

GAHC020007542023

2025:GAU-NL:534-DB



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

Case No. : WA/16/2023

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, WORKS
AND HOUSING DEPT. NAGALAND - KOHIMA

VERSUS

SMTI. IMYANGLULA
D/O LATE MAKUNGSANGBA
R/O LAKHUNI VILLAGE
MOKOKCHUNG NAGALAND

2:THE COMMISSIONER AND SECRETARY

P AND AR DEPARTMENT
NAGALAND - KOHIMA

3:THE ENGINEER-IN-CHIEF
NAGALAND PUBLIC WORKS DEPARTMENT
NAGALAND- KOHIMA

4:THE EXECUTIVE ENGINEER
PWD (H)
DIVISION
MOKOKCHUNG-NAGALAN

Advocate for the Petitioner : K. ANGAMI,

Advocate for the Respondent : LIMAWAPANG, PFOSEKHO PFOTTE, AREPLA CHANG

Linked Case : I.A.(Civil)/159/2023

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE SECRETARY TO THE GOVT. OF NAGALAND

VERSUS

SMTI. IMYANGLULA
R/O LAKHUNI VILLAGE
MOKOKCHUNG NAGALAND

Advocate for : K. ANGAMI
Advocate for : appearing for SMTI. IMYANGLULA

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT

Date : 07-11-2025

1. Heard Mr. K. V. Angami, the learned Government Counsel for the appellants. Also heard Mr. Limawapang, the learned counsel appearing for the sole respondent.
2. This writ appeal has been filed by the State of Nagaland and 3 other appellants under Rule 2(2) of the Chapter V-A of the Gauhati High Court Rules, impugning the judgment & order dated 26.04.2022 passed by the learned single judge in W.P.(C) No. 229/2021 whereby the State respondents were directed to

regularize the services of the petitioner within a period of 3 (three) months from the date of receipt of certified copy of the impugned judgment.

3. The facts relevant for the instant appeal, in brief, are as follows:

(i) The writ petitioner who was appointed as work-charged labour with scale of pay and all allowances admissible from time to time for government servants of Nagaland, by an order dated 09.11.1987, issued by the Executive Engineer (PWD), Mangkolemba Division, Mokokchung District, was released from service w.e.f. 31.03.2017 by an Order dated 24.05.2017 issued by the Executive Engineer, PWD (H) Division, Mokokchung, Nagaland on attaining 60 years of age and after having completed 29 years 4 months and 21 days of service. Since no pension and pensionary benefits was given to her on account of non-regularization of her service, she approached this Court by filing the WP(C)No.111(K)/2019, praying for appropriate order or direction directing the respondents to regularize her service so as to entitle her to get pension and pensionary benefits.

(ii) The said Writ Petition was disposed of by an Order

dated 30.07.2019 by this Court. The operative portion of the same reads as follows:

"I have heard the learned counsels for the parties. In view of the consent of the parties, this Writ Petition is disposed of with a direction to the respondent No. 3 & 4 to examine the petitioner's representation dated 20.05.2017 and take a decision there on, in terms of the Office Memorandum dated 22.09.2004 and 17.03.2015, within a period of 3 months from the date of receipt of a certified copy of this order. The decision taken should thereafter be communicated to the petitioner. The Writ Petition is accordingly disposed of."

(iii) In pursuant to the order passed by this Court, the petitioner's representation was considered, however, same was rejected by the respondent No. 2 in terms of the advice given by the Additional Secretary to the Government of Nagaland, P&AR Department (O&M Branch) which reads as follows:

"(i) Office Memorandum dated 17-03-2015 is a scheme for regularization of work-charged employees who have completed 30 (thirty) years or more continuous service. However, since the petitioner had served only 29 years 4

months 21 days and retired, regularization of her work-charged service would not be feasible under the aforesaid Office Memorandum (ii) Office Memorandum dated 22-09-2004 is scheme for regularization of work-charged employees against 50% of all vacancies of similar nature in the Department. However, this scheme is being modified vide Para (iii) of Office Memorandum dated 17-03-2015 enhancing the quota for work-charged employees from 50% to 67% for the next 5 (five) years effective from 01-01-2015. The existing scheme already expired w.e.f. 31-12-2019. In view of the above, we regret our inability to convey clearance for regularization of work-charged service of Smt. Imyanglula who had already retired from service after rendering only 29 years 4 months 21 days. This has the approval of the Commissioner & Secretary, Personnel and Administrative Reforms Department."

- (iv) Being aggrieved by the rejection of her representation, the present respondent approached this Court once again by filing the Writ Petition (c) No. 229 /2022.
- (v) Though, the present appellants, as respondents, contested the writ petition, however, by the

impugned judgment, the learned Single Judge has quashed and set aside the impugned note bearing U.O. 207 given by the Additional Secretary to the Government of Nagaland, P & AR Department on 18.07.2020. The respondents were also directed by the learned Single Judge to regularize the service of the respondent within a period of three months from the date of the receipt of the certified copy of impugned judgment. Being aggrieved, the instant writ appeal has been filed by the state appellants.

- (vi) During the pendency of the present appeal, the respondent had filed an additional affidavit wherein she had stated that after delivery of the impugned judgment and order dated 26.04.2022 in WP (C) No. 229/2021 the respondent received a letter no. EE/H/MKG/ESTT-29/2022-23/287 dated 09.08.2023 written by Executive Engineer, PWD (H), Mokokchung to the Engineer-in-Chief, NPWD Nagaland whereby a list of Grade-IV work charge employees who were regularized within year 2004 to March 2017 was given. It is apparent from the said list that the employees figuring at Serial No. 10, 37, 32 and 48 of the said list who were junior to the present

respondent were regularized on 17.08.2012, 12.12.2012, 01.07.2013 and 24.05.2016 respectively.

4. Mr. K. V. Angami, the learned Government Counsel for the appellants has submitted that while passing the impugned judgement, the learned single judge had erred in not taking into consideration the fact that the writ petitioner was neither eligible for regularisation in terms of the OM dated 22.09.2004 nor as per the OM dated 17.03.2015. He submits that writ petitioner was only a work-charged employee and was not holding a substantive post or sanctioned post. He submits that the writ petitioner did not complete the requisite eligibility criteria of 30 years or more in continuous service as on 01/01/2015 for getting the benefit of regularisation under OM dated 17.03.2015. He submits that the writ petitioner also failed to conform to the eligibility criteria of continuous service of 30 years or more even during the extended period of five years after 01/01/2015 as she attained the age of superannuation on 31/03/2017 after completing 29 years 04 months and 21 days in service.
5. The learned Government Counsel for the appellants has submitted that the writ petitioner was not found eligible for regularisation in terms of the prevailing office memorandum of the government, at the time of her superannuation, as she was

not the senior most work-charged employee in the Department. The learned Government Counsel for the appellants has also submitted that the learned single judge had erred in holding that the writ petitioner is eligible for regularisation under the provisions of OM dated 22.09.2004, in as much as, the writ petitioner did not act diligently by approaching the Court within a reasonable period of time to enforce her claim under OM dated 22.09.2004. He submits that her claim under OM dated 22.09.2004 is barred by the delay and laches. He further submits that by directing the regularisation of service of the writ petitioner under the provisions of OM dated 22.09.2004, the learned single judge has nullified and defeated the very purpose of the policy laid down in the OM dated 17.03.2015.

6. The learned Government Counsel for the appellant has also submitted that though, from the additional affidavit filed by the respondent, it appears that some of the employees who were junior to the writ petitioner were regularized without regularization of the writ petitioner, however, he submits that the seniority is not the only criteria for regularization of work-charged employees. He submits that it is based on their performance reports submitted by the Executive Engineer concerned. In support of his submissions, the learned

Government Counsel has cited the ruling of the Apex Court in the case of ***"The State of Nagaland and Others Vs. Nishevi Achumi"*** reported in **(2022) 18 SCC 371**.

7. On the other hand, Mr. Limawapang, the learned counsel for the writ petitioner submitted that by order dated 30.07.2019 passed in WP (C) No. 111(K)/2019, this Court directed the appellants to examine the representation filed by the writ petitioner in terms of OM dated 22.09.2004 and 17.03.2015 and as such, the present appellants were under obligation to examine the case of the writ petitioner in terms of OM dated 22.09.2004, however, in spite of the fact that the services of at least four work-charged employees, who were junior to the writ petitioner, were regularized, she was denied of that benefit. The learned counsel for the writ petitioner submits that under the aforesaid circumstances, non-regularization of the service of writ petitioner has infringed her fundamental rights guaranteed under Article 14, 16 and 21 of the Constitution of India. He submits that the denial of regularization of service of the writ petitioner by the appellants, when the services of the work-charged employees junior to her were regularized, was arbitrary discriminatory and unreasonable. He submits that the learned single judge has rightly directed the State respondents to regularize the service of writ petitioner. He submits that the

impugned order does not suffer from any vice of unreasonableness, infirmity or illegality.

8. He further submits that the learned single judge rightly considered the fact that in the year 2004, when the writ petitioner had completed 16 years 10 months of service and when this Court in WP (C) No. 111(K)/2019 having directed the present appellant to consider the case of writ petitioner in terms of OM dated 22.09.2004 also, the present appellants cannot do away with her case by saying that she was not eligible in terms of OM dated 17.03.2015. He submits that the writ petitioner served the state as work-charged employee for more than 29 long years without being regularized not by her own choice but by compulsion of needs, therefore, the State, instead of exploiting the compelling circumstances, ought to have regularized the service of the writ petitioner in terms of the OM dated 22.09.2004. He submits that the learned single judge correctly relied on the ruling of this Court in the case of ***"State of Manipur Vs. KSH. Ibobal Singh"*** reported in **1997 (2) GLT 209**. The learned counsel for the respondent has also cited a ruling of a Division Bench of this Court in the case of State of Nagaland Vs. Angphei Konyak reported in 2024 (1) NLJ 384 in support of his submission.

9. We have considered the submissions made by the learned

counsel for both sides and peruse the materials available on record including the impugned judgment very carefully.

10. The writ petitioner was appointed as the work-charged labour in scale of pay on 09.11.1987 and she was released from service with effect from 31.03.2017 on attaining the age of superannuation after completing 29 years 4 months and 21 days of service. There is no dispute at the bar, that prior to attaining the age of superannuation by the writ petitioner, at least four work-charged employees, who are placed at Serial No. 10, 27, 32 and 48 in the seniority list of work-charged employees maintained by the Executive Engineer, PWD (Housing), Mokokchung Division, were regularized, however, the case of the writ petitioner was not considered although she was senior to those employees. The State respondents (appellants) have not given any reasonable explanation for depriving the writ petitioner from the benefit of regularization while allowing such benefit to the work-charged employees junior to her.
11. The learned single judge, while allowing the writ petition and directing the present appellant to regularize the service of the writ petitioner relied on the judgment of this Court in the case of State of ***"Manipur and Others Vs. KSH Ibobal"*** (Supra) has observed that the petitioner who has continuously worked for

such a length of service cannot be let to go empty handed at an age when she has very little chance of getting re-employment. It was also observed in the impugned judgment that when the writ petitioner has spent best part of her life, giving service to the State, she cannot be allowed to go empty handed after all these years of service. The State being a model employer cannot do such a thing to its own citizens. We do not find any infirmity in the observations made by the learned single judge, more so, in view of the uncontroverted additional affidavit filed by the respondent (writ petitioner) in this appeal which shows that the work-charged employees junior to her were regularized before her superannuation.

12. We are also of the considered opinion that the facts in the case of ***"State of Nagaland and Others Vs. Nishevi Achumi"*** (Supra) are distinguishable from the facts of the instant case in as much as in the case of Nishevi Achumi, the petitioner was found not to be entitled for regularization on the basis of seniority and in that case the wife of the deceased employee claimed regularization of service of her deceased husband after a period of 12 years from his death. Whereas, in the instant case, the fact that work-charged employees junior to the writ petitioner were regularized, has remained uncontroverted, however, she was deprived of the same. Moreover, even

though, a direction was issued by this Court in WP (C) No. 111(K)/2019 directing the State respondents (appellants) to consider the case of writ petitioner also under the OM dated 22.09.2004, however, the same was not done and the State respondents denied the claim of the writ petitioner only on the pretext that she was not covered under OM dated 15.03.2015. Hence, as the facts of this case are distinguishable from the case of the Nishevi Achumi (Supra), the ratio-decidendi of the said judgment would not be applicable to the instant case.

13. We also fail to persuade ourselves with the plea taken by the appellants that as the writ petitioner was not holding a substantive post or a sanctioned post, she is not entitled for regularization of her service. In this regard, we rely on the observations made by the Apex Court in the case of ***"Jagjit Singh Vs. State of Punjab"*** reported in "(2017) 1 SCC 148, which are reproduced herein below:

56. We shall now deal with the claim of temporary employees before this Court.

57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the

Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

"7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate

higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of “equal pay for equal work” constitutes a clear and unambiguous right and is vested in every employee, whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of “equal pay for equal work”, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of “equal pay for equal work” summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing

the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post."

14. In the light of the above observations, on similar logic, it may be safely concluded that if the duties and responsibilities discharged by the temporary employees were the same as

were being discharged by regular employees, they cannot be discriminated, while considering their case for regularisation merely on the ground that they were not appointed against sanctioned posts or against substantive posts.

15. Clause (iv) of the OM dated 22.09.2004 had provided that the work-charge employees will have the right to be considered first for regularization against 50% of all future vacancies of similar nature in the department for which they possess the requisite qualification. Such regularization will be considered on the basis of seniority cum merit. This means that senior most work charge employee in the relevant category will be regularized subject to his/her fitness for the vacant post. The said office memorandum did not distinguish between the work charge-employee appointed against a sanctioned post or otherwise. The relevant criteria are seniority as well as fitness of the work-charge employee under consideration. In the instant case there is nothing on record to suggest that the petitioner was found unfit for regularization. In fact, her case for regularisation was never considered while she was still serving, whereas, work-charge employees junior to her were regularized. As such the plea that the petitioner was not initially appointed against a sanctioned post or substantive post is not convincing plea to deny the benefit of

regularization to her.

16. We also find it appropriate to reproduce herein below the observations made by a Division Bench of this Court in the case of State of **"Manipur and Others Vs. KHS Ibobal Singh"** (Supra) which was also relied upon by the learned single judge in the impugned judgment:

(12) We, unequivocally of the view that the term "contract appointment" must be terminable at some stage of their service. But if contract appointment continued uninterruptedly till the age of superannuation as is happened in the case at hand, the character of the contract appointment automatically changes and the employee has to be treated under the normal Government service rules, entitling them pensionary benefits. In the instant case, the stand taken by the appellant Government that the respondents were on contract service and therefore, even if they retire on attaining the age of superannuation they will not be entitled to pension and other retiral benefits is unacceptable. If they are on contract service their services could have been terminated when they are still youthful and they could have gainfully employed in some other avocation. But then, after using their entire services, drained out their energy and when they are aged, old and infirm and incapable of functioning, allowing them to go empty handed is an invasion of

mandate of Articles 14 and 21. Right to live has been interpreted as right to live with dignity. Unless citizens have means for sustenance right to live with dignity will have no meaning. The contention of me learned counsel for the appellant are therefore rejected as untenable in law."

17. We are of the considered opinion that the above logic is equally applicable in case of work-charge employees also. If the service of a work-charge employee has been utilised for a long period of time without any break, then such an employee would be entitled to be considered for regularisation in terms of the prevailing notification regarding regularisation. In the instant case, the petitioner, in spite of her long service, wasn't considered for regularisation under the Office Memorandum of the year 2004, when it was in force. However, three work-charge employees junior to her were regularised during that period and one was regularised when the office memorandum of 2015 was in force, which in our considered opinion is discriminatory against the petitioner.
18. Thus, in view of the discussions made and reasons stated in the foregoing paragraphs, we are unable to agree with the submissions made by the learned government counsel for the appellants. We accordingly do not find any infirmity in the

impugned judgment of the learned single judge warranting any interference by us in this appeal.

19. Thus, this Writ Appeal is found devoid of any merit and accordingly, dismissed.
20. Registry of principal seat of the Gauhati High Court is directed to send the record of this writ appeal along with connected files immediately to the registry of the permanent bench of the Gauhati High Court at Kohima.

JUDGE

JUDGE

Comparing Assistant