



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

WP(C)/91/2024

1. Smti. Themsao
W/o Late Yaolai Khamniungan @ Yaolai
Khim @ P. Yaolai Khamniungan @ P.
Yaolai Noklak Village Nagaland

.....Petitioner

-Versus-

1. The State of Nagaland
Through The Chief Secretary to the Government
of Nagaland
2. The Commissioner and Secretary P And AR
Department Nagaland Kohima
3. The Commissioner and Secretary Works and
Housing Department Nagaland Kohima
4. The Financial Commissioner
Nagaland Kohima
5. The Engineer-In-Chief
PWD Nagaland Kohima
6. The Executive Engineer
PWD Tuensang (C) Division Tuensang Nagaland
7. The Sub-Divisional Officer
PWD Noklak Nagaland
8. Treasury Officer
Tuensang Nagaland
9. The Accountant General Nagaland

.....Respondents

For Petitioners : Mr. I. Imti Longchar, Advocate
For Respondents : Ms. A. Ayemi, Government Advocate (R 1 to 8)
Mr. Joshua Sheqi (R.9)
Date of Judgment **19.08.2025**
Reserved
Date of Judgment : **20.01.2026**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT

1. Heard Mr. I. Imti Longchar, the learned counsel for the petitioner. Also heard Ms. A. Ayemi, the learned Government Advocate for the respondents Nos. 1 to 8 as well as Mr. Joshua Sheqi, the learned counsel for the respondent No.9.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, Smti. Themsao, wife of late Yaolai Khamniungan @ Yaolai Khim @ P. Yaolai Khamniungan @ P. Yaolai, praying for issuance of a writ in the nature of certiorari and/or mandamus for posthumous regularisation of service of late husband of the petitioner with effect from 02.02.1985 to 23.05.2005 and for grant of pensionary benefit and other service benefits to the petitioner.
3. The petitioner is the wife of late Yaolai Khamniungan @ Yaolai Khim @ P. Yaolai Khamniungan @ P. Yaolai. The deceased husband of the petitioner was appointed as a work-charged mason helper for a period of six months under the establishment of SDO, PWD, Noklak in a scale of pay of Rs. 210-4-250-5-275-7-310/- per month by

office order No.TSG/E/CD/E-1/APT-16/3377-80 dated 02.02.1985. Thereafter, by office order No. TSG/E/CD/E-1/APT-16/6228-31 dated 01.3.1986 of the Executive P. W. D. Tuensang Central Division, Tuensang. The husband of the petitioner was reappointed/promoted as work-charged mason helper under the establishment of SDO, PWD, Noklak in the scale of pay of Rs. 375-7-445-9-490-10-590/-. Thereafter, by office order dated 07.05.1992 passed by the Executive Engineer (C), Division, Tuensang PWD Tuensang, the petitioner's husband was promoted and appointed as work-charged pipe fitter in the scale of pay of Rs. 425-9-542-12-614-EB-14-670-15-750/- per month.

4. On 23-05-2005, the petitioner husband died leaving behind the petitioner, two sons and one daughter. As the services of the petitioner's husband were not regularized and the petitioner was not provided any family pension, she filed a representation for family pension on 21.08.2023 before the Engineering Chief, Nagaland Public Works Department, Nagaland. However, the said representation was not considered by the respondent authorities, therefore, she approached this Court by filing the instant writ petition.
5. Mr. I. Imti Longchar, the learned counsel for the petitioner has submitted that the petitioner has rendered unblemished service to the Department for more than 20 years and he died in harness, hence, his case is covered under Rule 2 of the Central Civil Services (Pension) Rules, 1972. He submits that the Government servants who had rendered temporary service of not less than 20 years (now

10 years) were covered within the purview of CCS (Pension) Rules 1972.

6. Hence, he submits that the petitioner being the wife of the deceased employee, she is entitled to death cum retirement gratuity and family pension in pursuant to the CCS (Pension) Rules 1972. He submits that the period of service rendered by the husband of the petitioner as work charged employee should be counted for fixing the length of service for the purpose of deciding as to whether the Petitioner would be entitled to get family pension and other pensionary benefit or not. He submits that even as per the Office Memorandum dated 17.03.2015 issued by the Government of Nagaland, the service rendered as Work charged/casual employee shall be counted towards length of service for the purpose of deciding qualifying service for pension.
7. The learned counsel for the petitioner has submitted that the petitioner's husband had served on Work charged basis in the Office of Sub-divisional Officer, PWD Noklak Division from 02.02.1985 to 23.05.2005 i.e., for a period of 20 years, 3 months and 21 days. He submits that the petitioner's grievance may be redressed by regularizing the services of her late husband by creating a supernumerary post personal to her husband and regularizing his services for one day before his death. In support of his submission, Mr. I. Imti Longchar, the learned counsel for the petitioner has cited a ruling of this Court in the case of "**Pradeep Chakraborty and Others Vs. State of Assam and Others**" reported in (2014) 1 GLT 617.

- 8.** The learned counsel for the petitioner has submitted that the husband of the petitioner had rendered unblemished service to the State for more than 20 years and under such circumstances it would be unfair on the part of the State Government not to regularize his service after taking his services for such a long period. He submits that taking of service on Work charged basis for a long period amounts to adopting the exploitative practice.
- 9.** He submits that had the husband of the petitioner would not have died prematurely on 23.05.2005, he would have completed the requisite period of 30 years in service, hence, depriving the petitioner who is the widow of the said Work charged employee from grant of family pension would be exploitative and against the principles enshrined in the Constitution of India.
- 10.** On the other hand, Ms. A. Ayemi, the learned Government Advocate appearing for the State Respondent has submitted that the husband of the petitioner was not eligible for regularization under the prevailing Office Memorandum of 2004 i.e, OM bearing No. AR-3/GEN-67/2001 (pt) dated 29.09.2004.
- 11.** She submits that as per the Clause (iv) of the said Office Memorandum, the regularization may be considered on the basis of seniority cum merit, which means the senior most and the relevant category would be regularized against the vacant post. She submits that as per the seniority list available with the respondents, the husband of the petitioner was not having the requisite seniority for being considered for regularization at the time of his death.

- 12.** She submits that as the husband of the petitioner was not eligible as per the prevailing policy of the Government, i.e. Office Memorandum of the year 2009 to get regularization, he cannot be granted posthumous regularization. In support of his submission, she has cited ruling of the Apex Court in the case of the ***State of Nagaland and Others Vs. Nishevi Achumi (2022 SCC Online SC 818)***, as well as a judgment of a Coordinate Bench of this Court in the case of ***"Methavino Neihu, Vs. State of Nagaland and 4 Others"*** in WP(C) 102/2019.
- 13.** Mr. Joshua Sheqi, the learned counsel for the respondent No.9 has stated that the respondent No. 9 does not have much to say about the merit of the case. He submits that the respondent No. 9 has not received any proposal for grant of family pension to the petitioner. He submits that the family pension is first to be proposed by the State Government to the respondent No. 9. It is only when such a proposal is received from the State Government, the respondent No. 9 processes the same. He submits that as in the present case, no such proposal has been received or is pending before respondent No. 9, it does not have much stake in this case.
- 14.** I have considered the submissions of the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.
- 15.** On perusing the materials on record, it appears that the petitioner's husband was employed as a work-charged fitter at the time of his death. He was earlier employed as a work-charged mason helper

with effect from 02.02.1985. Thus, on the date of his death, though, he had completed 20 years of service, he was not holding any substantive posts and was only working on a work-charged basis.

- 16.** The regularization policy of the Government which was prevailing at the time of death of the husband of the petitioner was the Office Memorandum bearing No. AR-3/GN-67-2001 (pt) dated 22.09.2004. As per the said Office Memorandum, regularization of work-charged employees could have been done against available regular vacancies on the day. 50% of all regular vacancies of similar nature arising in the year will be reserved for regularization of work-charged employees and 50% will be filled up as per Government Rules. Further, it was stipulated in the said Office Memorandum that the work-charged employees will have a right to be considered first for regularization against 50% of future vacancies of similar nature in the department for which they possess requisite qualification. Such regularization will be considered on the basis of seniority cum merit. This means that senior most work-charged employee in the relevant category will be regularized subject to his fitness for the vacant post.
- 17.** The plea of the respondent is that the petitioner's husband was not having the requisite seniority in the seniority list of the work-charged staff to be considered for regularization. Further, at that point of time, no such regular vacancies were available in which the petitioner's husband would have been regularized. The petitioner

has also failed to show anything contrary to the stand of the government.

- 18.** The petitioner has failed to show that her husband was possessing requisites seniority and there were available regular vacancies to which he could have been appointed. The observation made by the coordinate bench of this Court in the case of ***Methavino Neihu, Vs. State of Nagaland and 4 Others (Supra)***, facts of which are similar to the instant case, that if the husband of the petitioner was not entitled to regularization during his lifetime, the question of issuance of direction to authorities for granting regularization posthumously does not arise, is aptly applicable to the instant case too.
- 19.** As regards the submission of the learned counsel for the petitioner, regarding applicability of provision of Central Civil Services Pension Rules 1972 is concerned, this Court is of considered opinion that in view of the provisions of Section 2 (b) of the Central Civil Services (Pension) Rules, 1972, the said rules are not applicable to a work charged employee whose employment is in the nature of a casual and daily rated employment.
- 20.** In view of the discussions made in the foregoing paragraphs and reasons stated therein, this Court finds no merit in the instant case petition and accordingly, the same is dismissed.

- 21.** The Registry of the Principal Seat is directed to immediately send this case record to the Registry of Permanent Bench of this High Court at Kohima.

JUDGE

Comparing Assistant