

A THE STATE OF NAGALAND & ORS.

v.

NISHEVI ACHUMI

B (Civil Appeal No. 4223 of 2022)

JULY 11, 2022.

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

- Service Law – Family pension – Claim of – Husband of the respondent-wife died in harness as work-charge employee in the year 2005 – In the year 2017 i.e. after period of twelve years from the death of deceased employee, the respondent-wife filed a writ petition and claimed the services of her late husband ought to have been regularized and therefore she is entitled to family pension – Single Judge of the High Court directed the State to regularize the services of respondent's husband one day prior to his demise so that respondent gets entitled to pensionary benefits – Aggrieved, State filed appeal before the Division Bench of the High Court, which was dismissed – On appeal, held: Deceased employee never claimed any regularization during his lifetime – Respondent claimed regularization twelve years from the death of the deceased employee – At the time of death, the employee was much below in the seniority list of work charge employees whose services were to be regularised – High Court committed error in issuing direction to regularise the services of the deceased employee one day prior to his death – Judgment and order of High Court unsustainable and set aside.*

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4223 of 2022.

G From the Judgment and Order dated 19.04.2021 of the High Court of Gauhati (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh) Kohima Bench in Writ Appeal No. 21 of 2019.

Ms. K. Enatoli Sema, Amit Kumar Singh, Ms. Chubalemla Chang, Advs. for the Appellants.

The Judgment of the Court was delivered by

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**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 19.04.2021 passed by the High Court of Gauhati at Kohima in Writ Appeal No.21 of 2019 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge directing the appellant – State to regularize the services of the deceased husband of the respondent from one day earlier to his death and thereafter to pay the family pension to the Respondent, the State has preferred the present appeal.

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2. The deceased husband of the respondent was working as work-charge Jugali. He died in harness on 28.08.2005 as work-charge employee. That in the year 2017 and after a period of twelve years from the death of the deceased employee, the respondent herein the widow/wife of the deceased employee filed a writ petition before the learned Single Judge claiming that the services of her late husband ought to have been regularized and therefore, she is entitled to the family pension. The learned Single Judge allowed the said writ petition and directed the appellant – State to regularize his services from one day prior to the date of his demise so that the respondent herein – original writ petitioner and her family members are entitled to pensionary benefits.

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2.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the appellant – State had preferred the appeal before the Division Bench of the High Court. By the impugned judgment and order the Division Bench of the High Court has dismissed the said appeal and has not interfered with the judgment and order passed by the learned Single Judge regularizing the services of the respondent's husband one day prior to his demise. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court and not interfering with the judgment and order passed by the learned Single Judge, the State has preferred the present appeal. Though served nobody appears on behalf of the respondent.

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3. Ms. K. Enatoli Sema, learned counsel appearing on behalf of the State has vehemently submitted that the impugned judgment and order passed by the High Court directing the appellant – State to regularize the services of the deceased employee one day prior to his

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- A demise is absolutely unsustainable. She has made the following submissions:
- (i) That during his life time, the deceased employee never claimed regularization;
  - B (ii) That the respondent - original petitioner - widow claimed regularization after a period of twelve years from the death of the deceased employee;
  - C (iii) Even otherwise the deceased employee was not entitled to regularization even on the date of his death as he was much below in the seniority list and his turn had not come for regularization;

- 3.1 Learned counsel appearing on behalf of the State has further submitted that assuming that the services of the work-charge employee were required to be regularized in that case also as per the scheme the services of the work-charge employee were to be regularized as per seniority and as and when the vacancy arises. It is submitted that all those work-charge employees whose services were regularized was much after the death of the deceased employee and that too as per the seniority. It is submitted that therefore at the time of the death of the deceased employee he was much below in the seniority list and therefore his services were not required to be regularized as his turn had not come. It is submitted that therefore the High Court has committed a grave error in directing the appellant to regularize the services of the appellant one day prior to his death.

- Making above submissions it is prayed to allow the present appeal.
- F 4. Having heard learned counsel for the State and considering the submissions made on behalf of the State and having gone through the judgment and order passed by the learned Single Judge confirmed by the Division Bench, we are of the firm opinion that the High Court has committed a grave error in directing the appellant to regularize the services of the deceased employee one day prior to his death.

- G 4.1 It is required to be noted that the deceased employee died in the year 2005. During his lifetime he never claimed any regularization. That the respondent herein – original writ petitioner - wife of the deceased employee claimed the regularization after a period of twelve years from the death of the deceased employee. At the time of the death of the

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deceased employee he was not entitled to regularization as he was much below in the list of the worked charge employees whose services were to be regularized. Under the Regularization Policy the services of the work-charge employees were required to be regularized as per the seniority and as and when the vacancy arises. The services of the other work-charge employees even who were senior to the deceased employees were regularized in the year 2009 i.e. after the death of the deceased employee. Despite the above, the High Court has directed the State to regularize the services of the deceased employee one day prior to his death, which otherwise his services were not required to be regularized as his turn had not come and he was much below in the seniority list.

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4.2 Considering the aforesaid facts and circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.

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5. In view of the above and for the reason stated above present appeal is allowed. The impugned judgment and order passed by the Division Bench of the High Court as well as the learned Single Judge is hereby quashed and set aside. Consequently, the original writ petition filed by respondent - wife herein stands dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

Ankit Gyan  
(Assisted by: Aarsh Choudhary, LCRA)

Appeal allowed.