

GAHC020000762017



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

Case No. : WP(C)/316/2017

Smti. Widunsu,
W/o- N. Elia,
Resident of Jalukie "B" Village,
Peren, Nagaland- 797101

VERSUS

- 1.** The State of Nagaland,
Represented through the Chief Secretary
to the Government of Nagaland, Kohima
- 2.** The Principal Secretary,
to the Government of Nagaland,
Department of School Education,
Nagaland, Kohima
- 3.** The Principal Director,
Department of School Education,
Nagaland, Kohima
- 4.** The District Education Officer,
Peren, Nagaland.
- 5.** Shri Kigum,
Permanent resident of Pailwa Village,
Presently residing at New Jalukie Town,

Under Peren District, Nagaland

6. The Deputy Commissioner,
Peren, Nagaland.

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. N. Longkumer, Advocate

For the Respondent : Ms. V. Suokhrie, Addl. AG,
Nagaland

: Mr. T. Khezhie, Advocate
(for Respondent No. 5)

Date of Hearing : 18.05.2023

Date of Judgment : 30.05.2023

JUDGMENT & ORDER (CAV)

(Mridul Kumar Kalita, J)

1. Heard Mr. N. Longkumer, learned counsel for the petitioner. Also heard Ms. V. Suokhrie, learned Additional Advocate General, Nagaland and Mr. T. Khezhie, learned counsel for the Respondent No. 5.

2. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner herein, namely, Smt. Widunsu, approached this Court impugning the order No. ED/EST/GR-IV/APPT/DEO-PEREN/11-12/281 dated 22.02.2017 whereby the Respondent No. 5 was appointed to the post of peon at Government Higher Secondary School

(GHSS), Jalukie and the approval No. DSE/APPT-PRN/GR-III&IV/19-48/2016/1490 whereby the aforesaid appointment of Respondent No. 5 was approved. The Petitioner has prayed for setting aside the aforesaid appointment order of Respondent No. 5. The Petitioner has also prayed for directing the respondent authorities to appoint her to the said post of Peon at Government Higher Secondary School, Jalukie, on the basis of land ownership, in terms of the agreement dated 02.09.1966 and Notification No. REV/LR-1/95 dated 21.08.2003.

3. The Petitioner has stated in her writ petition that for the purpose of expansion of the township and for setting up of the District Administrative Headquarters at Jalukie, under Peren District of Nagaland, a vast land was acquired by the Government of Nagaland through district administration from Jalukie village (erstwhile Zalukie village) free of cost. In lieu of the donation of the land, an agreement dated 02.09.1966 was executed between the land owners and the Government laying down certain conditions. Condition No. 4 of the said agreement is reproduced herein below:-

“that we decline to take any compensation for the land in question but request that the Government should give every facility to our village in the Town Area such as opening of our village block, allotting plot in the town and preference for government service”.

4. The Petitioner further contends that in order to uphold and safeguard the agreement entered into between the land owners and the Government of Nagaland, a Notification bearing No. REV/LR-1/95, dated

Peren, the 21st August, 2003 was notified, which is reproduced herein below:-

*“GOVERNMENT OF NAGALAND
OFFICE OF THE ADDITIONAL DEPUTY COMMISSIONER : PEREN
NOTIFICATION*

Dt. Peren the 21st Aug'03

NO REV/LR-1/95 This is for General information to all concerned department under Peren Sub-Division that as per the written agreement made between the land owner of Jalukie Old Village and the government of Nagaland at SL No. 4 that first preference shall be given to the land owners for appointment to the post of Grade IV staff and special preference shall be given to the land owners in allocating of small contract works etc.

Hence, all the Heads of Deptts/Officers are hereby requested to safe guard the interest of the land owners who had donated their land to the Govt. for establishments of Admn.(Hqs) while considering the above said appointments/allocation of contract works etc.

*Sd/- ZENEITUO
Addl. Deputy Commissioner
Peren”*

5. The case of the Petitioner, in brief, is that she is a permanent resident of Jalukie 'B' Village, under Peren District of Nagaland and a genuine land owner and had applied for appointment to a vacant post of Peon at Government Higher Secondary School, Jalukie, on land ownership basis, which became vacant due to voluntary retirement of Sri Hungambo, Peon, Government Higher Secondary School, Jalukie. The Petitioner further contends that in support of her application, the Jalukie Students Union had also written to the Minister of the concerned department to consider the case of the petitioner on land ownership basis in light of the aforementioned agreement dated 02.09.1966.

6. Petitioner further contends that against the aforementioned vacant post of Peon, three applications were received by the department including that of the petitioner's, however, to the utter shock and surprise of the petitioner, by order No. ED/EST/GR-IV/APPT/DEO-PEREN/11-12/281 dated 22.02.2017, the Respondent No. 5 was appointed to the said post of Peon, Government Higher Secondary School, Jalukie on *ad hoc* basis for a period of six months.

7. The Petitioner further contends that since the appointment of Respondent No. 5 was made in violation of the agreement dated 02.09.1966 as well as notification dated 21.08.2003, and since the appointment of Respondent No. 5 was made without routing his application through proper channel in a most surreptitious manner, the Petitioner as well as Jalukie Student Union submitted representations to the Principal, Government Higher Secondary School, Jalukie. Thereafter, taking into consideration, the representations made in this regard, the Principal Secretary to the Government of Nagaland, Department of School Education, Nagaland (*Respondent No. 2*) terminated the appointment of the Respondent No. 5 to the post of Peon, Government Higher Secondary School, Jalukie, on 06.04.2017 by order No. ED / EST /GR-IV/ EXTN/ DEO-PEREN /11-12/531 w.e.f. 01.04.2017. Thereafter, by an order dated 06.04.2017, the petitioner was appointed to the post of Peon, Government Higher Secondary School, Jalukie on *ad hoc* basis for a period of one year. The Petitioner also claims that the said appointment was made on the basis of approval given by the Government by its order No. DSE/APPT-PRN/GR-III & IV/19-48/2016 dated 30.03.2017.

8. The Petitioner further contends that against the cancellation order of

the appointment of the Respondent No. 5 as well as appointment order of the Petitioner, the Respondent No. 5 submitted a representation dated 06.04.2017 to the Respondent No. 2 with a prayer to re-instate him in the service on the ground that there is no such agreement between the land owner and the Government as stated by the Petitioner and that the Government had already paid compensation for the acquired land. Basing on the aforesaid representation of the Respondent No. 5, the appointment of the present petitioner which was approved by order dated 30.03.2017 was cancelled and the appointment order dated 10.04.2017 of the Respondent No. 5 was again approved by impugned letter dated 10.04.2017.

9. The petitioner further contends that after knowing about the false information given by the Respondent No. 5, Old Jalukie Village Council submitted a representation dated 12.04.2017 to the Deputy Commissioner, Peren to clarify the misleading information. A counter representation dated 20.04.2017 was also submitted by the Jalukie Students Union to Additional Director (HOD), Directorate of School Education, Kohima, Nagaland for clarifying the factual position. It is further contended by the Petitioner that as there were claims and counter claims as regards appointment to the post in question, the Respondent No. 2 by his letter dated 15.05.2017 requested the Deputy Commissioner, Peren to enquire into the claims and counter claims of both the parties as to whether there was any agreement between the Government of Nagaland and Old Jalukie Village Council. Accordingly, the Deputy Commissioner, Peren conducted an enquiry and submitted his report dated 05.06.2017. It is stated in the enquiry report dated 05.06.2017 that there is an agreement dated

02.09.1966. It is also stated in the said report that the Respondent No. 5 is originally from Puiwa Village who migrated and shifted to New Jalukie village. In the said enquiry report, it was also recommended to cancel the appointment of Respondent No. 5 for greater interest of public.

10. The petitioner further contends that subsequent to submission of the enquiry report by the Deputy Commissioner, Peren, the Government by its letter dated 04.08.2017 to the Principal Director, Directorate of School Education, Nagaland, Kohima (*Respondent No. 3*) conveyed the approval for *ad hoc* appointment of the present petitioner to the post of Peon at Government Higher Secondary School, Jalukie under the establishment of DEO, Peren superceding earlier approval issued in favour of the Respondent No. 5.

However, another letter No. DSE/APPT-PRN/GR-III & IV /19-48/2016 /1490 dated 08.11.2017 was issued by the Under Secretary to the Government of Nagaland reiterating the earlier approval and appointment order of Respondent No. 5 to the post of Peon, Government Higher Secondary School, Jalukie and superceding the approval order issued on 30.03.2017 and 04.08.2017 in favour of the present petitioner. The said letter No. DSE/APPT-PRN/GR-III & IV /19-48/2016 /1490 dated 08.11.2017 is also impugned in the present writ petition.

11. Mr. N. Longkumer, learned counsel for the petitioner, submitted that in the State of Nagaland giving preference to the landowners for appointment to Grade-IV post is a normal practice. He has further submitted that the respondent authorities having full knowledge about the agreement dated 02.09.1966 as well as Notification dated 21.08.2003 appointed Respondent No. 5 to the post of Peon, Government Higher

Secondary School, Jalukie depriving the present petitioner illegally. Mr. N. Longkumer, learned counsel for the petitioner, has submitted that the respondents violated the terms of agreement dated 02.09.1966 regarding preference to be given to the land owners for appointment to Grade-IV post. He also submitted that the respondent authorities also violated the policy dated 05.08.1991 of the Education Department, Government of Nagaland wherein it was decided by the Government that direct appointment to the Grade-IV post should be made by the appointing authorities from the land owners whose ownership of land is certified by Village Education Committee and local administrative officers. Mr. N. Longkumer, learned counsel for the petitioner, has further submitted that on the basis of the findings of the enquiry held by the Deputy Commissioner, Peren, the appointment of the present petitioner was approved by letter dated 04.08.2017, however, within a very short time, the respondent issued the impugned letter dated 08.11.2017 in total disregard to the existing agreement between the Government and the Jalukie Village depriving the petitioner from her legitimate right to be appointed against the said post.

It is alleged by the learned counsel for the petitioner that the actions of the respondent authorities are arbitrary, discriminatory, illegal and violative of the provisions of Articles 14 and 16 of the Constitution of India.

12. On the other hand, Ms. V. Suokhrie, learned Additional Advocate General, Nagaland, while admitting the existence of agreement dated 02.09.1966 executed between the land owners and the Government, has submitted that the land in question was compensated by the Government

by payment of money for 100 acres of land at Jalukie which was received by Sri Nanganghein Zeliang, Chairman Zeliang Kuki Tribal Council on 18.09.1970. It was also submitted by learned Additional Advocate General, Nagaland that a plot of land measuring 16.29 acres was allotted to Government High School for constructions of school building/staff quarters at Jalukie Town. Ms. V. Suokhrie, learned Additional Advocate General, Nagaland, has also submitted that on 22.01.2009 one Sri Heimagumbe was appointed as Sweeper-cum-Chowkidar, on the basis of land ownership of Old Jalukie Village.

13. Ms. V. Suokhrie, learned Additional Advocate General, Nagaland has further submitted that the Jalukie Town Council, Jalukie has been paying a sum of Rs.12,100/- annually to Old Jalukie as a token of gratitude and thankfulness in consideration of the Old Jalukie Village.

14. Ms. V. Suokhrie, learned Additional Advocate General, Nagaland has submitted that as appointment to a Grade-IV post at Government Higher Secondary School, Jalukie was already given to a land owner and as the landowners were compensated fully, the petitioner cannot seek further appointment to the post of Grade-IV on land ownership basis. She has also submitted that the Respondent No. 5 was appointed on the basis of Office Memorandum No. AR-3/Gen-174/2007(Pt) dated 04.06.2016 which provides that all direct recruitment vacancies occurring in Grade-IV post in the district offices shall be filled up by the indigenous inhabitants of the respective districts. Learned Additional Advocate General, Nagaland has also brought to the notice of this Court, the Government Notification No. LR/6-181/LIT-2015 dated 05.03.2018, clause 3(c) of which provides as follows:-

”It is also clarified that it is not the policy of the Government to provide employment to the landowner in perpetuity. The employment of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointed 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”.

Citing the above notification, learned Additional Advocate General submitted that even if there is a valid agreement between the landowners and the Government, the landowners may not claim right to be appointed against all Grade-IV posts in perpetuity. She submits that as already one of the landowner of Jalukie Village was appointed as Sweeper-cum-Chowkidar (a Grade-IV post) in the Government Higher Secondary School, Jalukie, by the Government, the petitioner cannot as of right claim to be appointed against the Grade-IV post of Peon on the basis of land ownership. Mr. N. Longkumer, learned counsel for the petitioner countered the said submissions of learned Additional Advocate General, Nagaland by submitting that the Notification dated 05.03.2018 is prospective in nature and same may not be utilized by the Government for depriving the present petitioner of her claim to be appointed on land ownership basis.

15. Mr. T. Khezhie, learned counsel for the Respondent No. 5 has submitted that for the land in respect of Government Higher Secondary School, Jalukie, the Zeliang Tribal Council has paid adequate compensation to Jalukie Village by giving 50 acres of land to Jalukie

Village and also paying Rs.1,00,000/- as the compensation for such land. He has also submitted that as the land in respect of Government Higher Secondary School, Jalukie falls within the compensated land, the petitioner cannot claim to be appointed against the post of Peon in Government Higher Secondary School, Jalukie on the basis of agreement dated 02.09.1966 and notification dated 21.08.2003 as a matter of right. He has further submitted that the enquiry report submitted by the Deputy Commissioner, Peren has ignored the fact that the agreement dated 02.09.1966 had been invalidated when the compensation for land was duly paid according to resolution of the Zeliang Tribal Council dated 10th to 13th March, 1971. It is also contended that the enquiry report of the Deputy Commissioner, Peren was submitted without inviting all the interested parties during the meeting for verification, hence, the enquiry report is biased and one sided.

16. I have considered the rival submissions made by learned counsel for both the sides. I have also perused the relevant materials on record.

17. On a specific query made by this Court, it was submitted at bar that the Grade-IV post of Peon, Government Higher Secondary School, Jalukie, which is the subject-matter of the present litigation, is a regular sanctioned post and after voluntary retirement of the earlier incumbent, namely, Sri Hungambo from the post of Peon, Government Higher Secondary School, Jalukie, no advertisement for filling up the said post has been made.

18. It appears from the submissions made by learned counsel for the both sides as well as on perusal of materials on record that after the

aforesaid post became vacant, due to voluntary retirement of its earlier incumbent, the Government flip-floped by issuing *ad hoc* appointment orders against the said post in favour of the present Petitioner as well as Respondent No. 5 and then reversing the said appointment order on more than one occasion, without showing any intention of filling up the said posts through proper selection process preceded by an open advertisement.

19. The Petitioner, who claims to be permanent resident of Jaluki "B" Village and a genuine land owner of Jalukie, claims her right to be appointed against the aforementioned vacant post of Peon on the basis of an agreement dated 2nd September, 1966 as well as Government Notification bearing No. REV/LV-1/95 dated 21.08.2003. On perusal of the copy of aforesaid agreement dated 02.09.1966, which is annexed as Annexure-A to the writ petition, it appears that eight persons including Gaonburahs and ex-Gaonburah have put their signatures on the said agreement on behalf of the Jalukie Village in presence of five witnesses. It appears that land bounded on the South by 18th Mile post, on the North by 15th Mile post, on the East by Helerlu River and on the West by Hellalwa Bridge was voluntarily given to the Zeliang Kuki Tribal Council for establishing Divisional Administrative Headquarters by the Government in Jalukie Village. Clause (4) of the said agreement has already been quoted in paragraph No. 3 herein above. On perusal of the same, it appears that the land in question was given to Zeliang Tribal Kuki Council with a request made that the Government should give every facility to Jalukie Village in the Town Area such as opening of Village Block, Allotment of Plot in the Town and preference for Government Service.

20. It also appears from the affidavit-in-opposition filed by the respondent Nos. 1, 2, 3 and 4 as well as from the submission of Ms. V. Suokhrie, learned Additional Advocate General, Nagaland that on 22.01.2009 one Sri Heimagumbe was appointed as Sweeper-cum-Chowkidar, GHSS, Jalukie on the basis of land ownership of Old Jalukie Village. It further appears that there is a policy of Government which has been notified on 5th March, 2018 (Notification No. LR/6-181/LIT/2015 dated 05.03.2018) to the effect not to provide employment to the land owner in perpetuity and the employment of the land owner, if permitted by a verifiable and valid agreement is limited to the person first appointed as land owner in the Government and does not entitle his descendents for further employment on his retirement from service. It also appears that the resolution passed by Zeliang Tribal Council which was held at Jalukie on 10th to 13th March, 1971 wherein it has been stated that from the land given by Jalukie Village to the Tribal Council, the Tribal Council has given back 50 acres of land to Jalukie Village within the given land of Town Area as land compensation as well as the resolution to the effect that the Tribal Council has given to the Jalukie Village, a sum of Rs.1,00,000/- as their land compensation and a plot of land given to Jalukie Village at Dimapur as land compensation was not taken into consideration by the Deputy Commissioner, Peren in his enquiry report dated 5th June, 2017 as same was limited only as regards the existence of agreement dated 02.09.1966.

21. It appears from materials on record that for the land given to the Zeliang Kuki Tribal Council by Jalukie Village for setting up of District Administrative Headquarters, it has been substantially compensated by giving plot of lands and monetary compensation to Jalukie Village. It also

appears one of the land owners was also appointed as Sweeper-cum-Chowkidar, GHSS, Jalukie. Under such circumstances and in view of the terms of Government Notification dated 5th March, 2018, this Court is of considered opinion that all the land owners who donated the land for establishment of District Administrative Headquarters at Jalukie may not claim as of right to be employed against any Grade-IV post which becomes vacant in any Government office at Jalukie in perpetuity, without the Government following a fair recruitment process to fill up any such post. What they may claim is only a preferential treatment, whenever such a post is advertised by the Government, if they otherwise fulfill the all other criteria mentioned in the said advertisement.

22. Hon'ble Supreme Court of India in “***State of Orissa v. Mamata Mohanty***” reported in “***(2011) 3 SCC 436***” has observed as follows:-

“35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : AIR 1992 SC 789] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 :

1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130] , Excise Supdt. v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , Arun Tewari v. Zila Mansavi Shikshak Sangh [(1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331] , Binod Kumar Gupta v. Ram Ashray Mahoto [(2005) 4 SCC 209 : 2005 SCC (L&S) 501 : AIR 2005 SC 2103] , National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319] , Telecom District Manager v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] , State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and State of M.P. v. Mohd. Ibrahim [(2009) 15 SCC 214 : (2010) 1 SCC (L&S) 508] .)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

23. It appears in the instant case that after the post of Peon in question, became vacant at Government Higher Secondary School, Jalukie due to voluntary retirement of its earlier incumbent, no fair recruitment process was conducted by following guidelines as prescribed by Hon'ble Supreme Court of India in the above mentioned case ("**State of Orissa v. Mamata Mohanty**").

24. Even if, there exist an agreement which prescribes giving of preference to land owners in appointment to Grade-IV post, for making

any appointment to such post, a fair recruitment process, as indicated by Hon'ble Supreme Court of India in "***State of Orissa v. Mamata Mohanty***"(*supra*) has to be adopted. No one can claim right to be picked and choosed for appointment to any Government employment *de hors* the fair and transparent recruitment process as indicated by Hon'ble Supreme Court of India as discussed herein above.

25. It appears that Respondent No. 5 was also appointed on *ad hoc* basis and approved against the above mentioned post of Peon, Government Higher Secondary School, Jalukie without following a due process as indicated by Hon'ble Supreme Court of India in "***State of Orissa v. Mamata Mohanty***"(*supra*), hence, his appointment to the said post is hereby quashed and set aside.

26. In view of what has been discussed herein above, the State respondents are directed to publish an advertisement, following the guidelines of Hon'ble Supreme Court of India in "***State of Orissa v. Mamata Mohanty***"(*supra*), for filling up the vacant post of Peon, Government Higher Secondary School, Jalukie, giving option to all eligible candidates to apply for the same and thereafter a proper selection process should be held wherein the Petitioner and Respondent No. 5 should also be allowed to participate. Further, in view of the fact that the present Petitioner and the Respondent No. 5 have already spent a substantial period of time (*more than five years*) in pursuing/defending the present litigation, the State respondents are hereby directed to consider for appropriate relaxation of age of the Petitioner and the Respondent No. 5 and other similarly situated person.

27. The State respondents are directed to comply with the aforesaid

directions and complete the selection process for filling up the vacant post of Peon, Government Higher Secondary School, Jalukie within a period of 6(six) months from the date of this order.

28. This Writ Petition is accordingly disposed of.

JUDGE

Comparing Assistant