

GAHC020000082015



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

Case No. : WP(C)/196/2015

MULELU CHIZO @ MULELU VERO
JERICHO-II COLONY, PHEK TOWN.

VERSUS

STATE OF NAGALAND AND 4 ORS
NAGALAND, KOHIMA.

2:THE COMMISSIONER AND SECRETARY
DEPT. SCHOOL EDUCATION
NAGALAND
KOHIMA.

3:THE DIRECTOR
DEPT. OF SCHOOL EDUCATION
NAGALAND
KOHIMA.

4:THE SUB-DIVISIONAL EDUCATION OFFICER
PHEK
NAGALAND.

5:NUTSEILU TSUTSO
PEON, OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICE,
PHEK, N/L.

Advocates for the Petitioner	: N. Mozhui
	: K. Kire
	: L.L Sangtam

: R. Zutso
: Apila Sangtam

Advocate for the Respondent : N. Angami (Government Adv.)
: A. Zho (R/5)
: Moa Jamir
: Taka Kichu

BEFORE
HONBLE MR JUSTICE KARDAK ETE

J U D G M E N T & O R D E R (O R A L)

Date : 17-04-2023

Heard Mr. N. Mozhui, learned counsel for the petitioner, Mr. N. Angami, learned Government Advocate for the State respondents, and Mr. A. Zho, learned counsel for the respondent no. 5.

2. By means of this petition, the petitioner challenges the Order No. ED/EST/GR-IV/APPT/SDEO-PHEK/2011-12/185 dated 20.08.2015, by which the respondent no. 5, namely Ms. Nutseilu Tsutso was appointed as Peon on Ad hoc basis under the establishment of the Sub-Divisional Education Officer, Phek. The petitioner also prays for a direction to appoint her to the post of Peon on the basis of land-ownership as per the standing policy issued by the School Education Department dated 03.08.1991.

3. The case of the petitioner is that she is the wife of Mr. Nuchive Vero, the owner of the land wherein the present Sub-Divisional Education Office, Phek is located. In the year 1991, the Department of School Education had framed a policy for recruitment of candidates for various posts under School Education, which was issued *vide* Letter No. EDS (E)- 16/91 dated 03.08.1991. As per the said policy at

Clause-5, it stipulates that direct appointment should be made by the appointing authorities from among the landowners whose ownership of land is certified by the Village Education Committee and Local Administrative Officer.

4. The petitioner claims that she is a matriculate and is eligible for appointment to any Grade-IV post in the Department. When the matter was situated thus, the petitioner came to learn that one Mr. Hunezo, Daftry had taken voluntary retirement and was released *vide* order dated 20.04.2015, and one Mr. Thupukholie, Peon was promoted to the post of Daftry and accordingly a post of Peon was lying vacant under the establishment of Sub-Divisional Education Officer (SDEO), Phek. On coming to know of such vacancy she applied for the said post of Peon on the basis of land ownership by enclosing all the necessary documents, *i.e.* i) Land Ownership Certificate dated 01.05.2015 issued by the Village Council, Phek Village, a statutory body under law, ii) a copy of the Certificate dated 09.05.2015 whereby the Chairman, Phek Village Council described her as the rightful owner of the land wherein the SDEO, Phek is located, iii) the Deputy Commissioner, Phek District Certificate dated 08.10.2015 certifying her as the rightful owner of the land. On receipt of the application for appointment as Peon on land ownership basis the Sub-Divisional Education Officer, Phek, Nagaland *vide* Letter bearing No. SDEO/PK/EST-3 (P)-2015/16 dated 08.05.2015 forwarded the application for appointment on land ownership basis to the Director, Department of School Education, Kohima, Nagaland.

5. The petitioner also contended that the Vero clan of Phek

Village, who are the land owners of the land on which the establishment of SDEO, Phek and the Government Higher Secondary School of Phek is situated, had written a representation dated 02.06.2015, to the Government regarding the donation of land free of cost, and to that effect the clan members had reminded the Government that neither compensation was paid nor any land owner was appointed to Grade-IV post. Thereafter, a reminder was given to the Department to confer preference to the land owners as and when vacancy arises.

6. The petitioner contends that while she was legitimately expecting for consideration for appointment on land ownership basis pursuant to the Government policy which was in vogue, she was surprised to know that the respondent no. 5 has been appointed against the post of Peon under the establishment of the SDEO, Phek *vide* order dated 20.08.2015, for a period of six (6) months on Ad hoc basis, while ignoring the legitimate right of the petitioner as per the policy of the State Government.

7. The learned counsel for the petitioner submits that the appointment of the respondent no. 5 on Ad hoc basis by ignoring the legitimate right of the petitioner being a rightful owner of the land, who has donated free of cost, is totally illegal in as much as there exists a clear-cut policy *vide* letter dated 03.08.1991 wherein at Clause-5 it is clearly stipulated that direct appointment should be made by the appointing authorities from amongst the land owners whose ownership of the land is certified by the Village Education Committee and Local Administrative Officer.

8. The learned counsel for the petitioner submits that action of the State respondent is in total violation of its own policy, more particularly Clause-5 of letter dated 03.08.1991 in as much as without considering the case of the petitioner for appointment to the post of Peon on land ownership basis, had instead illegally appointed the respondent no. 5, which needs to be interfered with by this Hon'ble Court and a direction may be issued for consideration for appointment of the petitioner to the post of Peon in the establishment of the SDEO, Phek on the basis of land ownership in pursuance to the policy of the State Government.

9. Mr. N. Angami, learned Government Advocate responding to the submission made by the learned counsel for the petitioner submits that the Government letter dated 03.08.1991 does not provide that all Grade-IV posts should be filled up by the land owners who donated land free of cost to the Government. It only prescribes the manner of appointment in which land owners whose land ownership is certified by the Village Education Committee and Local Administrative Officer can be directly appointed to Grade-IV posts without selection process. As per the records available, the land in question was donated by four (4) clans of Phek Village namely, Vero clan, Lohe clan, Keyho clan and Hoshi Clan. Out of the 14 (fourteen) Grade-IV posts arising at the establishment of the SDEO/ Government Higher Secondary School Phek, nine (9) posts of Grade-IV were filled up by land owners: the petitioner's clan namely, Vero clan has filled up five (5) posts on the basis of land ownership and only four (4) posts are shared by the other three (3) land donor clans. Relying on the affidavit filed by the State respondents the learned Government Advocate further submits that in the interest of justice the Department in

its own wisdom felt that the candidates other than the land owners should also be given the opportunity of employment, as such the private respondent no. 5 was appointed as Peon on Ad hoc basis. However, it is categorically stated that the appointment of the private respondent on Ad hoc basis is a stop-gap arrangement made on exigencies till such time the post is filled up by regular selection process.

10. The learned Government Advocate submits that during the pendency of the present writ petition by Notification dated 05.03.2018 the Government has formulated and come out with a new policy with regard to the appointment to the Grade-IV posts under the Government of Nagaland on land ownership basis. The relevant portion of the Notification is reproduced as under:

"2. Old cases where Administrative Headquarters and Block Headquarters were set up in various parts of the State on the lands donated freely by individuals, villages or people of that areas should not be reopened for compensation or for employment in consonance with the policy brought out vide Memorandum No. LR/2-135/76 dated 20.06.1977.

3(a) In other cases prior to 26.07.2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land where a specific written agreement exists providing for employment to the land owners the claim of land owner for employment should be settled in terms of such agreement.

3(b) If there is any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned who shall examine such claim carefully including whether any employment of any other facility including contract or supply order has been given in the past. Written statements from the

witnesses that is, Government officials of the concerned department and the District Administration and Village functionaries present at the time of such oral agreement should be taken by the Deputy Commissioner. The recommendation of the Deputy Commissioner should be referred with relevant documents to the Department of Land Revenue for advice in such cases by the Department concerned.

3(c) It is also clarifies that it is not the policy of the Government to provide employment ot the landowner in perpetuity. The employment if landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointment as landowner in Government service and does not entitle his descendants for further employment on his retirement from service. After the appointed landowner retires or vacates the post, the vacancy will be filled up through open advertisement in consonance with the existing policy giving equal opportunity to all applicants."

By referring to the said Notification dated 05.03.2018 he submits that all earlier office memorandum and notification pertaining to claims of land ownership are either done away with or streamlined.

11. The State counsel further submits that by a judgment and order dated 26.06.2018, a Division Bench of this Hon'ble Court in WA/18 (K)/2013 and WA/19 (K)/2013 in the case of Shri C. Alem Sangtam -vs- Shri N. Atovi & Others, the Hon'ble Division Bench by taking cognizance of the said Notification dated 05.03.2018, particularly Clause-2 laid down the principle of law that if the land was donated free of cost or if there is no written agreement between the land owners and the State Government at the time of donating the land to give appointment in Grade-IV posts no right would flow down to the land owners who have donated land to claim for any appointment on land ownership basis. In the present case, the

learned State counsel submits that the contention of the petitioner is that land was freely donated by Vero clan a long time ago. There is no written agreement between the land owners and the Government. In such a situation the principle of law laid down in WA/18 (K)/2013 squarely covers the case of the petitioner and it bars her to claim any right to appointment at the Office of the SDEO, Phek on the basis of land ownership.

12. The learned State counsel further relied on the judgment and order dated 17.10.2019, of Hon'ble Division Bench of this Court passed in WA/5 (K)/2016 to show that the principle of law has been laid down that just because land was jointly donated by parties it does not mean that they would be entitled to appointment to any Grade-IV posts for indefinite period of time and number and also to show that appointment can be given to limited number of posts and not at all time and it would amount to denial of equal opportunity. And also it barred the appointment on land ownership basis in that particular office in view of the new scheme provided by the Notification dated 05.03.2018. Accordingly, the petitioner has no right to claim for appointment on land ownership basis in view of the judgment and order (Supra) and the new Notification dated 05.03.2018.

13. Mr. A. Zho, learned counsel for the respondent no. 5 vehemently argued that the petitioner has miserably failed to establish any right which warrant adjudication by this Court in as much as in the entire petition nothing is disclosed whether land was donated or was there any agreement to that effect. That apart the petitioner has not challenged the basic order which is approval by the Government and only challenged

the consequential order therefore, no cause has been shown for adjudication in this present petition. The learned counsel for the respondent no. 5 while relying on the case of ***Edukanti Kistamma –Vs- S. Venkata Reddy & Others*** reported in (2010) 1 SCC 756 submitted that it is a settled proposition of law that challenge to the sequential order without challenging the basic order on the basis of which the order has been passed cannot be entertained. In the present case the petitioner has challenged the consequential order and not the basic order which is by way of approval by the Government; therefore, the writ petition cannot be entertained and may be dismissed. At the same time the learned counsel for the respondent no. 5 in his usual fairness fairly admitted that the appointment of the respondent no. 5 is only on Ad hoc basis and admittedly no selection process has been undertaken.

14. I have considered the rival submissions of the learned counsels for the parties and carefully examined the materials available on record.

15. It is an admitted position that the Vero clan to which the petitioner belongs is one of the land owners amongst the four (4) clans who have donated the land in question. The stand of the State respondent that out of the nine (9) Grade-IV posts which have been filled up on the basis of land ownership, five (5) posts of Grade-IV have been from the Vero clan to which the petitioner belongs is not rebutted or disputed by the petitioner.

16. It is also admitted fact that the appointment of the respondent no. 5 to the post of Peon on Ad hoc basis is also not by way of selection process which is against the constitutional scheme of public employment.

No doubt the State respondent has categorically submitted that the appointment is by way of stop-gap arrangement till the required selection process is made by the concerned authority. But then as on date, no selection process has been conducted even after lapse of nearly eight (8) years.

17. Regard being had to the submission of the learned counsel for the respondent no. 5 that challenge to the consequential order without challenging the basic order is not permissible, there is no quarrel on the said proposition of law. The writ petitioner had challenged the Appointment Order which was issued after approval of the competent authority which admittedly was the approval for appointment without due selection process. Even if we consider the approval to be a basic order, the approval itself is illegal. Therefore, the submission of the learned counsel for the respondent no. 5 is considered only to be rejected.

18. Apart from the case law relied on by the learned counsel for the respondent no. 5, *i.e.* *Edukanti Kistamma (Supra)*, a profitable reference may be made to the case of ***Amarjeet Singh & Others –Vs- Devi Ratan & Others*** reported in (2010) 1 SCC 417 wherein the Hon'ble Supreme court has held that challenging the consequential order without challenging the basic order is not permissible.

19. In the present matter, since the approval and the order of appointment are contrary to the constitutional scheme of public employment, the above referred cases are not applicable.

20. This Court also takes note of the fact that during the pendency

of the present writ petition the Division Bench of this Court has already, in the case of WA/18 (K)/2013, WA/19 (K)/2013 and WA/5 (K)/2016, decided more or less similar issues which has attained finality. It is to be taken note that new notification of the Government dated 05.03.2018 has already come into effect which guides the issues involved in the present writ petition, specially claiming of appointment on land ownership basis by the donors of land to the Government for public establishment. Therefore, this Court, in view of the Government notification dated 05.03.2018, which is in vogue, unhesitatingly of the view that same would guide the issue which relates to the donation of land by the individuals, villages or people of the areas free of cost where Administrative headquarters and Block headquarters were set up.

21. Taking into account the judgment and orders (Supra) by the Division Bench of this Court and the Notification dated 05.03.2018, this Court is also of the view that there cannot be policy of the Government to provide employment to the land owner in perpetuity. The employment of land owner if permitted by a verifiable and valid agreement is limited to the person first appointment as land owner in Government service and also does not entitle his descendants for further employment on his retirement from service. After the appointed land owner retires or vacates the post the vacancy will be filled up through open advertisement in tune with the constitutional scheme of public employment.

22. In the case at hand as noted above, five (5) persons have been appointed from the Vero clan which the petitioner belongs to, which has not been disputed by the petitioner. Therefore, the petitioner would

not have any right to claim for appointment on land ownership basis. At the same time, since appointment of respondent no. 5 to the post of Peon is only on stop-gap arrangement without there being any selection process, it also violates the constitutional scheme of public employment seemingly depriving the equally situated persons who are also in the long line of queue for public employment.

23. In view of what has been discussed above, the claim of the petitioner for appointment to the post of Peon on the basis of land ownership is hereby rejected. However, the appointment order dated 20.08.2015 appointing the respondent no. 5 is set aside and quashed.

24. Consequently, this writ petition is disposed of with a direction to the respondent Authorities that the post of Peon under the establishment of the SDEO/Government Higher Secondary School, Phek shall be filled up by way of selection process by giving opportunity to all the eligible candidates including the writ petitioner and the private respondent no. 5. The respondents are also directed to consider for relaxation of the age of the petitioner and the respondent no. 5 and other similarly situated persons in view of the fact that the proceeding in this litigation has taken a considerable time of nearly eight (8) years.

25. No order as to cost.

JUDGE

Comparing Assistant