

GAHC010121732015



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

**Case No. : WP(C)/6105/2015**

DR. MISS JOGMAYA SAIKIA  
D/O LT. KAMALAKANTA SAIKIA, EX-LECTRER, NATIONAL INSTITUTE OF  
TECHNOLOGY, SILCHAR, PRESENTLY A R/O SAIKIA BHAWAN, R.K. ROAD,  
ITACHALI, P.O. NAGAON, DIST- NAGAON, ASSAM, PIN-782001

VERSUS

UNION OF INDIA and 5 ORS,  
THROUGH THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF EDUCATION  
DEPTT., NEW DELHI-1

2:THE NATIONAL INSTITUTE OF TECHNOLOGY  
SILCHAR  
REP. BY ITS DIRECTOR  
SILCHAR  
ASSAM  
PIN-788010

3:THE DY. REGISTRAR A  
NATIONAL INSTITUTE OF TECHNOLOGY  
SILCHAR  
ASSAM  
PIN-788010

4:THE ASSTT. REGISTRAR  
NATIONAL INSTITUTE OF TECHNOLOGY  
SILCHAR  
ASSAM  
PIN-788010

5:THE ACCOUNTANT GENERAL  
NAGALAND

KOHIMA-797001

6:THE DY. OF EDUCATION  
GOVT. OF NAGALAND  
REP. BY ITS SECY.  
KOHIMA-79700

**Advocate for the Petitioner** : MR.S BANIK, ADVOCATE

**Advocate for the Respondent** : MR.S P CHOUDHURY, ADVOCATE  
MRS. M. KECHII, ADDL. AG, NAGALAND

**BEFORE**  
**HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

**JUDGMENT**

**Date : 29.02.2024**

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. S. P. Choudhury, learned counsel for the respondent Nos. 2, 3 and 4 and Ms. M. Kechii, learned Addl. Advocate General, Nagaland for the respondent No.6.

2. The case of the petitioner in brief is that she joined as Assistant Teacher in the Government High School, Kohima, Nagaland on 03.10.1967. While she was serving as such, the petitioner applied through proper channel in response to an Advertisement issued by the erstwhile Regional Engineering College, Silchar (now National Institute of Technology, Silchar). The petitioner was selected by the Regional Engineering College, Silchar and she joined as Lecturer in the Department on Humanities and Social Sciences on 06.04.1984. While she was serving as Lecturer in the Regional Engineering College, Silchar, the petitioner was on lien leave under the State of Nagaland. In the meantime, petitioner applied for voluntary retirement from her service as Assistant Teacher,

Government High School, Kohima on completion of 20 (twenty) years service which was granted by the Government of Nagaland. While granting the voluntary retirement, the Government of Nagaland calculated the period of 3(three) years 4(four) months and 25(twenty five) days rendered by the petitioner at Regional Engineering College, Silchar for completing the said period of 20 (twenty) years service to enable her to go on voluntary retirement.

3. The Regional Engineering College, Silchar, was converted to the National Institute of Technology on 28.06.2002. After availing voluntary retirement, the Government of Nagaland paid monthly pension to the petitioner which is continuing till today. However, the National Institute of Technology, Silchar deducted the amount of pension received by the petitioner from her monthly salaries till her retirement on 31.12.2004. The petitioner is aggrieved by the communication dated 14.11.2014, written by the Assistant Registrar, National Institute of Technology Silchar and addressed to the petitioner, wherein, it is stated that as the petitioner was granted the benefit of voluntary retirement by the Government of Nagaland and subsequently re-employed in REC Silchar, presently NIT Silchar, petitioner is not entitled to get second pension from the Institute in terms of Rule 7(2) of the CCS (Pension) Rules 1972. It is the case of the petitioner that as her pension amount was deducted from her salary by the NIT Silchar till her date of retirement, she is entitled to get pensionary benefits from the NIT. It is the further case of the petitioner that she was not under re-employment in the service of the NIT and therefore, Rule 7(2) of the CCS (Pension) Rules 1972 is not applicable to her and therefore, she is entitled to get pensionary benefits from the NIT, particularly, when her pension amount from the Government of Nagaland was deducted from her monthly salary till her

retirement on 31.12.2004.

4. Mr. S. P. Choudhury, learned counsel appearing for the respondent Nos. 2, 3 and 4 i.e., National Institute of Technology Silchar on the other hand submits that after the petitioner was appointed as Lecturer in the Department of Humanities and Social Sciences in the erstwhile REC Silchar, the petitioner maintained lien to the post of Assistant Teacher under the Government of Nagaland till her confirmation in the REC Silchar. While calculating the qualifying service for voluntary retirement from the Govt. of Nagaland the period of 3(three) years 11(eleven) months and 25(twenty five) days which was rendered by the petitioner at REC Silchar was taken into account for arriving at the qualifying service of 20 years for voluntary retirement. Further, the Board of Governors in its 61<sup>st</sup> meeting under Item No.9, had treated the petitioner as a re-employed pensioner w.e.f 01.04.1988. Thereafter, the Principal, Regional Engineering College, Silchar by an order dated 16.10.1993, had treated the service of the petitioner as re-employed pensioner w.e.f 01.04.1988, under the Regional Engineering College, Silchar. It is submitted that the said order dated 16.10.1993 is not under challenge and the petitioner had accepted the said order and therefore, petitioner cannot claim that her employment in the REC (now NIT Silchar) is a regular employment and not a re-employment. In the said circumstances, the learned counsel for the respondents submits that there is no merit in the present writ petition and is liable to be dismissed.

5. I have heard the learned counsel for the parties.

6. The first consideration before this Court is whether the employment of the petitioner in the REC Silchar (now NIT Silchar) is a re-employment or a regular service as Lecturer in the Department of Humanities and Social Sciences. This Court has perused the records produced by the learned counsel for the respondent Nos. 2, 3 and 4. This Court has also perused the order dated 16.10.1993, issued by the Principal, Regional Engineering College, Silchar and the same is reproduced herein below:

*“REGIONAL ENGINEERING COLLEGE*

*SILCHAR (ASSAM) 786 010*

*Office Order No.578*

*Dated Silchar, the 16.10.1993*

*In pursuance of the decision of the Board of Governors taken in its 61<sup>st</sup> meeting under Item-9 and consequent upon undergoing voluntary retirement by Dr. (Miss) J. Saikia, w.e.f 1-4-88 from her parent deptt. Education Deptt. Govt. of Nagaland, Kohima, the services of Dr. (Miss) Jagomaya Saikia, Lecturer in Humanities of this Institution is treated as re-employed pensioner w.e.f. 1.4.88.*

*Accordingly, the pay of Dr. (Miss) Jagomaya Saikia, Lecturer in Humanities is refixed under Assam Services (Pension) Rules, 1969 as follows, in the scale of pay of Rs.2200-4000/-.*

*Pay as on 1-4-88 Rs.2900. with D.N.I on 1-4-89*

*Less pension Rs.985.00*

*Less P.E.G. Rs.174.07*

*Principal*

*Memo No.RECS/E/Misc/3/80/Vol.3(Pt)/7594-98*

*Copy to:*

*Dated Silchar, the 16/10/1993"*

7. A perusal of the order dated 16.10.1993 would clearly indicate that the employment of the petitioner as a Lecturer in Humanities and Social Sciences under the Regional Engineering College, Silchar is a re-employment and not a regular employment. Rule 7 (2) of the CCS (Pension) Rules 1960 provides that a Government servant who having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment. On a consideration of the Communication dated 14.11.2014, written by the Assistant Registrar and addressed to the petitioner which is impugned in the present writ petition would indicate that after the issuance of the order dated 16.10.1993, the said communication was made wherein, the respondents had invoked the Rule 7(2) of the CCS (Pension) Rules 1972. This Court on perusal of the same does not find any infirmity on the contends of the Communication dated 14.11.2014, inasmuch as the employment of the petitioner in the NIT Silchar is a re-employment and not a regular service.

8. In view of the above, this Court therefore, does not find any merit on the submission of the learned counsel for the petitioner that the petitioner is entitled to get pension from NIT Silchar, particularly, when the NIT Silchar had deducted the pension amount of the petitioner from the Govt. of Nagaland from her monthly salaries till her retirement on 31.12.2004.

9. However, another important point of note is with regard to the deduction of the pension amount paid by the Govt. of Nagaland to the petitioner from the monthly salaries of the petitioner while she was serving under the NIT Silchar. The learned counsel for the respondent Nos. 2, 3 and 4 has failed to show any rule or law which entitles the REC Silchar (now NIT Silchar) to deduct the pension amount from the salaries of the petitioner while she was re-employed under the REC Silchar.

10. This Court after having considered the matter in its entirety is also of the considered opinion that the deduction of the pension amount paid by the Govt. of Nagaland to the petitioner by the REC Silchar is illegal. Accordingly, the REC Silchar (now NIT Silchar) is directed to refund the full pension amount deducted from the salaries of the petitioner from the date she joined in the REC Silchar till her retirement on 31.12.2004. It is made clear that the refund of the pension amount to the petitioner shall be done within a period of 2(two) months from the date of receipt of the copy of the order of this Court.

11. With the above observations and directions this writ petition is disposed of.

**JUDGE**

**Comparing Assistant**