

GAHC020004702023



2026:GAU-NL:10

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH
WP (C)No. 187/2023

Shri Agwenye Magh,
Khalashi(Work-Charged),
Office of the Executive Engineer (PHED),
Kohima Rural Division, Kohima,
Kohima-797001.

Petitioner

-Versus-

- 1.** The State of Nagaland,
Through the Chief Secretary to the Government of
Nagaland, Kohima-797001.
- 2.** The Secretary to the Government of Nagaland,
Personnel And Administrative Reforms Department,
Nagaland, Kohima-797001.
- 3.** The Finance Commissioner,
Nagaland, Kohima-797001.
- 4.** The Chief Engineer,
Department Public Health Engineering,
Nagaland, Kohima-797001.
- 5.** The Secretary,
Department Public Health Engineering,
Nagaland, Kohima-797001.
- 6.** The Executive Engineer,

Kohima Rural Division,
Department Public Health Engineering,
Nagaland, Kohima-797001.

Respondents

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGEMENT AND ORDER(CAV)**

Advocate for the petitioner : Justin Magh, Advocate.
Advocate for the respondent(s) : Ms. A. Ayemi, Government Advocate.
Date on which judgment is reserved : 19.08.2025
Date of pronouncement of judgment : 20.01.2026

1. Heard Mr. Justin Magh, the learned counsel for the petitioner. Also heard Ms. A. Ayemi, the learned Government Advocate appearing for the State Respondents.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, Shri Agwenye Magh, praying for issuance of writ in the nature of mandamus against the respondent authorities for regularization of his service.
3. The facts relevant for consideration of the instant writ petition, in brief, are that the petitioner was appointed as a work-charged labour in a fixed pay of Rs. 375/- per month by office Order No. PHE/NC/WC/EST-1/PT-2/90-91/656-41

dated Kohima the 8th July 1991 and was posted as Tesophenyu village. Thereafter, by office Order dated 5th March 2021, the petitioner's service was upgraded to work-charged khalashi and he was granted scale of pay at the scale of Rs. 3,000-15,200/- per month with grade pay of Rs. 1,300/- as per Government Administrative Order w.e.f. 01.03.2021. The petitioner has completed 34 years of service and is due to retire from service on 31.08.2026.

4. Mr. Justin Magh, the learned counsel for the petitioner has submitted that the petitioner had completed 30 years of continuous service in the month of August 2021 and is eligible for regularization of his service in terms of Office Memorandum No. AR-3/GEN-201/2009 dated 17th March 2015. He submits that in spite of the petitioner being eligible under the aforesaid Office Memorandum to get regularization of his service same was not done by the respondent authorities. He also submits that on 21.11.2022 the petitioner submitted a representation to the respondent authorities for regularization of his service; however, nothing was done on his representation.
5. The learned counsel for the petitioner has submitted that the State Respondents had resorted to subterfuge and deceitfully exploited the petitioner by utilizing his services, however, at the same time not regularizing his services

though he is entitled to such regularization in terms of the aforementioned Office Memorandum.

- 6.** The learned counsel for the petitioner has submitted that the petitioner has devoted his entire life in rendering service to the State and is due for retirement on 31.08.2026, however, his services are not yet regularized by the Government in spite of having clear policy to do so in terms of Office Memorandum of dated 17.03.2015 and thereby, the State Respondents have violated the fundamental rights guaranteed to the petitioner under Articles 14, 15 and 21 of the Constitution of India. Hence, he prays for issuance of necessary directions to the State Respondents for regularization of the petitioner's service.
- 7.** On the other hand, Ms. A. Ayemi, learned Government Advocate representing the State Respondents has submitted that initially, the petitioner was found eligible for regularization in terms of the Office Memorandum dated 17.03.2015 as he has completed 30 years of continuous service and also enjoying scale of pay. Accordingly, the proposal for his regularization was forwarded to the Government, by respondent No. 4 by letter dated 7th July 2022 and the response of the Government was awaited. However, after the submissions made by the learned Government Counsel at the time of final argument she has

informed this court that by letter dated 01.08.2025 addressed to her by the Additional Chief Engineer (PHED), Nagaland, Kohima it has been informed to her that the Finance Department on 21.06.2023 has rejected the case of petitioner, along with 12 other employees on the ground that the extant orders does not permit grant of scale pay to fixed pay work-charged employees and has advised the Government to withdraw the scale of pay. It is also stated in the said letter that the petitioner's case is not covered under Office Memorandum dated 05.03.2025 and that the case of the petitioner would be considered after receipt of proposal regarding same in terms of Office Memorandum dated 05.03.2025. It is also submitted that the petitioner's case would have to be considered only after clearance of the proposal by Personnel and Administrative Department, Finance Department, Manpower Rationalization Committee and Cabinet Approval.

- 8.** I have considered the submissions of learned counsel for both sides and have gone through the materials available on record. I have also gone through the Office Memorandum relied upon by the learned counsel for respective sides.
- 9.** On perusal of Annexure-A to the writ petition, i.e., the office order dated 16th July 1991, it appears that on the said date the petitioner was appointed as work-charged labour at a

pay of Rs. 375/- per month. It also appears that by office order dated 5th March 2021, the petitioner's services were upgraded to work-charged khalasi in the scale of pay of Rs.3,000-15,200/- per month with grade pay of Rs. 1,300/- as per Government Administrative Order No. PHE-1/ESTT/131 / 2021 dated 26th February 2021 with effect from 1st March 2021.

10. It also appears that as per the terms of Office Memorandum dated 17th March 2015, any work-charged and casual employees in scale of pay who have completed 30 years of continuous service after 01.01.2015, their cases for regularization would have to be taken up subsequently in two batches as on 1st July and 1st January every year in terms of the aforesaid Office Memorandum. It appears that the petitioner had completed 30 years of continuous service in the month of August 2021. Hence, as per the Office Memorandum, his case for consideration of regularization ought to have been considered on 1st January 2022. However, the State Government has failed to do so. It also appears that thereafter, the petitioner filed a representation for regularization of service. However, even after receipt of said representation, the case for regularization is only kept in the process of consideration.

11.After going through the Office Memorandum dated 17th March 2015, which was in force when the petitioner had completed 30 years of continuous service, i.e., in the month of August 2021, it appears that the petitioner is entitled to the regularization of his services in terms of the aforesaid Office Memorandum.

12.It appears that the Finance Department has objected to grant of scale of pay to the petitioner on the ground that extant orders does not permit grant of scale of pay to fix paid work-charged employees. To arrive at the said decision, it had relied on the Office Memorandum No. AR-3/GEN-67/2001 dated 5th March 2025. It appears that the scale of pay was granted to the petitioner way back in the year 2021 by office order dated 5thMarch 2021 after getting Government administrative approval on 26th February 2021. At that time the Office Memorandum No. AR-3/GEN-67/2001 dated 5th March 2025 was not there, hence, the reasoning given by the Finance Department that the case of the petitioner is not covered by Office Memorandum dated 5thMarch 2025 is preposterous and not acceptable.

13.Further, as the proposal sent to the Government by the Chief Engineer (PHED), Nagaland on 7th July 2021 was in respect of regularization and absorption in terms of the

Office Memorandum dated 17th March 2015 and not for grant of scale of pay as the petitioner was already getting scale of pay since the year 2021.

14. Since the petitioner had completed 30 years of continuous service in the month of August 2021, it was incumbent on the State Respondents to consider his case for regularization in terms of Office Memorandum dated 17.03.2015 in the month of January 2022. However, same has not been done and the Finance Department has raised an unreasonable objection regarding scale of pay to the petitioner and has not cleared his case for regularization. The petitioner has rendered 34 years of service to the State and in terms of the Office Memorandum of the Government itself, he is entitled to get the regularization of his services. He was so entitled in the month of January 2022 itself. Now, so belatedly, the State Government cannot take a plea that his case is not covered under the provision of Office Memorandum dated 5th March 2025, which was not in force when the petitioner had completed 30 years of continuous service and was eligible for regularization. The Government cannot deny the legitimate benefit of regularization to an employee who is otherwise found eligible for such regularization in terms of Office Memorandum dated 17th March 2025. Such an act would be regarded as exploitative and against the

fundamental rights guaranteed to the petitioner under Article 21 of the Constitution of India.

15. The State Respondents are therefore directed to regularize the services of the petitioner in terms of Office Memorandum dated 17.03.2015 within the period of 3(three) months from the date of this judgment.

16. This writ petition is accordingly disposed of.

17. 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