

(2017) 05 GAU CK 0016
In the Gauhati High Court
Case No : 87 (K) of 2016

Sungmo Chang

APPELLANT

Vs

The State of Nagaland and others

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Citation : (2017) 05 GAU CK 0016

Hon'ble Judges : S. Serto

Bench : SINGLE BENCH

Advocate : I. Imti Longchar, Sentiyanger, Rempemo, Hisenlo, Tainjungla, Sashimongla, Supongwati, Lucy, Yangerwati

Judgement

1. This is a writ petition filed by the wife of one late W. Wongto @ Wongto Chang @ Wongto Chollen @ W. Wongto Chollen @ Wongto Chang, who worked as Work-Charged jugali in the department of Power, Executive Engineer, Electrical Division, Tuensang and died while performing his duty, claiming for pension/pensionary benefits and ex-gratia. Heard Mr. Hisenlo, learned counsel for the petitioner and also heard Mrs. Lucy, learned Addl. Sr. Government Advocate who appears on behalf of the State respondents.

2. The case of the petitioner is that her husband late W. Wongto Chang was appointed initially as a muster roll employee in the department of Power and thereafter, he was appointed as Work-Charged jugali with a fixed pay of Rs. 300/- pm and was posted in the office of Executive Engineer, Electrical Division, Tuensang vide order No. 120, TEL/WC-1/85-86/2974-29, dated 29.11.1985. Thereafter, vide O.M. No. CEL/A- 362/4457-60, dated 27.09.2000, issued by the Chief Engineer, Department of Power, he was given scale of pay as Work-Charged jugali with all allowances admissible as per rules applicable. Vide order dated 19.01.2005, issued by the SDO, Electrical Division No. II of the Executive Engineer, Tuensang, her husband was given the responsibility of looking after the extension of 11 KVA phase transmission line and 250 KVA, 11/4 KVA sub-station under PMGY at Assam Rifles, Nagaland Range, Tuensang. On 16.02.2010, while

performing his duties he was electrocuted and as result he died on the same day. According to the petitioner as per Rule-2 Clause-3 of the CCS (Pension) Rules, 1972 and liberalized scheme of payment of ex-gratia in case of death in harness issued by the Government of India, Department of Pension & P.W. O.M No. 45/55/97-P & PW(C), dated 11.09.1998, which are applicable in the State of Nagaland she and her 4(four) children left behind by her husband are entitled to pension/pensionary benefits and ex-gratia. Therefore, through her legal counsel, a legal notice was sent to the Chief Engineer of the department of Power on 15.11.2014. However, on 26.11.2014, a reply was received from the Chief Engineer stating that since the eldest son has been appointed as Work-Charged employee in the department on compassionate ground she should not insist for pension/pensionary benefits and ex-gratia. Being aggrieved, the petitioner has come to this Court praying for a direction to the respondents to give her pension, pensionary benefits and ex-gratia since her husband died while performing his duty, and since he had served the department for 24 years, though in the capacity of Work-Charged with his scale pay and other allowances.

The learned counsel for the petitioner cited the judgment of this Court passed in a similar facts and circumstances, wherein it was directed that the Government servant who died in harness be regularised in service so that his bereaved family members may enjoy pension or pensionary benefits. The judgment and order cited by the learned counsel is of W.P.(C) No. 72(K) of 2012, passed on 27.09.2012.

3. Mrs. Lucy, learned Addl. Sr. Government Advocate produced a copy of two letters, one of which is addressed to the Chief Engineer, department of Power by the President of All Nagaland Electricity Field Workers Association (ANEFWA), Nagaland and the other is copy of the letter of the Chief Engineer addressed to the Commissioner & Secretary to the Government of Nagaland, department of Power. These letters according to the learned counsel shows that the All Nagaland Electricity Field Workers Association had accepted risk allowance instead of ex-gratia, therefore, the claim of the petitioner for exgratia should not be entertained.

4. I have considered the case of the petitioner in the light of the documents submitted in the writ petition, the law applicable and also considered the submission of the learned Addl. Sr. Government Advocate. In 2004, the Government of Nagaland, department of P&AR (Administrative Reforms Branch), issued a Memorandum No. AR-3/Gen/2001(Pt), dated 22.09.2004, by which the scheme for regularisation of service of Work-Charged employees was notified. The O.M is reproduced here below:- "Government of Nagaland Department of Personnel & Administrative Reforms (Administrative Reforms Branch) No. AR-3/Gen-67/2001(Pt)

Dated, Kohima, the 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 the employees have been serving continuously for many years. They have been representing to the Government for regularization of their service. Some Departments have been regularizing the service work-charged employees from time to time against available vacancies. However, no transparent rational policy and criteria is discernible in the process of regularization of service of work-charged employees. Therefore, in order to examine the issue of regularization of work charged employees various Departments, the State Governments set up a Committee under the Chairmanship of Shri. Lalthara, IAS, Additional Chief Secretary (Geology & Mining).

On the basis of the recommendations of the Committee for regularisation of Work-Charged employees in the State, the Government hereby adopts the following policy and scheme for regularisation of the service of work charged employees serving under various Departments of the State Government.

(i) Each Department having Work-Charged employees should maintain a list of work-charge 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 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 regularisation 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.

(v) In case no work-charged employee is found suitable for regularization in terms of the above clause(iv) the Department will obtain clearance of P&AR Department before making any fresh appointment against the quota reserved for work-charged employees explaining the circumstances for not being able to fill up the vacancy through regularization of work-charged employee.

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

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

(viii) Those Departments which have not approached the Nagaland Work-charged and casual Employees Commission should do so immediately to get the optimum

strength of Work-charged employees fixed for their Departments. They should take all possible measures including pursuing VRS option vigorously to bring down the strength of Work-charged employees to the level recommended by the Commission.

(ix) Adequate provision for payment of work-charged employees should be made in the 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 the Government would be doing so at his/her risk. Any new work-charged appointment should be treated as illegal and strict action taken against the appointing authority. In case or any unforeseen situation requiring new work-charged appointments, specific approval of the Cabinet must be taken."

As per the above stated scheme, the petitioner's husband was eligible for regularisation in service. However, for reasons best known to the respondents or authorities concern, the petitioners' husband, though work for 24 long years before he died while performing his duty was not regularised in service. 24 years is a long time in service carrier of a person. It is unthinkable that such things still happen in a welfare State. The poor and ignorant people are still ignored and even when they make their voice heard they are told, you don't deserve this.

5. It would not be stressing of one's imagination to say that the petitioner's husband could have been regularised in service if the respondents had been a little more concern and perform their duty or duties in time. The petitioner's husband was given scale of pay with all other allowances admissible as per the rule and served for such a long time till he met his fate. Therefore, his non regularisation in service was not because his service was not required and the Government did not have money to pay if regularised in his service or no scheme was framed by the Government. It would have taken only some precious time to process for his regularisation if he belonged to higher echelon of service and was from influential family. The Government should be a model employer and that should include providing good working condition, looking after the welfare of its employees and regularisation of service as per schemes or rules made by itself from time to time. If the Government wants to take the best from its employees, it should also enable them to give the best by giving to them what they need. There is no room for exploitation and discrimination in our Constitution. But in the case of the petitioner's husband to say the least it is clear case of exploitation and discrimination.

6. Taking such similar facts and circumstances into consideration, this Court in W.P.(C) No. 74(K) of 2016 had directed the Government respondents therein to regularise the service of a deceased employee who died after serving for 22 years, posthumously for the purpose of pension and pensionary benefits. Keeping in view the judgment cited by the learned counsel for the petitioner, the judgment mentioned above and what has been stated above, this Court is of the

opinion that the present case is also a fit case for directing the respondents to regularise the service of the petitioner's husband posthumously for the purpose of pension/pensionary benefits.

7. Coming to the prayer for ex-gratia, there is no dispute that the petitioner's husband died while performing his duty. Normally, the family members of Government servants who died while performing their duties are given such ex-gratia. There is no contention from the Government respondents that the scheme for payment of ex-gratia in case of death while performing duty as provided under Central Government O.M. dated 11.09.1998, issued by the Government of India, Department of Pension & P.W. O.M No. 45/55/97-P & PW(C) is not applicable in the State of Nagaland. At paragraph-5 Clause- (a) of the said O.M., it is provided that Government employee who died due to accident while performing their duties are entitled to ex-gratia payment of Rs. 5 lakhs. Since, the said scheme is applicable in the State of Nagaland, I find no reason why the petitioner should also not be given the same benefit since her husband died while performing his duty. In view of what has been stated above, the respondents are directed to regularised the service of the petitioner's husband posthumously for the purpose of pension or pensionary benefits and also pay ex-gratia of Rs. 5 lakhs to the petitioner and her children. All these directions should be implemented within a period of 4 months. With this, the writ petition is disposed.