
(2015) 03 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 17 (K) of 2014

Nazimuddin Ahmed

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2015) 3 GLT 495 : (2015) LabIC 2220

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : S. Mere, Govt. Adv., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Michael Zothankhuma, J.

1. No one appears for the petitioner. Ms. S. Mere, counsel for the respondent Nos. 1 to 4 prays for time to file affidavit-in-opposition. Sufficient time has been given to the State respondents to file affidavit-in-opposition since 10-04-2014 and as such, the prayer of Ms. S. Mere is rejected. In view of the fact that similar matters have been disposed of by this Court, I also proposed to dispose of this case today. The fact of the case as per the pleadings is that the petitioner was appointed as work-charged Fitter Grade-II in the scale of pay of Rs. 205-5-225-EB-6-285-EB-8-325 vide Office Order No. ZBT/PHE/EE/TNVT/EST/-5/83-84 dated 12-04-1983. The petitioner's service was attached to the Office of the Executive Engineer, PHE, Investigation Division, Zunheboto. The petitioner was transferred on the same day to the PHE Sub-Division, Tuensang vide order dated 12-04-1983 and the petitioner joined in his place of posting. The petitioner's further case is that the petitioner had elected for revision of scale as per Finance Department order dated 20-01-1985 and that his pay has been increased and revised in his Service Book from time to time.

2. The petitioner's further case is that he was issued one membership card for

Nagaland Government Employees Group Insurance Scheme as can be seen in Annexure-4 of the writ petition. The petitioner in his writ petition has also stated that he was a member of the contributory Provident Fund Scheme as well as other retirement benefits schemes. The petitioner's further contention is that the condition and benefits of his service clearly shows that he was a regular employee even though his nomenclature was a work-charged employee. The petitioner lastly states that he was asked to retire from his service from 31-03-2013 on attaining the age of 60 years. Thus the petitioner prays that as he had rendered his service for more than 30 years against a substantive post, the petitioner is entitled to receive pension and all other retirement benefits as he was in all respects to be considered as regular employee.

3. Ms. S. Mere, learned Government Advocate has submitted that the petitioner has not appeared in this Court for the last two dates excluding today and that the case should be dismissed for non-prosecution. She also submits that the petitioner not being a regular employee, the petitioner has no right to get pension or other retirement benefits. With regard to the first contention of Ms. S. Mere, as the petitioner has allegedly worked for 30 years i.e. from 1983 to 2013, I feel that it would be improper to dismiss the case for default on account of the absence of the counsel for the petitioner. Also the petitioner having worked for 30 years, I feel that some consideration should be given to the petitioner for the long years of service that he has rendered to the Government.

4. This Court in W.P (C) No. 164 (K) of 2013 had passed order dated 22-01-2011 in respect of the work-charged Sweeper who had been in service from 10-10-1983 till her retirement on 30-06-2012, i.e. 29 years 8 months and 21 days. This Court vide order dated 22-01-2014 passed in W.P (C) No. 164 (K) of 2013 stated as follows:--

"It has been pointed out that in number of cases, similar to that of the petitioner, this Court repeatedly held that a State as being a model employer should not/must not force an employee to retire from service without her service being regularized after obtaining his/her service in that capacity over a very long period of time.

In that connection, the decision rendered by this Court in the case of Shri. Imchasashi v. State of Nagaland and Ors., in W.P (C) No. 225(K) of 2002 is relied on to show that since the petitioner was forced to retire from service after serving 29 years 8 months and 21 days without her service being regularized, the decision in the case aforementioned has clearly covered her case too requiring this Court to give her the benefits which was rendered to the petitioner in Imchasashi v. State of Nagaland (supra).

For ready reference, the decision in Imchasashi v. State of Nagaland (supra) is reproduced below:--

"A Division Bench of this Court dealt with the similar case wherein the petitioner retired on superannuation without any pensionary benefit after putting on 28 and

29 years of service. In the instance case also the petitioner has retired after rendering more than 20 years of service. The Division Bench of this Court in the State of Manipur and Ors. v. K.S.H. Ibohal Singh, reported in 1997 (II) GLT 209 in paragraphs 11 and 12 of the judgment has held as follows:--

11. We are being disturbed that the petitioners were compelled to go on superannuation after putting in 28 and 29 years of service respectively without any pensionary and other retiral benefits. In a welfare State like ours committed to a socialistic pattern of society, it is unconscionable that employer compels the employee to go on retirement without any retiral benefits after putting 28 and 29 years of service on the pretext of contract service. It will be hit by equality clause as enshrined in Article 14 of the Constitution. The writ petitioners/respondents have spent the entire youthful life to the service of the State rendering valuable services to the State as an Artist, it will be too cruel to allow them to grow empty handed when they are aged, old and infirm and incapable of earning by themselves. It is common knowledge that Government servants works for future security. The argument that the writ petitioners accepted the appointment with full knowledge of the terms and conditions laid down in contract and therefore, their services cannot be regularized and they are not entitled pension and other retiral benefits would amount to exploitation of labour. May be the petitioners have knowing fully well the terms and conditions of contract accepted the employment because of compelling circumstances. State being a model employer are not permitted to use method of exploitation against the weaker section of people.

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 it 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 substance right to live with dignity will have no meaning. The contention of the learned counsel for the appellants is therefore rejected as untenable in law."

The above decision of the Division Bench of this Court was also followed in many other subsequent by this Court where the facts and circumstances are similar to the case, referred to above. She has, therefore, approached this Court seeking

the reliefs, aforementioned. "

5. Thus, this Court vide order dated 22-01-2014 passed in W.P (C) No. 164(K) of 2013 had directed the State Government to regularize the service of work charged Sweeper and to grant her all pensionary benefits in accordance with the Rules governing the service of the petitioner in the light of the judgment rendered in the case of Shri Imchasashi v. State of Nagaland and Ors. (supra), reported in W.P (C) No. 22 (K) of 2002.

In pursuance to the order dated 22-01-2014 passed in W.P (C) No. 164 (K) of 2013, the Office of the Engineer-in-Chief, NPWD, Nagaland, Kohima had issued Office Order No. NO-E-N-C/Estt/Legal/GEN-1/14-15/405 dated 04-09-2014 wherein, the service of the petitioner was absorbed into regular cadre and the period of service rendered was counted as qualifying service for pension benefit only.

6. That this Court in W.P (C) No. 183 (K) of 2013 vide order dated 20-01-2014 had also directed the State respondents to finalize the matter relating to regularization of the service of the petitioner who had served for 35 years as work-charged Khalasi so that he became eligible to get pensionary benefit. In pursuance to the order dated 20-01-2014 passed in W.P.(C) No. 183 (K) of 2013, the Office of the Engineer-in-Chief, NPWD, Nagaland, Kohima vide Office Order No. NO- E-N-C/Estt/Legal/GEN-1/14-15/340 absorbed the service of Shri Pholu into regular cadre and counted his work-charged period as qualifying service for pension benefit only.

7. Thus from the above referred judgments and subsequent orders passed by the State respondents, it is quite clear that this matter is a covered matter. In that view of the matter, the State respondents are directed to consider the case of the petitioner for regularization of his service into regular cadre and to count his period of service of work-charged period as qualifying service for the purpose of pensionary benefit only. The State respondents while considering the petitioner's case will also keep in mind the judgments and orders passed in similar cases and also the subsequent orders of the Government passed in pursuance to those judgments. The entire exercise is to be carried out within a period of three months from today. The writ petition is accordingly disposed of.