

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5807 OF 2017

NAGALAND PUBLIC SERVICE COMMISSION
(THROUGH ITS CHAIRMAN) & ANR.

APPELLANT(S)

VERSUS

SMT. PHUHOLI SEMA & ORS.

RESPONDENT(S)

O R D E R

The present Civil Appeal has been filed by Nagaland Public Service Commission (through its Chairman) [henceforth "NPSC"] and the Secretary, NPSC against the impugned judgment of the Division Bench of the Gauhati High Court dt. 17.12.2012 in W.A. No.8(K) of 2012. By the impugned judgment, the High Court dismissed the appeal filed by the appellants herein against the judgment and order of the learned Single Judge of the High Court dated 11.06.2012 in W.P.(C) No.76(K) of 2011.

2. Briefly stated, the facts of the case are that the Respondent No.1 herein, Smt. Phuholi Sema was initially appointed as a Typist and by subsequent promotions, reached the post of Upper Division Assistant (UDA) in the NPSC. During her functioning as the UDA (Exam Branch), NPSC conducted examinations for Nagaland Civil Services, Nagaland Police Services and other allied services.

3. By order dated 02.03.2009, the Secretary, NPSC placed Respondent No.1 on suspension in exercise of powers conferred by

Rule 6(1) of the Nagaland Services (Discipline and Appeal) Rules, 1967 [hereinafter "Service Rules, 1967"]. The allegation was that Respondent No.1 along with her colleague tampered with 42 answer scripts of 11 candidates of the aforementioned examinations by replacing the actual answer scripts written in the examination with new answer scripts written outside the examination hall. It is relevant to note that, in this regard, FIR No.22/2009 dated 03.03.2009 was also registered in PS Kohima (North).

4. On 22.07.2009, the Secretary, NPSC forwarded the Memorandum of Charges to the respondent. In response, the respondent submitted her written statement denying all the charges contained in the Annexure to the Memorandum. Thereafter, on 10.08.2009, in exercise of powers conferred under Rule 9(2) of the Service Rules, 1967, Sri Hukato Swu, Additional District and Sessions Judge, Vigilance Commission, Kohima was appointed as the Inquiry Officer in the Tribunal for Disciplinary Proceedings, Vigilance Commission to enquire into the charges framed against the respondent.

5. The Tribunal for Disciplinary Proceedings conducted the proceeding being Tribunal Case No.9 of 2009. Vide report No.TRL/9/2009 dated 14.01.2010, the Tribunal found that the respondent failed to maintain absolute integrity and acted in a manner unbecoming of a government servant and that she has violated Rule 4(1)(ii) and (iii) of the Nagaland Government Servants Service Conduct Rules, 1968 [hereinafter "Service Conduct Rules, 1968"].

6. Based on the above report, the Secretary, NPSC issued a Memorandum dated 16.03.2010 proposing to impose on the respondent the penalty of dismissal under Rule 7(IX) of the Service Rules, 1967. Thereafter, vide Memorandum dated 31.03.2010, respondent was terminated from service.

7. Aggrieved by the above developments, Respondent No.1 challenged the disciplinary proceedings and her dismissal from service by filing W.P. (C) No.76(K) of 2011 before the High Court of Gauhati, Kohima Bench.

8. The High Court, vide judgment and order dated 11.06.2012, allowed and disposed of the writ petition on the ground that the Office Memorandum dated 12.07.1976 necessitated consultation with the Vigilance Commission for a free and fair proceeding and that in this case, the Vigilance Commission was not consulted. Hence, the High Court held that the inquiry was not complete and that, based on such an incomplete inquiry, the Secretary, NPSC could not have taken any view or decision. Consequently, the High Court quashed and set aside the Tribunal Case No.9 of 2009 as well as the dismissal order dated 31.03.2010.

9. Aggrieved by the above judgment, the appellants herein filed an appeal W.A.No.8(K) of 2012 before the Division Bench of the Gauhati High Court. The High Court, vide impugned judgment and order dated 17.12.2012, dismissed the appeal for the following reasons.

(i) First, the High Court referred to Regulation 19 of the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008 which provides as follows:

"19. In respect of any matter for which provision is not made by these regulations, the conditions of service of a person serving as a member of the Commission or its staff shall be governed by the rules and orders for the time being applicable to such grades of Government servants as shall be specified by the Governor."

(emphasis supplied)

The High Court observed that no order of the Governor specifying the adoption of the Service Conduct Rules, 1968 or any provision thereof was referred to by the appellants herein and therefore, the provisions of the Service Conduct Rules, 1968 could not be made applicable to the facts of this case.

(ii) Second, the High Court opined that there cannot be any other means to hold any statutory Rule or Regulation applicable within the ambit of Article 318 of the Constitution of India, except as specified in terms of Regulation 19 of the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008.

10. Based on the above observations, the High Court held that the misconduct of which Respondent No.1 was charged, cannot stand the test of law and thus, Respondent No.1 could not have been charged under the misconduct as defined and provided in Rule 4(1) of the Service Conduct Rules, 1968. As a consequence, the High Court quashed the Memorandum dated 22.07.2009, the proceeding of

the Tribunal Case No.9 of 2009, the Order dated 10.08.2009, the Inquiry Report dated 14.01.2010, and the Office Memorandum dated 31.03.2010 and dismissed the appeal filed by the appellant.

11. The High Court also directed the appellants to restore the status of Respondent No.1 as the UDA forthwith, if such restoration is not deterred by any other order passed by the competent authority, within a period of three months providing all consequential pecuniary and service benefits.

12. As no action was taken despite the expiry of three months, Respondent No.1 filed Contempt Petition (C) No.200/2013 before the High Court.

13. Being aggrieved by the impugned judgment and order of the High Court in W.A.No.8(K) of 2012, the appellants filed SLP (C) No.24232 of 2013. This Court, vide order dated 26.07.2013, issued notice and stayed the impugned order of the High Court and the contempt proceedings.

14. Meanwhile, in the trial in Criminal Case G.R. No.40/2009 arising out of FIR No.22/2009, the Judicial Magistrate First Class, Kohima acquitted Respondent No.1 vide order dated 07.10.2016. On appeal by the appellants herein in Criminal Appeal No.01/2017, the District and Sessions Judge, Kohima dismissed the same. There was no appeal filed before the High Court against the judgment of the Sessions Court.

15. We have heard Ms. Pinky Behera, learned counsel for the appellant(s)/Nagaland Public Service Commission and another and Ms. Jyotika Kalra, learned counsel for respondent no.1 at length and perused the impugned orders of the Division Bench of the High Court as well as the learned Single Judge.

16. We are in complete agreement with the reasoning of the High Court. In the circumstances, we find no merit in this appeal. The Civil Appeal is hence dismissed.

17. However, we find that during the pendency of this appeal before this Court, respondent no.1 has retired from service inasmuch as she has attained the age of superannuation. The High Court had directed reinstatement of respondent no.1 in service with all consequential pecuniary and service benefits. Since, the said direction cannot be implemented in toto on account of superannuation of respondent no.1 and the fact that since March, 2010 till the date of superannuation, respondent no.1 was not reinstated and has not worked, in lieu of the salary that she is entitled to for the

said period, she will be paid only 50% of the said salary for the said period.

18. However, she will have the benefit of continuity of service and all consequential monetary benefits shall enure to the benefit of respondent no.1 on her superannuation.

19. The benefits shall be arrears of 50% of salary and pension, which shall be computed within a period of three months from the date of release of this order and shall be paid to respondent no.1. However, it is made clear that the entire salary shall be taken into consideration for the purpose of fixation of pension although only 50% of the salary shall be released to Respondent No. 1 for the relevant period.

The appeal is disposed of in the aforesaid terms.

Pending application(s) shall stand disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
MAY 15, 2025

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5807/2017

NAGALAND PUBLIC SERVICE COMMISSION
(THROUGH ITS CHAIRMAN) & ANR.

Appellant(s)

VERSUS

SMT. PHUHOLI SEMA & ORS.

Respondent(s)

[AS ITEM NO. 101]

Date : 15-05-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Appellant(s) : Ms. Vibha Datta Makhija, Sr. Adv. (Not present)
Ms. Pinky Behera, AOR
Mr. Praveen Gaur, Adv.
Mr. Davies, Adv.
Mr. Kl Michael, Adv.
Ms. Nehaol Sri Lv, Adv.

For Respondent(s) : Mr. Bhaskar Y. Kulkarni, AOR
Mrs. Jyotika Kalra, Adv.
Mr. Harshal Kulkarni, Adv.
Mrs. Annwasha Dev., Adv.
Mr. Rishi Madan, Adv.
Ms. Tenzing Doma Lepcha, Adv.

Mr. Amit Kumar Singh, AOR
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Civil Appeal is disposed of in terms of the signed
order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)