As mentioned above, the two petitioners are found to have submitted applications before the respondent no. 2 seeking their appointments in vacancies existing at that time in the Offices of the Superintendent of Excise, Wokha and Superintendent of Excise, Dimapur in the year 2022.
10. At this juncture, it is relevant to take note of the common stand taken by the State respondents in their affidavits-in-opposition filed in both the writ petitions. The affidavits-in-opposition were filed by the Secretary to the Government of Nagaland, Department of Excise & Prohibition. It is stated that the appointments of the Multi Tasking Staffs [MTSs] were approved during a protracted process of acquiring Government approval for appointments on the compassionate ground as there was a clear directive to set up a Screening Committee to process for recommendation of the MTS candidates for appointment on priority basis as a stop gap arrangement as it was necessary and a requirement for the department considering the acute shortage of Grade-IV staff in the department. The Department Screening Committee made the recommendations of the candidates and accordingly, request was made to the Government for approval. It is stated that the Government in the Excise & Prohibition Department vide its Order no. EX/APPTT-3/2010/436 dated 05.01.2023 conveyed its approval for appointment of three candidates including the two petitioners herein. It was subsequent to such Government approval, conveyed on 05.01.2023, the petitioners were issued Appointment Orders dated 07.01.2023. It is further stated that subsequently, the Government in the Excise & Prohibition Department in pursuance of the proposals submitted earlier and a Letter dated 29.06.2022 of the respondent no. 2 for appointment of ten nos. of

applicants on compassionate ground, accorded approval on 08.05.2023. The two private respondents herein were amongst the ten nos. of applicants whose appointments on compassionate ground were approved by the Order dated 08.05.2023.

11. It is further stated in the affidavits-in-opposition that the Departmental Screening Committee made the recommendation of the candidates. However, the Screening Committee in its Forwarding Letter dated 29.11.2022 did not mention that the recommended candidates were against the posts of MTS which were proposed to be filled up by appointments on compassionate ground. After having noticed those facts, the respondent no. 2 was directed by the Department on 13.10.2023 to revoke appointments of the two petitioners and to give appointments to the private respondents in those vacancies to be created on compassionate ground with immediate effect.
12. Having regard to such stand taken by the State respondents, the Minutes of the meeting of the Departmental Screening Committee held on 21.11.2022 are looked at.
13. From the Minutes, it can be noticed that the Departmental Screening Committee consisted of : [i] the Commissioner of Excise as the Chairman; [ii] the Additional Commissioner of Excise as its Member Secretary; [iii] the Deputy Commissioner [Headquarter] as a Member; and [iv] Assistant Commissioner of Excise [Administration] as a Member. As per the Minutes, the Screening Committee found that there were three vacancies in Grade-IV post in the Department. Two posts of Chowkidar [MTS] were vacant at Kohima and Wokha respectively and one post of Office Peon [MTS] was vacant at Dimapur. The Screening Committee noted that it was conveyed to it in pursuance of an Order dated 09.11.2022 of the Government. The contents of the Order dated

09.11.2022 has not been brought to the notice of this court by any of the parties. The Minutes of the Screening Committee further recorded that there were a nos. of applications against all the three vacant posts. After deliberation and scrutiny, the Screening Committee recommended the names of three applicants including the two petitioners herein, for appointment to the three vacant posts.

14. From the materials on record, it has emerged that the vacancy in which the petitioner in W.P.[C] no. 140/2024 was appointed, was created due to demise of one Nsemo Lotha, Chowkidar, who expired on 16.10.2021. The vacancy in which the petitioner in W.P.[C] no. 141/2024 was appointed, was created due to demise of one Lichumse Sangtam, Office Peon, who expired on 26.03.2021.
15. The recommendations of the Screening Committee were forwarded by the respondent no. 2 to the State Government in the Excise & Prohibition Department. The State Government in the Excise & Prohibition Department conveyed its approval for appointment of the three applicants including the two petitioners, recommended by the Screening Committee on 21.11.2022, and its approval was communicated by the Secretary to the Government of Nagaland, Excise & Prohibition Department to the respondent no. 2 by an Office Letter dated 05.01.2023.
16. It was after such Government approval, the two petitioners came to be appointed by Appointment Orders dated 07.01.2023. To understand the nature of appointments, it is relevant to refer to the contents of the Appointment Orders dated 07.01.2023. As both the Appointments Orders are similarly worded, the contents of the Appointment Order issued in respect of the petitioner in W.P.[C] no. 140/2024 are quoted herein below for ready reference :-

GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER OF EXCISE
NAGALAND : DIMAPUR

Dated Dimapur the 7th Jan'2023

No.Ex-1/17/03[VOL-III]/ : consequent upon the approval of Government vide letter No. EX/APPTT-3/2010/43G dated Kohima the 5th January, 2023, the following are hereby appointed as Multi Tasking Staff [MTS] in the office of the Superintendent of Excise, Wokha, under Excise Department in Pay Level-1 of the Pay Matrix plus all other allowances as are admissible under the rules in force from time to time with immediate effect.

Sl. No.	Name	PIMS code of retired employee against which vacancy the appointment is made
1	Smti. Thungchanbeni Yanthan	EXC00184 – Nsemo Lotha, Chowkidar [expired]

1. The appointee shall be on probation for 2 [two] years. On completion of the probation period, he/she will be considered for service confirmation subject to fulfillment of conditions prescribed in the Service Rules/Rules in force.
2. He/she will be liable to be discharged from service if he/she fails to fulfill the required conditions as laid down from time to time during the period of probation.
3. Other conditions of service not stipulated in this notification shall be governed by the relevant rules/orders issued from time to time.
4. The appointment order is subject to subsequent confirmation of service on the recommendation of a medical board and verification of antecedents. In case of false declaration/submission of wrong information, the appointment shall be revoked and other criminal proceedings/legal action shall be initiated.

Sd/- NCS
Commissioner of Excise
Nagaland : Dimapur

17. From a plain reading of the Appointment Order, quoted above, it can be noticed that the petitioners were appointed as Multi Tasking Staffs [MTSs] in Pay Level-1 of the Pay Matrix plus other allowances as are admissible under the rules in force from time to time with immediate effect. The PIMS code has been referred to. The Appointment Orders specifically mentioned that the appointees would be on probation for a period of 2 [two] years and on completion of the probation period, appointees would be considered for service confirmation subject to fulfillment of conditions prescribed in the Service Rules/Rules in force. The appointees would also be liable to be discharged from service if they would fail to fulfill the required conditions as laid down from time to time during the period of probation. The other conditions of their service not stipulated in the Appointment Order, would be governed by the relevant rules/orders issued from time to time.
18. It is an admitted fact that both the petitioners after issuance of the Appointment Orders dated 07.01.2023, immediately joined in the posts of Chowkidar [MTS] in the office of the Superintendent of Excise, Wokha and of Office Peon [MTS] in the office of the Superintendent of Excise, Dimapur respectively by submitting joining letters. After having joined, the petitioners started discharging duties of their respective posts. It is not the case of the State respondents that the petitioners had discharged their duties and responsibilities of their respective posts in a dissatisfactory manner.
19. During the period between the dates of submission of the applications by the petitioners and their appointments, the Departmental authorities were also processing the applications received from a nos. of applicants for appointment on compassionate ground. It was on 29.06.2022, the respondent no. 2 had forwarded a proposal to the Excise & Prohibition Department by an Office Letter of even date. The proposal was for consideration of cases of ten applicants

including the two private respondents herein, for their appointments on compassionate ground against the vacancies shown therein. The respondent no. 4 in W.P.[C] no. 140/2024 sought her appointment on compassionate ground against the demise of her father, Nsemu Lotha, who expired on 16.10.2021. On the other hand, the respondent no. 4 in W.P.[C] no. 141/2024 sought her appointment on compassionate ground as her husband, Lichumse Sangtam who was serving as Office Peon, expired on 26.03.2021.

20. On receipt of the proposal for appointment of the ten applicants on compassionate ground from the respondent no. 2, the Government in Excise & Prohibition Department accorded its approval for their appointment by an Order dated 08.05.2023. The Order dated 08.05.2023 mentioned that it had clearance of Personnel & Administration Reforms Department. With the issuance of the Order dated 08.05.2023, the State Government in the Excise & Prohibition Department directed the respondent no. 2 to issue formal Appointment Orders from his end. On receipt of the Order dated 08.05.2023, the respondent no. 2 wrote back to the State Government in the Excise & Prohibition Department on 02.06.2023 mentioning about the appointments already made in the three vacancies pursuant to the recommendation of the Screening Committee and the approval of the Government. The respondent no. 2 had highlighted that during the protracted process of acquiring Government approval for appointment under the compassionate ground, a clear directive was received from the competent authority to fill up the post of MTs and it was on the basis of such clear directive, the Departmental Screening Committee made the recommendations from the candidates.
21. It was thereafter, the State Government in the Excise & Prohibition Department issued an Order dated 13.10.2023 whereby the respondent no. 2 was directed to revoke the appointments of the petitioners with immediate effect and to

appoint the private respondents with immediate effect. For ready reference, the contents of the Order dated 13.10.2023 are extracted herein below :-

To

The Commissioner of Excise & Prohibition,
Nagaland, Kohima

Sub : Matter relating to MTS appointment.

Sir,

I am to refer to your letter No. EX-1/ESSTT/2/2022 dated the 2nd June, 2023 and to direct herewith that the appointment of Shri Athobu Meyase, MTS and Smti. Thungchanbeni Yanthan, MTS issued on 7th January, 2023 who were purely appointed for the period during the pendency of compassionate appointment may be revoked with immediate effect.

Consequent upon which, as conveyed to you already vide letter bearing even number dated 8th May, 2023 Smti. Y. Sethrongia [Sl.6] and Smti. Bithunglo N. Mozhui [10] may be given compassionate appointment with immediate effect.

This has the clearance of P&AR Deptt conveyed vide their U.O. No. 592 dated the 31st July, 2023.

This has also the approval of competent authority.

Yours faithfully,

Sd/- NCS

Commissioner & Secretary to the Govt. of Nagaland

22. On receipt of the Order dated 13.10.2023, the respondent no. 2 had passed the common impugned Order dated 30.10.2023 :-

GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER OF EXCISE
NAGALAND DIMAPUR

ORDER

Dated Dimapur, the 30th Oct'23.

Ex-1/17/03 [Vol-III] : As per the Directive of the Govt. of Nagaland vide No. EX/COMP/APPTT-6/2018/207 dated 13th Oct' 2023 and with the clearance of the P&AR Department conveyed vide their U.O.NO. 572 dated 31st July'2023, the appointment orders in respect of the following MTS issued vide No.EX-1/17/03 [Vol-III] dated Dimapur 7th January is hereby revoked with immediate effect.

1. Shri Athobu Meyase, MTS under Supdt. of Excise Dimapur district [PIMS Code-EXC00576].
2. Smti Thungchanbeni Yanthan, MTS under Supdt. of Excise Wokha [PIMS Code-EX00578].

Sd/-

NCS

COMMISSIONER OF EXCISE
NAGALAND DIMAPUR

23. Subsequent to issuance of the common impugned Order dated 30.10.2023, Appointment Orders were issued in favour of the private respondents on 01.11.2023, which were similarly worded as like the Appointment Orders of the two petitioners. The appointments of the private respondents were admittedly made in the two vacancies created in the post of MTS with the termination of the appointments of the two petitioners.
24. Undoubtedly, the two petitioners came to be appointed on 07.01.2023 in two clear vacancies and two sanctioned posts. The petitioners had immediately joined in those posts. The Nagaland Services [Discipline and Appeal] Rules, 1967 are a set of rules framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. Once the petitioners had joined in the sanctioned posts, their conditions of service were to be regulated as per the provisions of Article 309 of the Constitution of India. It is relevant to mention that as per Article 311 of the Constitution of India, no person who holds a civil post under the State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and

given a reasonable opportunity of being heard in respect of those charges. It has been provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry. It is not a case of the State respondents herein that the case of the petitioners comes under the purview of the 2nd proviso to Clause 2 of Article 311 of the Constitution of India.

25. A contention has been advanced on behalf of the respondents that since the two petitioners were appointed on probation for two years, it was open for the State respondents to cancel their appointments in the manner as made by the Order dated 30.10.2023. From the Order dated 30.10.2023, it is easily discernible that no reason was assigned as to why the petitioners' appointments were cancelled with immediate effect. A mention was made that the cancellation of the petitioners' appointments was as per the directive of the State Government given on 13.10.2023.
26. The common impugned Order dated 30.10.2023 did not indicate that the petitioners' appointments were cancelled due to any kind of unsatisfactory service.
27. As per the Rules, 1967, if the appointing authority/disciplinary authority contemplates to impose any major penalty prescribed in Rule 7 thereof, it has to initiate a disciplinary proceeding by framing definite charges on the basis of the allegations on which the enquiry is proposed to be held. The procedure to be followed in the course of the disciplinary proceeding has been laid down in details in Rule 9 of the 1967 Rules. If the State respondents are of the view that the appointments of the petitioners were illegal or irregular then the State respondents had no other option but to follow the procedure laid down in the 1967 Rules. The petitioners by virtue of their appointments on 07.01.2023 have

been vested with the right to be afforded with due opportunity of being heard before any action for cancellation of their appointments. Even if it is assumed that it was open for the State respondents to terminate the appointments of the petitioners on the ground of them being on probation, then also the respondent authorities are under obligation to abide by the constitutional principles laid down in Article 311 of the Constitution of India.

28. The main objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. There is a subtle difference between the termination of a probationer and that of a confirmed employee. A confirmed employee comes within the protective umbrella of Article 311 or the Service Rules. But such may not be the case of a probationer. The probationers have no indivisible right to continue in employment until confirmed and they can be relieved by the competent authority if found suitable. It is in a very limited category of cases that such probationers can seek protection under the principles of natural justice. In this connection, the Hon'ble Supreme Court of India in **Rajasthan High Court vs. Ved Priya**, [2021] 13 SCC 151 has observed as under :-

21. True it is that the form of an order is not crucial to determine whether it is simpliciter or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. If the Court finds that the real motive behind the order was to "punish" the official, it may always strike down the same for want of reasonable opportunity of being heard.

29. There is nothing on record, as observed earlier, to demonstrate that the State respondents had terminated the appointment of the petitioners due to unsatisfactory service during the probation period. If the cancellation of the appointment of a probationer is not on unsatisfactory performance, then the cancellation of the appointment of a probationer cannot be on the mere ipse dixit of the employer. If the cancellation of the appointment of a probationer is to be on the ground of any alleged misconduct then the probationer is clearly entitled to an opportunity of being heard. It has emerged that the petitioners' appointments were cancelled only to accommodate the private respondents and in such a case also, the petitioners ought to have been granted the opportunity of being heard.
30. In the case in hand, the requirements to be followed for cancellation of the petitioners' appointments are found to have not been followed. The cancellation of the petitioners' appointments by the common order dated 30.10.2023 is clearly in violation of the principles of natural justice in absence of not affording any prior opportunity of being heard to the petitioners. In such view of the matter, the impugned common Order dated 30.10.2023 is found to be unsustainable in law and is liable to be set aside. It is accordingly set aside.
31. The appointments of the private respondents made vide Orders dated 01.11.2023 are consequential to the impugned common Order dated 30.10.2023, which has already been set aside and quashed. Therefore, the appointments of both the private respondents, made vide Orders dated 01.11.2023, cannot stand the scrutiny of law and therefore, both the Appointment Orders of the private respondent no. 4 in both the writ petitions are also set aside and quashed.

32. The State Government in the Personnel & Administration Reforms Department has framed a Scheme for appointment on compassionate ground and the Scheme has been notified by an Office Memorandum dated 17.09.2015. The Office Memorandum is on the subject, 'Revised Compassionate Appointment Scheme for State Government employees who die in harness'. As per Clause 2 of the Scheme, appointment on compassionate ground shall be given only to one of the following members of deceased employee's family :- [a] spouse, or [b] son, or [c] daughter, only. As per Clause 6 thereof, the Scheme is applicable to family of the deceased employee provided no surviving member of the family holds any regular post in the State Government. It has been clarified that the benefit of such appointment shall be available to only one family member. The Scheme is made applicable only to dependents of deceased Government servants appointed and serving on regular basis at the time of death.
33. In the writ petition, W.P.[C] no. 140/2024, the petitioner has categorically averred that one Nzanbemo Humtsoe was the husband of the respondent no. 4, Bithunglo N. Mozhui and Nzanbemo Humtsoe was employed as a personnel in 9th India Reserve [IR] Battalion under the Home Department, Government of Nagaland. It has been contended that being so situated, the respondent no. 4 cannot be termed as a dependent of the deceased employee, Nsemo Lotha as her husband was a serving government employee at the time of her appointment on 01.11.2023. The respondent no. 4 in response to the averments made by the petitioner in the writ petition, has admitted in her affidavit-in-opposition that her husband expired on 02.07.2024. It has, thus, clearly emerged that the respondent no. 4's husband, namely, Nzanbemo Humtsoe was working as a Government employee on 01.11.2023. In such a scenario, the respondent no. 4 could not have been eligible for appointment on compassionate ground under the Scheme of the State Government, notified by the Office Memorandum dated 17.09.2015.

34. The common impugned Order dated 30.10.2023 has been set aside, it is ordered that the two petitioners herein are to be reinstated in service forthwith.
35. At the time of reinstatement, the State respondents shall duly consider the period from 30.10.2023 to the date of this Judgment by taking into account the reasons for which the impugned Order dated 30.10.2023 has been set aside. The State respondents are to take appropriate decisions as regards the pay and allowances of the petitioners for the said period in accordance with law.
36. If the appointing authority/disciplinary authority is of the view that the appointments of the petitioners have suffered from any irregularity/illegality, then the petitioners are to be afforded prior, proper and reasonable opportunity of being heard. At the same time, it is observed that the fact of setting aside and quashing of the private respondents' appointments shall not preclude the State respondents to consider their applications for appointments on compassionate ground. But the consideration for their appointments shall be strictly in terms of the Scheme framed and notified vide Office Memorandum dated 17.09.2015 after due consideration of the conditions of eligibility or ineligibility mentioned therein.
37. The writ petitioners are allowed to the extent indicated above. There shall be no order as to costs.

JUDGE

Comparing Assistant