

**(2002) 11 GAU CK 0027**

**In the Gauhati High Court**

**Case No : Writ Petition (C) No. 147 (K) of 2001**

Pushu Khiammungan and Others

APPELLANT

Vs

State of Nagaland and Another

RESPONDENT

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**Date of Decision : 27-11-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation : (2004) GLT 561 Supp**

**Hon'ble Judges : D. Biswas, J**

**Bench : Single Bench**

**Advocate : Taka Masa Ao. and M. Theyo, for the Appellant; Govt. Advocate, for the Respondent**

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## **Judgement**

D. Biswas, J.—This petition is for regularisation of service of the writ Petitioners who are working as Stenographer Gr-III. The Petitioners were appointed initially on contract basis for a fixed period and they have been allowed to continue in service by orders of extension passed from time to time, the appointment letters annexed with the writ petition clearly show that their appointments were against regular vacancies in the scale of Rs. 620-1040/- p.m. plus Inner line Compensatory Allowance etc. The orders of extension annexed with the writ petition show that in some cases there was break in service for a day or so. But from the date of their initial appointment, all the writ Petitioners appeared to have completed more than 5 (five) years of service.

2. A question would naturally arise whether the break in service occasioned by the Respondent authority with an intention to defeat their legitimate claim for regularisation on completion of 5 years service as per Government policy will operate as a bar.

3. Mr. Taka Masa, learned Counsel for the Petitioners in order to overcome this initial clog relied upon a decision of this Court in Raby Roy, Petitioner v. Commissioner, Custom and Central Excise, Shillong and Anr. Respondents 1999 (2) GLT 484 . Relying upon the decision of the Apex Court in Sri Rabinarayan

Mohapartra Vs. State of Orissa and others, , Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, and Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh, , the learned Single Judge of this Court held as follows:

11. Applying all these established principles of law laid down by the Apex Court, the Respondents ought to have ignored this one day break in service of the writ Petitioner and they ought to have considered the case of the writ Petitioner alongwith other casual labourers/workers who are similarly situated with the Petitioner, by formulating a scheme on rational basis and, instead of doing so, one fine morning, the Respondents issued the impugned termination order. That is also in hand writing with one sentence, thus terminating the Petitioner from service on the ground that his work was found unsatisfactory. In my considered view, this action of the Respondents while passing the impugned termination order is violative of all these enshrined principles of law laid down by the Apex Court mentioned above and the same is also violative of Articles 14 and 16 of the Constitution of India. Accordingly, the impugned termination order is hereby quashed.

4. Therefore, the short break occasioned by the Respondent authority in the case at hand while giving extension, in the considered opinion of this Court, will not be a bar in the matter of regularisation of the services of the writ Petitioners since they have been otherwise in continuous service of the Respondent from 1995 and prior to that. Some of them by now appeared to have rendered more than 12 (twelve) years of service.

5. The Government policy is that Adhoc/temporary employees in the continuous service of the State exceeding 5 years will be entitled to regularisation. There is no dispute about this. The writ Petitioners being in service for a long period are eligible for consideration for regularisation as per Govt. policy. The break in service for a very short period will have to be ignored to ensure justice.

6. Mr. Taka Masa, learned Counsel for the Petitioners submitted that the Petitioners were initially appointed after selection/test conducted by the competent authority and they were appointed as such against substantive vacancies as they were found qualified and suitable to man the posts.

7. By way of instance, in the affidavit-in-reply, the Petitioners have annexed certain orders of the Government which indicate that similarly situated persons have been regularised in their service on completion of 5 years. According to the learned Counsel there cannot be any reason for differential treatment in the matter of regularisation in so far the writ Petitioners are concerned.

8. The Petitioners are presently aggrieved because of a Notification issued by the Joint Secretary to the Government of Nagaland in the Home Department whereby it is notified that a selection Committee has been constituted by the Government for selection of casual employees in the Nagaland Civil Secretariat whose terms of appointment has not been extended and those who are on

extension of service. The learned State counsel brought to the notice of the court that the State has also taken a decision to appoint selected persons on fixed pay of Rs. 3,500/- p.m. This Notification of the Government has been the cause of concern for the writ Petitioners as they are likely to be deprived of their legitimate claim for regularisation in service.

9. Considering the gamut of the entire situation, this Court is of the opinion that since the writ Petitioners were initially appointed after selection by the competent authority against sanctioned posts, a fresh selection test for appointment afresh would mean total negation of the right the Petitioners earned during all these years of service.

10. Similar issues came before this Court for consideration in Civil Rule No. 54(K) 1997, W.P. (C) No. 170(K) 1999 and W.P. (C) No. 105(K) 2000. In writ petition No. 170(K) 1999, the learned Single Judge gave the following directions:

(a) The Department shall consider the case of all the Petitioners who are holding and working in their respective post for more than 5 years on adhoc or contract as the case may be for regularisation of their services subject to their possessing requisite qualification at the time of their initial appointment.

(b) For those Petitioners who are not yet completed 5 years of service in their respective post as on today, they shall be allowed to appear in the written test as well as viva voce to be conducted in association with the Nagaland Public Service Conrrarissionby relaxing their age, if any.

(c) The advertisement No. 3/99-2000 dated October/99 in so far with regard to the posts held by the Petitioners for 5 years or more shall not be processed for selection either written test or viva voce. The rest of the posts advertised shall go ahead with the process of recruitment in terms of the Recruitment Rules.

(d) If the concerned Department after examining the cases of the Petitioners who have completed 5 years of services on Adhoc/contract basis ultimately found that they are not qualified to hold the post either on the ground of academic qualification or suitability or otherwise, their cases shall not be considered for regularisation but they shall also be entitled to appear before the selection test after relaxing their age, if any.

Till such process as in (a), (b), (c) and (d) are completed, the Advertisement No. 3/99-2000 dated 6 October/99 notifying the posts shall be kept in abeyance in so far with regard to the posts held by the Petitioners for more than 5 years.

11. In my considered opinion the writ petition at hand should also be disposed of with similar relief as has been given vide para (a) of the judgment. Hence this petition is disposed of with the direction to the Respondent authority to consider the cases of all the Petitioners who have been working as Stenographer Gr-III for more than 5 years on adhoc or contract, as the case may be, for regularisation of their services ignoring the short break in service subject to their possessing requisite qualification at the time of initial appointment in consultation with the

Nagaland Public Service Commission as may be permissible under the Rules. The regularisation shall be against available sanctioned vacancies which the Petitioners claim to have been holding. Until exercise in this behalf is completed, the Petitioners shall be paid their salary as specified in the appointment letters and the interim direction given by this Court vide order dated 23.8.2001.

In the facts and circumstances of the case I pass no order as to costs.