
(2017) 03 GAU CK 0021
In the Gauhati High Court
Case No : WP (C) No. 3(K) of 2016

Imtisangla

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 370

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S. Serto, J. (CAV) - Heard Mr. Imti Longchar, learned counsel appearing for petitioner and also Mr. V. Zhimomi, learned Government Advocate for State respondents.

2. This is a writ petition under Article 226 of Constitution of India filed by a widow whose husband died while serving as Work charged Mohourer in Directorate of Sericulture, Government of Nagaland, praying for regularization of service of her late husband for purpose of pensionary benefits and family pension including interest at rate of 12% per annum.

3. case of petitioner is that her husband Late T. Imlimeren Ao @ Imlimeren was appointed as work charged Mohourer in Directorate of Sericulture, Government of Nagaland vide office order No. SERI/APPT/91-92, dated 20/7/1992 issued by Director of Sericulture in scale of pay of Rs.425-9-542-12-614-EB-14-670-15-730/Pm plus inner line compensatory allowance of 25% of basic pay and all other allowances as admissible under Rules amended from time to time in State. Thereafter, service of her husband was extended by office orders issued from time to time thereafter and continued in service till he died on 19.5.08. That Mr. T. Imlimeren was given annual increment like any other regular employees and a service book was maintained from date of his appointment until

time he died on 19.5.2008.

4. That when her husband Late T. Imlimeren Ao died on 19.5.2008 due to cancer he left following family members including herself :-

SI.

Name

Relation

Date of birth

1

Imtisangla

Wife

12/12/72

2

Temsutuba

Son

05/06/91

3

Tiatoshi

Son

11/12/92

4

Yashitsungba

Son

21.07.1995

5

Sentienla

Daughter

27.06.1996

5. After death of her husband, a death certificate dated 7.6.2010 was issued by Government of Nagaland, Department of Economic & Statistics under section 12/17 of Registration of Births and Deaths Act, 1969 and Rule 8 of Nagaland Registration of Births and Deaths (Amendment) Rules 1999 Act. District Judge

Mokokchung Nagaland also issued a Succession Certificate dated 6.9.2010 in her favour for purpose of receiving GPF/GIS/Gratuity, Leave encashment and pension.

6. That her husband despite of having served State for 15 years 9 months and 15 days devotedly was not regularized in service. As such, a representation was submitted by her to Director, Sericulture, Government of Nagaland to regularize service of her Late husband so that she can avail family pension and other pensionary benefits. But same was not considered by Director, Sericulture. Therefore, petitioner through her learned counsel served a legal notice dated 24.9.2015 to Director of Sericulture asking him to regularize service of her Late husband from date of his initial appointment for purpose of family pension and other pensionary benefits. Thereafter, through a letter No.SERI/PF/96/92/398, dated 19.10.2015 Director, Sericulture informed petitioner that her husband was not entitled to be regularize in service and also not eligible for pension benefits as per CCS Rules. relevant portion of letter as given in petition is given below :-

"I am to state that Late Imlimeren was appointed as Work charge Mohorer wef 1.8.92 continued upto 31.3.2000 extended for a period of 6(six) months from time to time enclosed annexure 1 to 15, but from 2000 onwards service of Late Imlimeren was extended wef 1.4.2000 to 30.3.2001 with I(one) day break each year i.e 31.3.2001 which continues till 30.3.2003 enclosed Annexure 16 to 17. Further he was appointed wef 14.4.2002 with a gap of 14 (fourteen) days enclosed annexure 18 and extension continued in same manner with 1 (one) day break upto 30.3.2008. Further as per record available in department service of Late Imlimeren was not extended beyond 30.3.2008.

Moreover as per CCS pension Rules as applicable in Nagaland services Late Imlimeren does not entitled for pension."

7. learned counsel for petitioner submitted in support of petitioner's case as follows that so called service break mentioned in letter of Director Sericulture are artificial since Late Imlimeren continuously rendered his service.

8. That on 19.11.2015, petitioner through her learned counsel filed an RTI application before Public Information Officer of Directorate of Sericulture seeking for following information :-

"List of all work-charged Mohorrir/Mohourer who were appointed since 1.1.1992 and whose services were subsequently regularized along with their regularization order."

In reply Deputy Director/PIO, Directorate of Sericulture vide his letter No. SERI/ RTI/ Appli.Refr 1/2008 (Vol-I) 859 dated 15.12.2015 furnished following information :-

List of Work-charge Mohourer appointed since 01.01.1992 and subsequent Regularization

SI.

Name

Remarks

1

Shri T. Imlimeren Ao, Mohourer

(i)First appointment Order enclosed in Page-1

(ii) The incumbent expired before regularization

2

Shri Wati Nungsang, Mohourer

(i)First appointment Order enclosed in Page-2

(ii)Regularized as Sericulture Operator Appointment order enclosed in Page-3

3

Shri. Etmin T. Sangma, Mohourer

(i)First appointment order enclosed in Page-4

(ii) Regularized as Sericulture Operator

Appointment order enclosed in Page-5

4

Shri I. Keoshu Yimchunger, Mohourer

(i) First appointment order enclosed in Page-6

(ii)The incumbent expired before regularization.

It is submitted by learned counsel for petitioner that Shri Wati Nungsang, Mohourer whose name appears at Sl.No.2 in table given above was appointed on 10.6.1992 i.e. same year in which husband of petitioner Late Imlimeren was appointed and Shri Etmin T. Sangma whose name appears at Sl.No.3 of same table was appointed on 5.11.1999 i.e.7 years after petitioner's husband was appointed. Both were regularized by a common order No.SERI/APPT/22/80(Vol-IV) dated 24.9.2013 but leaving behind case of petitioner's late husband. Such regularization of service of similarly situated persons and even a person junior to her husband while denying same treatment to him was arbitrary, illegal and whimsical. Therefore, petitioner's husband should also be regularized so that she may be entitled to all pensionary benefits.

The learned counsel further submitted that under Rule 2 clause 1 read with Rule 3 of Central Civil Services (Pension) Rules, 1972, petitioner is entitled to get all pensionary benefits. provisions of said Rules relied upon by learned counsel are given herein below :-

"2. Application-Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Government servants in Defence Services, appointed substantively to civil services and posts in connection with affairs of Union which are borne on pensionable establishments but shall not apply to -

- (a) railway servants;
- (b) person in casual and daily rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to benefit of a Contributory Provident Fund;
- (e) members of All India Services;
- (f) persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;
- (g) persons employed on contract except when contract provides otherwise; and
- (h) persons whose terms and conditions of service are regulated by or under provisions of Constitution or any other law for time being in force.

Government of India's Order

(1) Grant pensionary benefits to temporary Government servants retiring on superannuation/invalidation on completion of 20 years, (now ten years) temporary service-i. In terms of Rule 2 of CCS (Pension) Rules 1972 a Government servant including civilian Government servant in Defence Services appointed substantively to a civil service of post in a pensionable establishment is eligible for grant of pension and death-cum-retirement gratuity. A Government servant who at time of retirement from service does not hold a lien on a permanent pensionable post is not eligible for pension and death-cum-retirement gratuity but is eligible for terminal gratuity under sub-rule (1) of Rule 10 or sub-rule (1) of Rule 11 of C.C.S. (T.S.) Rules, 1965. question of grant of pension to Government servants who retire after long years of service without being confirmed in any post has been under consideration of Government. It has been decided that a Government servant who in his retirement from service on attaining age of superannuation or on his being declared to be permanently incapacitated for further Government service by appropriate medical authority after he has rendered temporary service of not less than twenty years (now ten years) shall be brought within purview of C.C.S. (Pension) Rules, 1972 and condition holding a pensionable post in a substantive capacity shall be dispensed with in his case. Consequently, such a Government servant will be eligible for grant of superannuation or invalid person, death-cum-retirement gratuity and family pension in accordance with provisions of aforesaid rules.

3. Death benefits-In event of death in harness of temporary/quasi-permanent Government their families shall be eligible to family pension and death gratuity on

same scale as admissible to families of permanent Government servants under CCS (Pension) Rules, 1972.

9. State respondent Nos. 1, 2 and 3 both through their joint affidavit and through their learned counsel Mr. V. Zhimomi, learned Government Advocate opposed prayer of petitioner stating as follows : that regularization of work-charged employees under Government of Nagaland is governed by Office Memorandum No.AR.-3/Gen-67/2001 (Pt) dated 22.9.2004 issued by Government of Nagaland of Personnel & Administrative Reforms (Administrative Reforms Branch). According to this policy work-charged employees can only be regularized against available regular vacancies. Therefore, in 2013 when regular vacancies arose, 2 work-charged employees under establishment of Directorate of Sericulture Nagaland were regularized but as for husband of petitioner, since he died in 2008 i.e. before regular vacancies arose he could not be regularize in service. Now that he has died he can no longer be regularized in service. It is also submitted that under said memorandum w/c employees will be entitled to count in full their continuous work-charged service towards pension benefits only when or if they are regularized and not otherwise. Therefore, petitioner's husband in no way was entitled to any pensionary benefits. Lastly, respondents submitted that though it is true that all pensionary benefits of employees under Government of Nagaland are governed by CCS (Pension) Rules 1972, but since petitioner's husband was not appointed to pensionable post, he was not entitle to pension benefits under same Rules.

10. I have considered case of both parties as stated above and also perused relevant CCS (Pension) Rules 1972 relied upon by learned counsel for petitioner and Office memorandum issued by Government of Nagaland, Department of P & AR relied upon by State respondents.

The provisions of CCS (Pension) Rules on which petitioner relied upon does not seem to help her case. reason being that at clause (b) of Rule 2 of same rules persons in casual and daily rated employment are excluded and husband of petitioner having been appointed and served only as work charged Mohourer, he would come under that category. Therefore, he would not be entitled for pension under CCS (Pension) Rules mentioned above. Further word "borne on pensionable establishment" appearing at last sentence of Rule 2 also indicates that only employees who were borne on pensionable establishment are entitle to pensionary benefits under that scheme. Moreover, Government of India orders given above also provides pensionary benefits only to temporary Government servants who were appointed substantively to civil service or post in a pensionable establishment retiring on superannuation/invalidation on completion of 20 years (now 10 years) temporary service. husband of petitioner was not appointed substantively to a civil service or post in a pensionable establishment State Government. He was appointed only as work charged Mohuorrer which means not against any substantive post. Therefore, he was not entitled to pension under Rules/provisions of CCS (Pension) Rules and Government of India

orders given above and relied upon by learned counsel of petitioner.

11. Now coming to Government Office Memorandum under which scheme for regularization is provided for work charged employees of State Government like petitioner's husband, before anything is stated same is reproduce here for easy reference :-

"Government of Nagaland

Department of Personnel & Administrative Reforms

(Administrative Reforms Branch)

No. AR-3/Gen-67/2001 (Pt)

Dated, Kohima, 22nd Sept" 2004.

Office Memorandum

Sub : Policy and Scheme for Regularisation of service of Work-Charged ; Employees.

There are large numbers of work charged employees in various Departments.

Many of these employees have been serving continuously for many years. They have been representing to Government for regularization of their service, Some Departments have been regularizing service of work charged employees from time to time against available vacancies. However, no transparent and rational policy and criteria is discernible in process of regularization of service of work charged employees. Therefore, in order to examine issue of regularization of work charged employees in various Departments, State Government set up a Committee under Chairmanship of Shri Lalthara IAS, Additional Chief Secretary (Geology & Mining). On basis of recommendations of Committee for regularisation of Work-Charged employees in State, Government hereby adopts following policy and scheme for regularisation of service of work charge employees serving under various Departments of State Government.

(i) Each Department having Work-Charged employees should maintain a list of work-charged employees in various categories in order of their length of service.

(ii) Regularisation of work-charged employees will be done against available regular vacancies

(iii) 50% of all regular vacancies of similar nature arising in a year will be reserved for regularisation of Work-Charged employees, and remaining 50% will be filled up as per normal rules of recruitment;

(iv) Work charged employees will have right to be considered first for regularization against 50% of all future vacancies of similar nature in Department 1 for which they possess requisite qualification. Such regularization will be considered on basis of seniority-cum-merit. This means that senior most

work charged employee in relevant category will be regularized subject to his/her fitness for vacant post.

(v) In case no work charged employee is found suitable for regularization in terms of above clause.

(iv) Department will obtain clearance of P&AR Department before making any fresh appointment against quota reserved for work-charged employees explaining circumstances for not being able to fill up vacancy through regularization of work charged employee.

(vi) No age bar would apply in cases for regularization if Work-Charged employee is below superannuation age.

(vii) Regularized Work-Charged employees will be entitled to count in full their continuous work charged service towards pension benefits.

(viii) Those Departments which have not approached Nagaland work Charged and causal Employees Commission should do so immediately to get optimum strength of Work-Charged employees fixed for their Departments. They should take all possible Measures including pursuing YRS option vigorously to bring down strength of Work-Charged employees to level recommended by commission.

(ix) Adequate provision for payment of work charged employees should be made in budget and regular monthly payment of work charged wages ensured.

(x) All new work charged appointments should be banned. Any person accepting Work-Charged service in Government would be doing so at his/her own risk. Any new work charged appointment should be treated as illegal and strict action taken against appointments specific approval of cabinet must be taken.

Sd/- Lalthara

Addl Chief Secretary to Government of Nagaland."

12. It is crystal clear from Clause-ii of Office memorandum that service of a work-charged employee can be regularized only against available regular vacancy. It is submitted on behalf of respondents that vacancies to regular post arose in Department where petitioner's husband served and died in harness only in 2013, therefore, only those work-charged employees who were at time were regularized to vacancies.

13. Though it may be true that petitioner's husband was not regularized as no vacancy of post occurred in Department during his life time or till last day he served in Department, however, one must not forget that Government policies issued or notified in form of Memorandum or notification are not issued for name sake but with a view to achieve a purpose intended. In a welfare State like ours, Government from time to time frame policies for welfare of people, and when such policies are framed and notified they give genuine expectation in mind of people for whom Government exists, that such policies will be carried forward to

bear fruit for their good. As stated above, in this case, petitioner's husband was appointed in year 1992 and when Office memorandum was issued in 2004 he had already worked for Government for 12 years. Therefore, definitely, petitioner's husband must have had a lot of hope and expectation to be regularized in service in a regular vacancy as per Office memorandum. And that hope which germinated from Government Office Memorandum therefore, genuine, perhaps, must have compelled him to continue in service as work charged Mohuorrer till he died in 2008. As submitted by learned counsel of petitioner, husband of petitioner was given scale pay and annual increments since his appointment. only thing that was lacking was creation of a regular post to which petitioner could have been regularized. Between date Office memorandum was issued and day petitioner's husband died there was 4 years time. If Government was conscious of purpose for which Office memorandum was issued, and is concerned for its citizen who had served State for so long, a post suitable for him could have been created so that he could have been regularized. But Government, for reasons best known to them, forgot purpose for which Office Memorandum was issued and slept over necessity of creating a suitable post for regularization of petitioner's late husband who deserved same. Needless to say but in a democratic form of Government, Government is of people, by people and for people. However, unfortunately word for people is often forgotten by people in power. suffering of forgotten people, nevertheless, continues and same continues to remain with their family members even after they are death and gone. In this case, though Government employee has died and gone with his dreams and hopes not fulfilled, that too in suffering but suffering has continued to follow member of his family he left behind. It is easy to say that since petitioner's husband died before regular post became available therefore, he could not have been regularized in Government service. But what about duty which should have been performed or discharged by Government and its machineries during those 4 years i.e. between date on which office memorandum was issued and date on which petitioner's husband died. It may be appropriate to mention here that 2nd and 3rd sentence of Office Memorandum shows that Government of that time had issued Office memorandum after a Commission was appointed because of its concern for existence of many work charged employees and for their regularization in service. At cost of repeatation, I would again record here that Government of State had forgotten very purpose for which Commission was constituted and scheme was prepared and Memorandum was issued. For such inaction on part of Government, a citizen for whom Government exist cannot be allowed to suffer. Therefore this Court feels duty bound to direct respondents to give what is due to petitioner and her family for service rendered by her husband which was stated to be more than 15 years. Accordingly, respondents are directed to regularize service of petitioner's husband one day before he expired for purpose of giving pensionary benefits including family pension to his wife and children.

14. Now questions is whether petitioner should be entitled to arrears of family

pension from date of regularization of her late husband or not. It is submitted fairly by Mr. Imti Longchar, learned counsel of petitioner that as per law in vogue as far as arrear is concerned it may be paid starting from 3 years back from date of filing of writ petition. I find submission of learned counsel for petitioner reasonable in facts and circumstances of case. Therefore arrears of family pension should be paid starting from 3 years back from date of filing of this petition i.e. 27.1.2016. respondents shall complete process of granting pensionary benefits including family pension to petitioner as stated above within 4 months from date of receipt of a copy of this order.