GAHC020006372024 2025:GAU-NL:529

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

Case No. : WP(C)/233/2024

SHRI O. MOA IMSONG
D.C. HILL, SANGTEMLA WARD
P.O. MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
KOHIMA NAGALAND

2:THE COMMISSIONER AND SECRETARY
YOUTH RESOURCES AND SPORTS
GOVT. OF NAGALAND
KOHIMA NAGALAND

3:THE DIRECTOR
DIRECTORATE OF YOUTH RESOURCES AND SPORTS
GOVT. OF NAGALAND
KOHIMA NAGALAND

4:THE SECRETARY
DEPT. OF P AND AR
NAGALAND KOHIMA

5:THE PRINCIPAL ACCOUNTANT GENERAL
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
NAGALAND KOHIM

Advocate for the Petitioner : IMTI LONGJEM,

Advocate for the Respondent : GOVT ADV NL,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Ms. Catherine Anichar , Advocate.

For the Respondents : Ms. S Mere, Govt. Advocate, Nagaland & Shri Joshua Sheqi, Advocate, R/5.

Date of Hearing : 03.11.2025.

Date of Judgment : 03.11.2025.

JUDGMENT & ORDER (Oral)

The approach to the writ court under Article 266 of the Constitution of India has been made with the following prayer:

> "*In the premises aforesaid, it is most respectfully prayed that Your Lordship would graciously be pleased to admit this petition, call for the records, issue Rule calling upon the respondents to how cause/causes as to why a writ of Certiorari and/or Mandamus and/or any other appropriate writ or direction should not be granted and upon cause or causes being shown be pleased to make the Rule absolute in the following terms:*
>
> *A. Quash and set aside the Order No. DYRS/ESTT-23/ 2023/962 dated 29.9.2023 (ANNEXURE- 10) whereby it was ordered that*

the pay for 16 months overstayed by the petitioner is to be refunded by the petitioner either in lump sum or deducted from his pension gratuity.

B. Direct the State respondents to refund/pay the petitioner the amount of Rs. 9,74,310/ (Rupees Nine lakh Seventy Four Thousand Three Hundred and Ten) which has been deducted from his pensionary/retiral benefits with an interest @ 12% w.e.f., 9.7.2024 till the date of payment.

And/or pass any such further or other order/orders, as Your Lordships may deem fit and proper in the facts and circumstances of the case."

2. As per the facts projected, the petitioner was initially appointed as a Substitute LDA on 02.01.1987 for a period of 2 months in the office of the District Sports Office, Mokokchung. However, the said arrangement was allowed to continue, and vide an order dated 29.03.1989, his service period was regularised w.e.f. 01.04.1989. It is the case of the petitioner that subsequently, he was promoted to the post of UDA in the year 2018. The petitioner has also annexed a seniority list published in the year 2019 in which, he has been placed at Sl. No. 24 and in the said seniority list, his date of retirement has been shown as 31.03.2024. However, vide a communication dated 17.04.2023 issued by the Director to the Department, the date of entry of the petitioner into the service was sought for. It appears that the date of entry of the petitioner into the service was considered as 02.01.1987, i.e. the date when the petitioner was inducted as a Substitute LDA. Thereafter, the petitioner got verbal information that he ought to have retired in February, 2022 and accordingly, he had submitted a representation that such retirement should be in March, 2024. Vide an order dated 30.06.2023, there was a direction to immediately stop the pay of

the petitioner on account of overstay in service. It was further directed that the release order, pension papers and other matters pertaining to his service should be kept in abeyance.

3. Thereafter vide the impugned order dated 29.09.2023, 16 months' salary from February, 2022 to May, 2023 was directed to be refunded by the petitioner, either in lump sum or from the pension gratuity. The petitioner was also released from service on 19.10.2023. The petitioner, thereafter had submitted a representation dated 24.11.2023 to the Director along with a Non-drawal Certificate.

4. I have heard Ms. Catherine Anichar, learned counsel for the petitioner. I have also heard Ms. S Mere, learned Govt. Advocate, Nagaland as well as Shri Joshua Sheqi, learned Standing Counsel, Accountant General, Nagaland.

5. Ms. Catherine, learned counsel for the petitioner has submitted that the initial appointment though made on 02.01.1987 was on a very temporary basis as a Substitute LDA and the substantive appointment was done only vide an order dated 29.03.1989 w.e.f. 01.04.1989. She has submitted that all along, the entry of the petitioner into the service has been recorded as 01.04.1989 and in the seniority list published in the year 2019, the date of retirement was put as 31.03.2024. It is submitted that in the aforesaid backdrop, the impugned action of recovery is absolutely unreasonable and arbitrary. It is submitted that it is not in dispute that for the period from February, 2022 to May, 2023, the petitioner had rendered his services and therefore, no deduction can be made from the remuneration paid to him for the aforesaid period. She has also submitted that pension is not a bounty but a vested right which cannot be tinkered with in a mechanical process. In support of her submissions, the learned counsel has placed reliance upon the following case laws:

i) ***State of Bihar Vs. Pandey Jagdish Prasad***, **(2009) 3 SCC 117**;

ii) ***State of Punjab Vs. Rafiq Masih (White Washer)***, **(2015) 4 SCC 334** and

iii) ***Dr. A Selvaraj Vs. CBM College*****, (2022) 4 SCC 627**.

6. *Per contra*, Ms. Mere, learned State Counsel, Nagaland has submitted that the order dated 29.03.1989 is only an order of regularization and the aspect that the petitioner had entered into the service on 02.01.1987 cannot be overlooked. It is also submitted that the period from 02.01.1987 to 01.04.1989 is a part of the service rendered by the petitioner and therefore, no fault can be attributed to the decision taken to make the recovery for the period of overstay of 16 months. She has reiterated that the petitioner ought to have retired from service from 30.01.2022 and it cannot be regarded that the period of service rendered by the petitioner from February, 2022 to May, 2023 was in accordance with law.

7. Shri Sheqi, learned Standing Counsel, AG, Nagaland has submitted that his client has simply followed the orders which were conveyed to it by the Administrative Department. He has, however, clarified that from the relief prayed for, it would appear that the petitioner is making double benefit, both seeking remuneration for the period from February, 2022 to May, 2023 as well as pension from the date from February, 2022. The learned Standing Counsel, AG has submitted that even if it is presumed that no deduction can be made on the basis that the incumbent had rendered his services for the aforesaid period, the pension cannot be given for the period for which remuneration has already been paid.

8. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

9. This Court has been apprised that in the State of Nagaland, the date of superannuation is reckoned from the date when an incumbent reaches 60 years of age or completes 35 years of service, whichever is earlier. In the instant case, the respondent State has taken into consideration the date of 02.01.1987 to be the date of entry into service and therefore, has come to a conclusion that on 31.01.2022, the petitioner would complete 35 years of service and therefore, any period subsequent thereto when the petitioner had rendered service would not be in accordance with law.

10. The petitioner has contended that such period of 35 years has to be reckoned from 01.04.1989 when his services were regularized. Reliance is also placed on the seniority list in which, the date of retirement of the petitioner has been stated to be 31.03.2024.

11. This Court is, however of the opinion that even if the aspect of overstay is taken into consideration, it does not appear from the records that the petitioner had an overt role in such action. It is also not in dispute that from February, 2022 to May, 2023, the petitioner had rendered his services.

12. In the case of ***Rafiq Masih*** (*supra*), the Hon'ble Supreme Court has clearly laid down the principles governing a situation of the present kind and the relevant observations are extracted hereinbelow:

> "*18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

13. This Court also cannot be oblivious of the fact that if the period of overstay is regularized, the date from which the pensionary benefits has to be reckoned from the date on which the petitioner had actually discontinued his service i.e. in May, 2023.

14. In view of the aforesaid facts and circumstances and the discussions made above, the impugned order dated 29.09.2023 by which 16 months' salary was directed to be refunded is set aside and the amount involved i.e. Rs. 9,74,310/- be repaid to the petitioner. This Court, however, further clarifies that the petitioner shall not be entitled for the pensionary and post-retirement benefits from February, 2022 to May, 2023 and such benefits shall be reckoned from June, 2023. The aforesaid order has been passed by balancing the equities as the State cannot be burdened with double payment.

15. The writ petition accordingly stands allowed in the manner indicated above.

16. Costs made easy.

JUDGE

Comparing Assistant