

GAHC020004912022



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

Case No. : WP(C)/175/2022

SMTI. PILONGLA SANGTAM
W/C LABOUR, O/O EXECUTIVE ENGINEER,
PWD (R AND B), KIPHIRE DIVISION, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF NAGALAND
WORKS AND HOUSING DEPARTMENT, NAGALAND KOHIMA

3) THE ENGINEER-IN-CHIEF
NPWD, NAGALAND KOHIMA

4) THE CHIEF ENGINEER
PWD (R AND B), NAGALAND KOHIMA

5) THE EXECUTIVE ENGINEER
PWD (R AND B), KIPHIRE NAGALAND

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 29-04-2023

Heard Ms. V. Therie, learned counsel for the petitioner. Also heard Mr. Moa Imchen, learned Senior Government Advocate.

2. By filing this writ petition, the petitioner prays for a direction for granting scale of pay to the petitioner.

3. The case of the petitioner is that she was appointed as a Work-charged Labour by the order dated 20.08.2000 under the Office of the Executive Engineer, PWD(R&B), Kiphire division, Nagaland. She has been serving the department for more than twenty-two years as on 20.06.2022. The petitioner approached the Chief Engineer, PWD(R&B), Kohima, Nagaland, for granting scale of pay but the same has not yielded any result till date.

4. The learned counsel submits that as many as 706 (seven hundred and six) similarly situated employees have been upgraded to scale of pay since the year 2000 till 2021, however, the department has not considered the case of the petitioner for granting scale of pay as that of the similarly situated employees.

5. Drawing the attention of this Court to the Annexure-4B, issued by the department dated 12.07.2022, whereby a list of 706 (seven hundred and six) work-charged employees have been granted scale of pay since 2000 up till 2021, the learned

counsel for the petitioner submits that as on date she has been receiving Rs. 5,280/- out of which she has to support her three children.

6. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of ***State of Punjab vs. Jagjit Singh and Ors***, reported in ***(2017) 1 SCC 148*** and also judgment of this Court passed in ***State of Nagaland vs. Smti. Hesheni Sumi*** in ***WA 25/2022***.

7. Mr. Moa Imchen, learned Senior Government Advocate by relying on the contention made in para 4 of the affidavit-in-opposition submits that Hon'ble Apex Court in the case of ***Ekta Shakti Foundation vs. Government of NCT Delhi*** in ***WP(C) No. 232/2006*** held that policy decision must be left to the Government alone as such the Court cannot direct the State Government to do anything that is not in the rules. He further submits that it a settled position in law that a wrong decision or a wrong judgment in favour of one person does not entitle any other party to claim benefit on the basis of the wrong decision. Having submitted that the learned Senior counsel submits that in view of the facts and circumstances of the case, this Court may pass any order deemed appropriate taking into account the relevant laws laid down by the Hon'ble Supreme Court as well as this Court.

8. I have considered the submissions advanced by the learned counsel for the parties.

9. On consideration of the submission as well as materials available on record, it is noticed that the petitioner, who was appointed in the year 2000 with initial pay of Rs. 750/- per

month and which was enhanced to Rs. 5,280/-, is still working in the department. The nature of work, duties and responsibilities of the petitioner seems to be same as that of the 706 (seven hundred and six) work-charged employees who had been given the scale of pay since 2000-2021, therefore, this Court is of the view that there is no reason why the petitioner should be left out in granting the scale of pay as that of the similarly situated work-charged employees. This Court has also taken note of the judgment and order of Division Bench of this Court in WA No. 25/2022 in the case of ***State of Nagaland vs. Smti. Hesheni Sumi***, whereby the Division Bench had dismissed the appeal by the State against the direction for granting scale of pay by the learned Single Judge in the said case.

10. In the case of ***State of Punjab vs. Jagjit Singh and Ors.*** (supra) the Hon'ble Court has held as under:-

"57. There is no room for any doubt that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under [Article 141](#) of the Constitution of India. The parameters of the principle have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities.

Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein [Article 7](#), of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"[7](#). The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under [Article 141](#) of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."

- 11.** By applying the dictum of ***Jagjit Singh's*** case (supra) this Court is of the view that the present petitioner has been treated with differently with that of the similarly situated work-charged employees of the State who is also engaged for the same work, duties and responsibilities which is not permissible under the law. **12.** In view of the above, the State respondents are directed to consider the case of the petitioner for granting scale of pay of work-charged employees as that of the similarly situated 706 (seven hundred and six) work-charged employees of the State within a period of two months from the date of receipt of certified copy of this order.
- 13.** Accordingly, this writ petition is disposed of.

Sd/-
JUDGE

Comparing Assistant