

GAHC020001152023



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

Case No. : WP(C)/42/2023

YIMKHIUNG AKHERU ARIHAKO(YAA)
REPRESENTED BY ITS PRESIDENT
MR. KEYOUNGKHUM K, H.Q. SHAMATOR,
NAGALAND, REGD NO.H/RS-282

VERSUS

THE STATE OF NAGALAND AND ANR REPRESENTED BY THE
CHIEF SECRETARY,
NAGALAND, KOHIMA, PIN CODE – 797001

2:THE COMMISSIONER AND SECRETARY PERSONNEL
AND ADMINISTRATIVE REFORMS
DEPARTMENT(ADMINISTRATIVE REFORMS BRANCH)
NAGALAND KOHIMA PIN CODE - 79700

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 26-09-2023

Heard Mr. C.T. Jamir, learned senior counsel for the petitioner along with Mr. Imti Imsong, learned Additional Advocate General for the State respondents.

2. The instant application is filed under Article 226 of the Constitution of India for issuance of the appropriate writ against the State respondents for the non implementation of the O.M. dated 23.03.2022.

3. The case of the petitioner is that the petitioner's community belongs to the Yimkhiung Tribe of Nagaland which is also recognized as one of the backward tribes of Nagaland with special provisions for reservation in public employment. The Tikhir Tribe was conglomeration in the Yimkhiung Tribe along with 6 (six) others tribes having different dialect. The Government of Nagaland vide notification dated 20.10.2022 granted the Tikhir tribe the status of a separate of Naga tribe which was earlier a part of the Yimkhiung tribe and by a notification dated 23.03.2022 included a Tikhir tribe in the list of backward tribe and by the partial modification of Para 1 of the Notification dated 14th April, 2022, directed that 25% of all categories, both gazetted and non-gazetted posts under the Government of Nagaland shall be reserved for the persons belonging to the following 7 (seven) Tribes of 6 (six) districts of Mon, Tuensang, Kiphire, Longleng, Noklak and Shamator, with immediate effect.

4. Mr. C.T. Jamir, learned senior counsel for the petitioner submits that the Yimkhiung and the Tikhir tribe belong to the Eastern Nagaland which earlier consisted of 6 tribes and enjoyed reservation quota of 25 % in all public employment, now with the

recognition of Tikhir tribe as a separate tribe the number of tribes from 6 (six) has increased to 7 (seven) tribes without the enhance of 25% quota for reservation. However, despite the existence of the notification dated 23.03.2022 where it can be clearly understood that 25% reservation quota is to be allocated to 7 (seven) tribes, the recent advertisement and notification for recruitment of Combined Staff Recruitment Examination, 2022 dated 09.09.2022 and in the advertisement issued by the Nagaland Public Service Commission dated 30.09.2022 in Advertisement No. NPSC/EXAM-12/2022 dated 30.09.2022 (NCS, NPS & Allied Services Examination, 2022), it was mentioned that implementation of reservation for backward tribes in the State shall be in accordance with the notification issued vide No. RCBT-5/87(Pt-II) dated **14.04.2011**, 15.06.2012 & 04.09.2015.

5. The learned counsel for the respondents submits that in the notification dated 14.04.2011 25% of all categories, both gazetted and non-gazetted under the Govt. of Nagaland was to be reserved for the persons belonging to 6 (six) tribes namely :

- 1) Konyak
- 2) Phom
- 3) Sangtam
- 4) Yimchunger
- 5) Chang
- 6) Khaimningan.

Thus, the learned senior counsel submits that in the said advertisements, the fact that the tribe Tikhir was recognized as a separate tribe vide notification dated 23.03.2022 has not been taken into consideration and this has caused disparity in the allocation of quota and deprived the persons belonging to both Yimchunger and Tikhir community to enjoy their due share of reservation quota. The learned senior counsel submits that henceforth any advertisement for public employment should take note of the notification dated 23.03.2022 and reservation of 25% should include the tribe of Tikhir along with the existing 6 (six) tribes in the allocation of quota.

6. Mr. Imti Imsong, learned Additional Advocate General on the other hand submits that the writ petition itself is not maintainable for non joinder of a necessary party since the NPSC has not been arrayed as a party to this writ petition. He further submits that the Tikhir tribe will be effected on the implementation of the said notification dated 23.03.2022 and are therefore a necessary party in the instant writ petition.

7. The learned Addl. Advocate General further submits that with regards to the question of reservation quota, the P&AR Department, Govt. of Nagaland in its letter dated 08.05.2023 had written to both the President of Yimkhiung Akheru Arihako (YAA) and Tikhir Students' Union (TSE) with a request to furnish the details of villages and population of both Yimkhiung and Tikhir tribes for consideration with at an early date.

8. The learned Addl. Advocate General further submits that the General Secretary, Ymkhiung Akheru Arihako (YAA) had also submitted a representation in regard to the quota reservation of Yimkhiung tribe wherein the State respondents in its letter date 10.03.2022 had replied that a comprehensive review of the State Reservation Policy is carried out and accepted by the Government. He also submits that the representation was in regards to the increase of quota for backward tribes from 37% to 25% especially for the tribes belonging to the Eastern Nagaland.

9. In rebuttal Mr. C.T. Jamir, learned senior counsel for the petitioner submits that the instant writ petition is not questioning the mentioned notifications/advertisements dated 09.09.2022 & 30.09.2022 issued by the NPSC and therefore they are not required to be made a party in the instant writ petition. He further submits that the Tikhir tribe is also not a necessary party, since the Tikhir tribe will be the beneficiary if the State respondents complied with its own notification dated 23.03.2022. He further submits that the instant petition is for the reservation of 25% quota in Government jobs for 7 (seven) tribes instead of the earlier 6 (six) tribes and is not in anyway connected with the population of the tribes and hence the notification dated 23.03.2022.

10. Having heard the submissions made by both the parties, this court finds that since the advertisements issued by the NPSC dated 09.09.2022 & 30.09.2022 have not been challenged, the NPSC is not a necessary party. This court also finds that the Tikhir tribe will be

benefited if by their inclusion as a separate tribe to enjoy the reservation quota in public employment. They are thus not a necessary party in the instant writ petition.

11. This court finds that in the notification made by the State respondents dated 23.03.2022, wherein it has been clearly state that "In partial modification of Para 1 of this Department's Notification No. RCBT/5/87(Pt-II) dated 14th April 2011, the Governor of Nagaland is pleased to include TIKHIR Tribe, which was recognized as a separate Tribe vide Notification No. HOME/SCST-30/TIKHIR/2022 dated 20th January 2022 as an educationally and economically backward tribe, and hereby directs that 25% of all categories, both gazetted and non-gazetted posts, under the Government of Nagaland shall be reserved for the persons belonging to the following 7 (seven) Tribes of 6(six) districts of Mon, Tuensang, Kiphire, Longleng, Noklak and Shamator with immediate effect :-

- 1) Konyak
- 2) Phom
- 3) Sangtam
- 4) Yimkhiung
- 5) Chang
- 6) Khaimniungan
- 7) Tikhir

12. It is thus cleared that the 25% of reservation of quota both gazetted and non-gazetted post under the Govt. of Nagaland is to be reserved for 7 (seven) tribes and not for the 6 (six) tribes as per the previous notification dated 14.04.2011.

13. In view of the above, henceforth, the State respondents are directed to implement their notification dated 23.03.2022 in any appointment made for gazetted and non-gazetted posts by taking necessary steps for its implementation.

14. Accordingly, the writ petition stands allowed and disposed of with the above directions.

Sd/-

JUDGE

Comparing Assistant