

Serial No. 28
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 277 of 2022

Date of Decision: 04.10.2023

Smti. Janailin Diengngan Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.R. Nath, Adv.

For the Respondent(s) Mr. S. Sen, Sr. GA with
Ms. I. Lyngwa, GA.
Mr. A. Momin, GA.

i) Whether approved for reporting in Yes/No
Law journals etc.:

ii) Whether approved for publication Yes/No
in press:

Oral:

1. The brief facts of the case are that the predecessor in interest of the writ petitioner namely one U Hainsingh Dkhar, on 19.11.1981, had donated a piece of land measuring 0.47 Hectare to the Department of

Soil Conservation Division, Nongstoin Division for construction of office quarters. It appears that thereafter on 27.04.2021, a fresh deed was executed between the mother of the petitioner amongst others and the State respondents indicating therein the renewal of the previous agreement made on 19.11.1981. In the said agreement at Clause – 5, it has been provided that the Donee/Second Party of the respondents herein, was to consider direct appointment of a family member of the donor, as per government policy which was notified on 17.11.2014. Pursuant to this fresh agreement, the respondent No. 4 on consideration thereof, vide Office Order No. 27 dated 10.06.2022, appointed the writ petitioner who was the nominee of the land owners against a vacant post of Plantation Mali. However, by a communication dated 08.06.2022, the said appointment was rescinded by the respondent No. 2, on the premise that the land was donated in the year 1981, prior to the effective date of the notification dated 17.11.2014. Being aggrieved thereby the writ petitioner is before this Court.

2. It has been contended by Mr. H.R. Nath, learned counsel for the petitioner that the fact that a valuable piece of land had been donated to the State respondents for their use, is not disputed and as such, consequently and in all fairness it was incumbent upon the respondents on entering into a fresh agreement to honour the same, which though

initiated has been recalled by the impugned order. He therefore prays that appropriate directions be issued to direct the respondents to afford appointment to the writ petitioner as proposed.

3. Mr. S. Sen, learned Senior GA on behalf of the State respondents has categorically submitted that in the initial agreement, though unregistered as Registration Act had not been made applicable to these areas, it had been stated that no demand will be made by the donors. He has further submitted that from the year 1981 itself, the land in question had stood transferred to the State respondents and as such, the fresh agreement entered into 27.04.2021, is of no significance and in fact a nullity in the eye of law. He therefore contends that as the policy came into being in the year 2014, and the land having been donated as far back as 1981, no right has accrued to the writ petitioner to demand any kind of employment in lieu of the donation that had been made. He lastly submits that, there being no merit in the writ petition, the same deserves no consideration, and if at all, the writ petitioner may seek remedy under private law before the Civil Courts.

4. I have heard the learned counsels for the parties and also examined the materials on record. From the materials, and as submitted, the factum of donation of a piece of land to the respondents is undisputed, as also the fact that a fresh deed of agreement had also been

executed between the successor in interest of the original donor and the State respondents, wherein a clause, namely Clause – 5, had been inserted. For the sake of convenience, the said clause is reproduced herein below:

“5. That the Donee/Second party as a token of gesture toward this noble cause of donation of the land by the First parties, consider direct appointment of a family member of the donor as per Government Policy quoted vide Notification NO. PER (AR) 49/2012/5 dt. 17-11-2014.”

5. It is clear that pursuant to the said fresh agreement and consequent to the condition as contained in Clause – 5 above, the State respondents had considered the writ petitioner for appointment in lieu of the land donated to the government and in this exercise, the Office Order dated 10.06.2022, was issued by the respondent No. 4.

6. From the sequence of events it is clear that, no doubt, though the land had been donated as far back as in the year 1981, wherein the stated policy dated 17.11.2014, was yet to come into force, the State respondents had acted upon the same in considering and affording appointment to the writ petitioner. Though attempts have been made by the learned Senior Government Advocate to demonstrate before the Court that the agreement was a non-starter, and that no reliance could be

placed on the same to assert any right, the culpability of the State respondents, however, has not been addressed or explained in any satisfactory manner before this Court. In the considered view of this Court, the agreement dated 27.04.2021, has been duly registered and signed by the competent authority and as per the policy, if the said donation has been made on that date, consideration was to be given for appointment of a family member. Pursuant to the same, the writ petitioner would naturally have acquired a right for consideration of employment.

7. Though, the situation as it pertains would not render a clear right to the writ petitioner to claim for employment, however, in the totality of the circumstances surrounding the instant case, and the fact that it is now a policy that the State respondents consider a family member for appointment on such donations being made, it is hereby directed, as an exception that the State respondents re-visit the decision of withdrawal of approval for appointment of the writ petitioner as Plantation Mali and to pass effective orders thereon.

8. It is expected that the entire exercise shall be completed within a period of 6(six) weeks from the date a copy of this order is presented before the concerned respondents.

9. It is further made clear that this case will not serve as a precedent for any other case, but the order passed herein above, as noted earlier, is in consideration of the peculiar facts and circumstances surrounding this case.

10. With the above noted directions, this writ application stands closed and disposed of.

Meghalaya
04.10.2023
"D.Thabab-PS"



Judge