

GAHC020001082025

2025:GAU-NL:488



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/38/2025

SHRI NUNGSHIMEREN AO,
R/O UPPER CHANDMARI COLONY,
KOHIMA, NAGALAND
PIN 797001

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND,
PIN 797001

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
NAGALAND
KOHIMA 797001

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND
WORKS AND HOUSING DEPARTMENT
NAGALAND
KOHIMA 797001

4:THE ENGINEER IN CHIEF
NPWD
NAGALAND
KOHIMA
PIN 797001

5:THE ACCOUNTANT GENERAL

NAGALAND
KOHIMA 79700

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, O TEMJEN JAMIR, JAWAMONG YADEN, IMTILA PONGEN, NUNGSANG AIER, KROVI TSUKRU, TOSHI, ASA RUTSA, ALIBA OZUKUM, I IMCHEN

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Date : 25-09-2025

:JUDGMENT & ORDER (CAV):

Heard Mr. C.T. Jamir, learned senior counsel assisted by Mr. I. Imchen, learned counsel for the petitioner. Also heard Mr. Kevi Angami, learned Sr. Government Advocate for the State respondents as well as Mr. Joshua Sheqi, learned counsel for the respondent No.5.

2. The case of the petitioner in the instant petition is that he was initially appointed as Computor/Draftsman Gr-1 (Civil) under the Nagaland Works & Housing Department on contract basis for a period of one year vide order No.E(II)/G-84/89-90(PT) dated 26.02.1991. After the expiry of one year, the petitioner's contract service was extended by order No.E(II)/G-84/89-90/(Pt-VII) dated 18.11.1992. The extension order dated 18.11.1992 clearly stated that the petitioner's contract service was extended upto 30.11.1992 and it also stated that his service would stand terminated w.e.f. 01.12.1992 positively. Therefore, the contract service of

the petitioner was terminated in terms of the order dated 18.11.1992 w.e.f 01.12.1992.

3. The petitioner states that after a gap of 45 days, the petitioner was again appointed as Junior Engineer/Overseer/Computer Gr-1 on contract basis by order No.E(II)/G-84/89-90/(PT-VII) dated 15.01.1993 for a period of 6(six) months w.e.f. 11.01.1993 in the same Department. While serving as such on contract basis, the petitioner got selected through NPSC and was appointed as Sub-Engineer(Overseer)Gr-I(Civil) by order No.E(II)G-46/86(PT) dated 25.05.1993 under Nagaland PWD.

4. In the meantime, it came to the notice of the petitioner that his length of service was being counted from 26.02.1991. Having come to know about this discrepancy, the petitioner submitted application to the respondent authorities and requested for rectification and the same was referred to the Personnel & Administrative Reforms Department (P&AR for short).

5. The petitioner is aggrieved by the findings of the P&AR Department dated 15.06.2024 and 04.02.2025 to the effect that the date of his entry into service shall be counted from his initial date of appointment i.e. 26.02.1991 in terms of the O.M. dated 31.08.2017 which prescribed that the service rendered on contract/adhoc/work charged/substitute which is followed by regularization for regular appointment without break or any gap in service except resignation shall be treated as public employment under the Nagaland retirement from Public Employment (2nd Amendment) Act, 2009.

6. The contention of the petitioner is that the State respondents had misinterpreted the O.M. dated 31.08.2017 which would retire the petitioner prematurely from service. The misinterpretation on the part of the State respondents has occurred due to ignoring of the word "break" or "gap" and by assuming that there is continuity in the service of the petitioner between his first and second appointment on contract basis which is an apparent error as record clearly shows that there is clear break of 45 days in the petitioner's service and there is no record to show the continuity between these two spells of service.

7. It is further submitted by the learned senior counsel for the petitioner that in view of the break in service for 45 days, the appointment of the petitioner should be counted from the order dated 15.01.1993 for the purpose of pension followed by his regular appointment through the NPSC. The learned senior counsel further submits that the State respondents in their affidavit had contended that the petitioner has enjoyed increment and other allowances though there was a service break and therefore, the continuous flow of increment and other allowances generated from his initial appointment on 26.02.1991 had not stopped. Therefore, it is a disputed question of fact as to whether the petitioner was really not paid his salary for 41 days i.e. from 01.12.1992 to 10.01.1993. The petitioner submits that this contention of the State respondents has no basis as the petitioner had not received his salary during the 45 days break between 01.12.1992 to 14.01.1993. The petitioner also further submits that unless the service of the petitioner is counted w.e.f. 15.01. 1993, prejudice will be caused to the petitioner as due to the break in service, his service would be counted as non

pensionable in terms of the CCS Pension Rules 1972 by the Accountant General.

8. The learned senior counsel has also submitted that this Court in a catena of judgments has already held that adhoc/contract/work charged services followed by regularization or regular appointment would be computed for calculation of 35 years of length of service when there is continuity in the two spells of service without break. In the case of the petitioner, his second contract appointment followed by regular appointment on 25.03..1993 ought to be counted for the purpose of pension in terms of the definition laid down under the Nagaland Retirement from Public Employment (2nd Amendment) Act, 2009. There is a clear break of 45 days in service between the petitioner's first contract appointment and the second contract appointment and as such, the findings of the P &AR Department to treat his first contract appointment as pensionable service has no basis in law and is therefore liable to be interfered with by this Court.

9. In view of the above submissions, the learned senior counsel for the petitioner has prayed for quashing and setting aside the impugned finding of the P&AR Department dated 15.06.2024 and 21.06.2024. The petitioner has also prayed for quashing and setting aside the impugned P&AR finding dated 04.02.2025 and the letter dated 10.02.2025. He has further prayed for excluding the length of service rendered by the petitioner in his initial appointment on contract basis by order dated 26.02.1991 from the computation of the length of service for pension.

10. The State respondents by filing affidavit-in-opposition has contested the writ petition by stating that although there was a service

break of 45 days, the petitioner has enjoyed the increment and other allowances during this period.

11. The learned Government Advocate Mr. Kevi Angami submits that the petitioner has to satisfy this Court that on the actual date of re-joining the service on the basis of his second contract appointment there had been absolute break or interruption of his service for 45 days between 01.12.1992 to 14.01.1993 with his resignation from service. The petitioner must satisfy the Court as to why his second contractual appointment was given a retrospective effective date of appointment as 11.01.1993 if it was altogether a fresh appointment and has to prove that the continuity in service is totally absent. The petitioner has also not disputed the statement that he has received the increment and allowances.

12. The State respondents have relied on the O.M dated 31.08.2017 in the last paragraph which states that the service rendered under adhoc/contract/work charged/substitute basis which is followed by regularization or regular appointment would be counted as public employment under the Nagaland Retirement from Public Employment (2nd amendment) Act, 2009 and therefore, the learned Government Advocate submits that this petition is without merit and liable to be dismissed.

13 The learned Govt counsel has relied on a judgment passed by a coordinate bench of this court in Surjit Singh Vrs State of Nagaland, WP(C)/172/2023 wherein vide Judgment & Order dated 13.08.2025, this Court held that the petitioner's entry in service was written as 20.08.1988 in the service book and his contract service was extended from time to time, till he was regularized by order dated 13.12.2002. The extract of his service book reflected his date of appointment as 20.08.1988 and since

the entries in the service book were never challenged by the petitioner at any point in time it was directed that his length of service had to be counted from 20.08.1988 for the purpose of pension. So also in the present case the entries in the petitioner's service book showed that he received increment during the break period.

13. Mr. Joshua Sheqi, learned counsel appearing for the respondent No.5/A.G has fairly submitted on the basis of verbal instruction that the petitioner's service can only be counted from 15.01.1993 as the extension order dated 18.11.1992 has categorically stated that the period of contract appointment of the petitioner stands terminated w.e.f.01.12.1992 positively.

14. The submissions of the learned counsel for the parties have been duly considered and the pleadings have been perused. The relevant extract of the Nagaland Retirement from Public Employment (2nd amendment) Act, 2009 and the O.M. No.AR-3/GEN-231/2011 dated 31.08.2017 are reproduced here below:-

"The Nagaland Retirement from Public Employment (Second Amendment) Act, 2009. (Act No. 7 of 2009.)

An

-Act-

Received the assent of Governor of Nagaland on 16/07/2009 and published in the Nagaland Gazette Extraordinary dated: 12th of August, 2009.

The further amend the Nagaland Retirement from public Employment Act 1991. Be it enacted in the sixtieth year of the public of India as follows:

Short Title, Extent and Commencement:

(1) This Act may be called the Nagaland Retirement from Public Employment (Second Amendment) Act, 2009.

(2) It extends to the whole of the State of Nagaland.

(3) It shall come into force on such date as the State Government may, by notification in the official gazette, appoint in this behalf.

*2. Amendment of Section 3 of the Nagaland Retirement from public Employment (Amendment) Act, 2007, the existing entry shall be substituted by the following: Section 3(1): **Notwithstanding anything contained in any rule or orders for the time being in force, a person in public employment shall hold office for a***

term of 35 years from the date of joining public employment or until he attains the age of 60 years, whichever is earlier. Section 3(2): A person under public employment shall retire on the afternoon of the last day of the month in which he attains the age of 60 years, or in which he completes 35 years of public employment, whichever is earlier.

"Government of Nagaland
Personnel and Administrative Reforms Department
(Administrative Reforms Branch)

AR-3/GEN-231/2011

Dated: Kohima, the 31st August 2017

OFFICE MEMORANDUM

Sub :-Counting of Contract/Adhoc/Work-charged/Substitute period for retirement purpose

1. *The Nagaland Retirement from Public Employment Act. 1991, defines public employment as "appointment to any pensionable state public service or posts connected with the affairs of the State of Nagaland and the Nagaland Legislative Assembly, and includes any appointment under the Government of India, and other State government. Central or State Public Sector Undertaking and local authority held by persons prior to their absorption under the public service of the State of Nagaland and the Nagaland Legislative Assembly which counts for the purpose of pension".*

2 *And whereas, clarifications have been sought by Departments from time to time whether the services rendered in adhoc/contract/work-charged/substitute capacity prior to regular appointment made through NPSC or Departmental Selection Board or any other prescribed procedure shall count as public employment for the purpose of calculation of length or service under the above Act.*

3. *And whereas, in the judgment and order dated 24/07/2012, the Gauhati High Court in Case no. WA-168/2012, WA-175/2012, WA-178/2012, WA-179/2012,WA-180/2012. WA-181/2012, WA-183/2012, had ruled that the period of service rendered on adhoc/contract/work-charged has to be counted for computation of public employment under the Nagaland Retirement from Public Retirement from Public Employment (2nd Amendment) Act. 2009.*

And whereas, this Department had issued office memorandum of even number

dated 01.08.2012 regulating counting of past service as public employment for the purpose of pension under the Nagaland Retirement from Public Employment (2nd Amendment) Act, 2009.

And whereas, in a landmark judgement and order 14.03.2017 in W.A. No. 5(K) of 2017, the Kohima Bench of Gauhati High Court, referring to the judgement and order dated 14.06.2012 passed in WP(C) No. 270 (K) of 2011 and batch of other writ petitions as well as the Order dated 20.07.2012 passed by the Division Bench in Writ Appeal No. 177-2012 alongwith a batch of other writ appeals, observed that "in view of the expressed provision defining public employment which does not distinguish between regular appointment and adhoc/contract/work-charged appointment for the purpose of retirement, period rendered on such basis has to be computed for the purpose of computation of 35 years of public employment". The High Court also held that "having come to the finding that the Memorandum dated 01.08.2012 is not in consonance with the judicial pronouncement of this Court. The Office memorandum dated 01.08.2012 is of no consequence and we declare the same to be nullity in law".

Now, therefore, it has been decided that the period of service rendered on adhoc/contract/work-charged/substitute, basis, which is followed by regularization or regular appointment without break; or any gap in service except resignation, shall be treated as public under the Nagaland Retirement from Public Employment (2 nd Amendment) Act. 2009.

This supersedes all office memoranda on the subject including the office memorandum dated 29th March, 2017.

*Sd/-PANKAJ KUMAR
Chief Secretary to the Govt. of Nagaland"*

15. From the above-mentioned Act and the O.M, it is clear that under the Government of Nagaland a person in Public employment shall retire when the attains the age of 60 years or when he complete 35 years of public employment whichever is earlier. In order to clarify the meaning of 'public employment' and the counting of contract/adhoc/work charged/substitute period for retirement purpose, the State Government has issued the O.M. dated 31.08.2017, wherein it is shown that the period

of service rendered on contract/adhoc/work charged/substitute basis which is followed by regularization or regular appointment without break or any gap in service except resignation shall be treated as public employment under the Nagaland Retirement from Public Employment (2nd amendment) Act, 2009.

16. A bare perusal of the O.M. dated 31.08.2017 has shown that there has to be no break or gap in the contract service except resignation. Clearly, the present case is not a case of resignation. The Department of P&AR in its findings dated 15.06.2024 has opined that the petitioner's entry into service shall be counted from his initial appointment i.e. 26.02.1991 and the reasons given is that the official has enjoyed annual increment and other allowances.

17. By the impugned opinion dated 04.02.2025, the Department of P & AR had again reiterated that the appointment date of the petitioner should be counted from 26.02.1991 as subsequent increment has been granted to the concerned official as seen in his service book. It is pertinent to mention that the respondents are the custodians of the service book of the petitioner and the respondents are also the authority who maintains the A.Roll regarding pay and allowance of the employee but the same has not been produced before the Court.

18. The petitioner has specifically stated that he did not receive his salary during the 45 days break in service and the respondents have not been able to show anything to rebut the same. The extension order dated 18.11.1992 has clearly stated that the petitioner's contract appointment stands terminated w.e.f. 01.12.1992. Thereafter, the second contract appointment dated 15.01.1993 states that the petitioner is appointed on

contract service w.e.f 11.01.1993 thereby a clear break of 41 days can be seen in between the two spells of service. There is nothing on record to show otherwise.

19. In view of the above observation, this Court is of the view that the petitioner's case is squarely covered by the O.M dated 31.08.2017 and the contract service without break as envisaged in the O.M dated 31.08.2017 has to be the appointment order of 15.01.1993 followed by his regular appointment as Sub-Engineer by order dated 25.05.1993.

20. As a result the writ petition is allowed and the impugned findings of the P & AR Department dated 15.06.2024 and 04.02.2025 are quashed and set aside. The impugned letter dated 21.06.2024 and 10.02.2025 are also quashed and set aside. The State respondents shall compute the length of service for pension in respect of the petitioner from 15.01.1993 as provided in the O.M dated 31.08.2017.

21. With the above directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant