
(2011) 12 GAU CK 0081

In the Gauhati High Court

Case No : Writ Petition (C) No. 110 (K) of 2010

Khutozhe Sema

APPELLANT

Vs

State of Nagaland and Ors

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Citation : (2012) 2 GLT 1082

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : Z. Zhimomi and Mr. Sanjib, for the Appellant; L.S. Jamir, Addl. AG, for the Respondent

Judgement

C.R. Sarma, J.—Heard Ms. Z. Zhimomi, learned counsel appearing for the writ petitioner and Mr. L.S. Jamir, learned Additional Advocate General, Nagaland, appearing for the State respondents. This writ petition has been filed by the writ petitioner namely, Shri Khutozhe Sema, seeking regularization of his service. The writ petitioner was appointed as Work Charged Chowkider, vide order dated 18.12.1985 (Annexure- A to the writ petition), at a fixed pay of Rs. 480.00 per month in the establishment of the office of the Executive Engineer, Public Health Engineering Department, Zunhebot, Nagaland and thereafter, he was promoted to the post of Work Charged Control man. However, by order dated 21.04.1999, his service was terminated by the respondents on the ground that his appointment was in violation of Government's standing order dated 13.09.1994.

2. Being aggrieved by the said termination order, the writ petitioner approached this Court, by filing W.P. (c) No. 101(K)/2000. This Court, by order, dated 19.10.2000, while allowing the writ petition, made the following directions.

The writ petitioner shall stand restored as W/C Control man in the regular scale of pay which he was enjoying at the time of order of termination on 21.4.99. Necessary order shall be issued in this regard immediately on receipt of this order and not later than one month from the date of receipt of this order. The

arrear pay and allowances from 21st April, 1999 till date shall be paid to the writ petitioner within 2 (two) months from the date of receipt of this order. The competent authority shall consider the request of the writ petitioner for regularization of his service within a period of 3 (three) months from the date of receipt of this order.

3. Upon receipt of the said order, the respondents by order dated 20th February, 2001 issued fresh appointment in favour of the petitioner.

4. As the said direction, made by this Court, was not complied with, within the stipulated period, the writ petitioner filed a contempt case, being Civil Original Contempt Petition No. 9(K)/2009.

Subsequently, by office order dated 11.03.2010, issued by the Secretary to the Government of Nagaland, Public Health Engineering Department, the petitioner was informed that his case was considered for regularization, but in view of the Office Memorandum dated 22.09.2004, as he did not fulfill the eligibility criteria, his service could not be regularized. However, it was made clear that his case would be taken up for upgradation/regularization in due course according to the seniority. In view of the said order, the contempt petition aforesaid was withdrawn with liberty to challenge the said order dated 11.03.2010. Accordingly, the prayer was allowed and the contempt petition was closed, on withdrawal.

5. Being aggrieved by the order, dated 11.03.2010, issued by the Secretary to the Government of Nagaland, Public Health Engineering Department, Kohima whereby and where under, the petitioner's prayer for regularization of his service was negated, the petitioner has come up with this writ petition praying for setting aside the impugned order dated 11.03.2010 and for issuing a direction to the respondents for regularizing the service of the petitioner, as Work Charged Control man, with retrospective effect and to pay him the pay and allowances along with the arrear pay.

6. The learned counsel appearing for the petitioner has submitted that though this Court, vide order dated 19.10.2000, directed the State respondents to consider the case for regularization of the petitioner service within a period of three months, the respondents failed to consider the petitioner's case within the said stipulated period, thereby causing much prejudice and hardship to the petitioner. It is also submitted that the petitioner joined his service in the year, 1985 and since then he has been rendering his service and that, in view of the direction made by this Court, the petitioner was entitled to be regularized so as to facilitate him to draw his service benefit including pension etc.

7. The learned counsel has also submitted that as the Court passed the order dated 19.10.2000 in WP (c) No. 101(K)/2000 in respect of the regularization of service of the petitioner, the Office Memorandum dated 22.09.2004, which came into effect from 2004 is not applicable to the case of the petitioner, in as much as, no retrospective effect can be given to any office memorandum. It is contended that the respondents committed illegality and error by considering the

case of the petitioner in the light of the said office memorandum.

8. The learned Additional Advocate General, appearing for the State respondents, referring to the affidavit-in-opposition, has submitted that as the petitioner's case was taken up for consideration in 2010, the office memorandum, which came into force from 2004, was applicable to the case of the petitioner and that the respondents committed no error by following the procedure, prescribed by the said memorandum. In the said affidavit- in-opposition, controverting the averments made by the petitioner, the answering respondents stated that the case of the petitioner was considered on the basis of with the Office Memorandum dated 22.09.2004 and that the petitioner was not found to have attained the seniority for regularization, in as much as the seniority is criteria for regularization. It has also been contended that the respondents revised the seniority list in 2009 and according to the seniority list, the name of the petitioner stands at Serial No. 44 and that the regularization has been made on the basis of the seniority.

9. The learned Additional Advocate General has also submitted that the Government has been regularizing the services of the Work Charged employees, on the basis of their seniority, as per the Office Memorandum aforesaid and that as the petitioner did not attained seniority, at the relevant time, his service could not be regularized at that stage. The learned Additional Advocate General has fairly submitted that as the Government has been regularizing the services of the Work Charged employees as per the abovementioned Office Memorandum, the case of the petitioner will be, again, taken up for consideration in its own course.

10. Having heard the learned counsel for both the parties and considering the materials on record, I find that there is no dispute with regard to this Court's order, dated 19.10.2000, directing the respondents to consider the case of the petitioner for regularization of his service within a period of 3 (three) months. Admittedly, the petitioner's case was not considered within the stipulated period, as aforesaid, for which the contempt petition was filed. As indicated above, the said contempt petition has been closed on withdrawal.

11. By the order dated 19.10.2000 aforesaid, this Court directed the respondents to consider the petitioner's case for regularization. Admittedly, the case of the petitioner was taken up for consideration in 2010 and, in the meantime, the Office Memorandum dated 22.09.2004 (Annexure- B to the affidavit in opposition) came into force. Clause (iii) and (iv) of the said Office Memorandum, reads as follows:

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

(iv) Work Charged 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 the senior most work charged employee in the relevant category will be regularized subject to his/ her fitness for the vacant post.

12. The learned counsel appearing for the petitioner has submitted that as this Court passed the order in W.P. (c) No. 101(K)/ 2000, in 2000, the Office Memorandum of 2004 aforesaid is not applicable to the case of the petitioner. In reply to the said contention, the learned Addl. Advocate General has submitted that all cases for regularization, after coming into force of the said memorandum, were considered on the basis of the criteria and the procedure prescribed by the said Memorandum, being existing policy/ guidelines for regularization, and therefore, as the petitioner's case was taken up for consideration in 2010, the Office Memorandum was applicable to the case of the petitioner also.

13. Unless otherwise provided, a matter in conflict or dispute is required to be decided on the basis of the law, procedure, criteria or guidelines as on date. In the present case, there is nothing, on record, to show that the criteria prescribed by the said office memorandum was not applicable to the case at hand. As the said Office Memorandum, by which the Government laid down the policy and scheme for regularization of services of Work Charged employees, came into force with effect from 22.09.2004, in my considered opinion, the Government has rightly applied the said policy and the scheme, in respect of the petitioner, whose case was considered in 2010. Therefore, I find no force in the contention of the learned counsel, appearing for the petitioner, that the Government committed illegality by applying the said policy and scheme for regularization of the services of the work charged employees.

14. From the affidavit-in-opposition, which remained uncontroverted, it is found that the seniority position of the petitioner is at Serial No. 44 and that he is not entitled for regularization as per seniority. Therefore, as the petitioner did not fulfill the criteria, prescribed for regularization, the impugned order, by which regularization of the petitioner's service was declined, suffers from no illegality.

15. In the light of the above and considering the entire aspects of the matter, I am of the opinion that there is no sufficient merit in this writ petition. Hence, this writ petition fails. However, as the petitioner has rendered service with effect from 1985, considering the length of service rendered by him, the respondents may consider the case of the petitioner, as per seniority, in the due course, as per rules. With the above observations, this writ petition is disposed of.