
(2015) 04 GAU CK 0047
In the Gauhati High Court
Case No : Writ Petition (C) No. 16(K) of 2015

Touzhu-u

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : (2015) LabIC 3009

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : Kekhriengulie, Khriezelhou, Belinda, Thejapfutuo and Sepienle, for the Appellant; N. Angami, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Lanusungkum Jamir, J—The petitioner No. 1 was appointed as contingency paid Mali in the Nagaland Civil Secretariat for a period of three months with effect from 01-09-1992 by an order dated 25-08-1992. The petitioner No. 2 was also appointed as contingency paid Mali in the Nagaland Civil Secretariat for a period of three months with effect from 01-09-1992 by an order dated 27-08-1992. After their appointment, both the service of the petitioners as contingency paid Mali has been extended from time to time. In the meantime, two posts of regular Mali arose in the Nagaland Civil Secretariat and accordingly, the petitioners have submitted representation for consideration of their case for regularization against the said two regular posts of Mali. While the petitioners were expecting regularization against the said two posts of Mali, they were surprised to come across the order dated 30-01-2015 by which the private respondent Nos. 4 and 5 were appointed. Being aggrieved by such appointment of the private respondent Nos. 4 and 5, the present writ petition has been filed by the petitioners praying for consideration of their case for regularization of their service against the said two vacant posts of Mali and for quashing and setting aside the impugned order dated 30-01-2015. Heard Mr. Kekhriengulie, learned counsel for the petitioners. Also heard Mr. N. Angami, learned Government Advocate appearing for the State

respondents. None appears for the private respondent Nos. 4 and 5. On 13-03-2015, this Court has deemed the service of notice on respondent Nos. 4 and 5 to be complete. However, till date, there is no representation on their behalf and accordingly, this writ petition is taken up ex parte against them.

2. Mr. Kekhriengulie, learned counsel for the petitioners submits that after the petitioners were appointed by an order dated 25-08-1992 and 27-08-1992 respectively, they have been in continuous service as contingency paid Mali. While they were serving in the said posts, a selection Committee has been constituted for selection of casual employees appointed without post in the Civil Secretariat for various categories of posts in which the post of Mali was also included. The Committee after assessing the requirement of the posts of various categories had made recommendation for appointment of certain number of employees on casual basis (fixed) out of the employees found in excess of the sanctioned posts. In the chart formulated by the Committee, the Malis appear at Serial No. 7 and the numbers of casual employees to be selected out of the existing employees is indicated to be 12 numbers. The Committee had further recommended that the employees of all categories be appointed against the vacancies of regular posts arising in future. On the basis of such recommendation being made by the selection Committee, the State respondents has issued the order dated 16-11-2001 wherein 12 Malis were appointed on fixed pay in the Nagaland Civil Secretariat, Kohima with effect from 15-10-2001 for a period up to 31-03-2002. He submits that the names of the petitioners appear at Serial Nos. 5 and 6 therein and the service of the petitioners has been extended from time to time till date. He submits that on the basis of the order dated 16-11-2001, the State respondents has been strictly maintaining the seniority as shown therein and the persons at Serial Nos. 1 and 2 have been regularized to subsequent regular vacancy by the State respondents. He further submits that the person at Serial No. 3 in the order dated 16-11-2001 was not considered by the State respondents and instead another person was appointed to a subsequent regular post of Mali and therefore the concerned person at Serial No. 3 had approached this Court by way of W.P(C) No. 224 (K) of 2011. On the basis of the judgment and order dated 18-04-2012 passed in the aforesaid case, the person at Serial No. 3, namely, Smti Neihenuo was also regularized. He submits that presently, the petitioners appearing in Serial Nos. 4 and 5 of the order dated 16-11-2001 are the senior most contingency paid Mali inasmuch as, the person at Serial No. 4 has left and is no more serving as contingency paid Mali.

3. Learned counsel for the petitioners submits that the State respondents has been strictly following the seniority as indicated in the order dated 16-11-2001 and making regular appointment to the post of regular Mali. However, when two posts of regular Mali arose in the Nagaland Civil Secretariat, it was the turn of the petitioners to have been considered for regularization to those two posts inasmuch as, the petitioners have also made their respective representation requesting for consideration of their case for regularization by the State respondents. However, in total violation of laid down procedure, the private

respondent Nos. 4 and 5 were appointed by the impugned order dated 30-01-2015 without considering the case of the petitioner Nos. 1 and 2. In that view of the matter, the learned counsel for the petitioners submits that the impugned order dated 30-01-2015 be set aside and a direction be given to the State respondents to consider the case of the petitioners for regularization against the said two vacancy post of regular Mali.

4. Mr. N. Angami, learned Government Advocate appearing for the State respondents submits that there is no doubt that the petitioners have been serving as contingency paid Mali for a long period of time however, there is no provision till date that contingency paid Mali will be given regular appointment. He also submits that when the petitioners were appointed as contingency paid Mali, they were aware of the nature and the terms and conditions of their service and therefore they have no right to approach this Court praying for a direction to have their service regularized. In that view of the matter, he submits that the writ petition should be dismissed.

5. I have considered the submissions forwarded by the learned counsel for the parties.

6. After the petitioners were appointed by order dated 25-08-1992 and 27-08-1992, a selection Committee was constituted for selection of casual employees appointed without post in the Nagaland Civil Secretariat. Thereafter, the High Powered Committee after assessing the requirement of the post of various categories had recommended for appointment of certain number of employees on casual basis (fixed pay) out of the employees found in excess of the sanctioned posts. The categories of casual employees of Mali is shown in Serial No. 7 and the recommended number of casual employees to be selected out of the existing employees has been shown as 12 numbers.

7. The Committee so constituted had also made recommendation with regard to safeguard of the future of the employees selected. The relevant portion of which is also extracted herein below:-

"The Committee felt that as a safeguard to the future of the employees selected after the present selection test conducted by this Committee who have put in several years of service as contract employees, some provision should be made to absorb them in the regular sanctioned posts as and when vacancies arise. Accordingly, it is recommended that the selected employees of all the categories be appointed against the vacancies of regular posts arising in future after following the requisite procedure on the basis of Seniority as recommended by the Selection Committee."

Further, in the minutes of the selection Committee, the selection list of Mali (casual) has also been appended therein wherein the name of the petitioners appears at Serial Nos. 5 and 6. On the basis of the recommendation of the selection Committee, the State respondents had issued the order dated 16-11-2001 wherein the name of the petitioners appear at Serial Nos. 5 and 6.

Following the seniority maintained in the order dated 16-11-2001, the person at Serial No. 1 was regularized to the post of Mali by an order dated 14-06-2007. Again, the person at Serial No. 2 appearing in order dated 16-11-2001 was again regularized against regular vacancy of Mali by an order dated 21-12-2007. Thereafter, by an order dated 13-09-2012, the person at Serial No. 3 was also regularized against the vacancy caused by late Kraviba Yhome, Mali in pursuance to the direction passed by this Court on 18-04-2012 in W.P (C) No. 224 (K) of 2011. The person at Serial No. 4 as submitted by the learned counsel for the petitioners is no more in service and therefore, according to the order dated 16-11-2001, the petitioners are senior most contingency paid Malis in the Home Department, Secretariat Administration Branch.

8. This being the admitted position and also considering the order dated 16-11-2001, it is incumbent upon the State respondents to have followed the seniority as given in the order dated 16-11-2001 when the said two regular vacancy of Mali arose in the Nagaland Civil Secretariat. This has not been done by the State respondents and instead has appointed the private respondent Nos. 4 and 5 by impugned order dated 30-01-2015.

9. This Court has also noticed that the appointment of respondent Nos. 4 and 5 has been made through the back door i.e. without following the laid down procedure insofar as public employment is concerned. In that view of the matter, the appointment of respondent Nos. 4 and 5 by the impugned order dated 30-01-2015 is interfered with and accordingly, the same is set aside and quashed.

10. The State respondents are now directed to forthwith take up the case of the petitioner Nos. 1 and 2 for consideration of their cases for regularization against the two regular vacant posts of Mali in the Home Department, Nagaland. Let such exercise be completed within a period of three months from the date of receipt of a copy of this judgment and order.

11. Writ petition is allowed. No costs.