

GAHC020002142021



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

Case No. : WA/4/2021

SHRI. KEVINGUTUO SEKHOSE
S/O KESALHOULIE SEKHOSE,
RESIDENT OF OLD MINISTERS HILL, KOHIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND, TOURISM DEPARTMENT

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND, DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS, NAGALAND, KOHIMA

4:THE JOINT SECRETARY TO THE GOVT. OF NAGALAND,
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(PERSONNEL-'A' BRANCH), NAGALAND, KOHIMA

5:THE DIRECTOR,
DEPARTMENT OF TOURISM, NAGALAND, KOHIMA

6:THE INSPECTOR GENERAL OF POLICE AND DIRECTOR
VIGILANCE AND ANTI CORRUPTION,
NAGALAND, KOHIMA-797001

Advocate for the Petitioner : D.K. BHATTACHARYA,

TAKA KICHU

Advocate for the Respondent : V.SUOKHRIE, ADDL. ADV. GENERAL

Linked Case : WA/4/2022

SMTI. VIBIZUONUO NDANG
W/O PUNGBAGONGBE NDANG
R/O PEREN VILLAGE
PEREN, NAGALAND

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
TOURISM DEPARTMENT, NAGALAND, KOHIMA

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND, DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS, NAGALAND, KOHIMA

4:THE JOINT SECRETARY TO THE GOVERNMENT OF NAGALAND
DEPARTMENT OF PERSONNEL AND ADMINSTRATIVE
REFORMS(PERSONNEL 'A' BRANCH) NAGALAND
KOHIMA

5:THE DIRECTOR
DEPARTMENT OF TOURISM, NAGALAND, KOHIMA

6:THE INSPECTOR GENERAL OF POLICE AND DIRECTOR
VIGILANCE AND ANTI-CORRUPTION, NAGALAND
KOHIMA

Advocate for the petitioner : D.K. BHATTACHARYA,
TAKA KICHU

Advocate for the State respondent : V. SUOKHRIE, ADDL. ADV. GENERAL:L

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDET (CAV)

Date : 29-03-2023

(Nelson Sailo, J)

This order will dispose of both the Writ Appeals. The Writ Appeals have been filed against the common judgment & order dated 12.03.2021 passed by the learned Single Judge in WP(C) No. 11/2019, WP(C) No. 41/2019, WP(C) No. 190/2020, WP(C) No. 21/2019, WP(C) No. 24/2019 and WP(C) No. 42/2019. Writ Appeal No. 4/2021 is filed by the petitioner in WP(C) No. 21 (K)/2019 while W.A No. 4/2022 is filed by the petitioner in WP(C) No. 11 (K)/2021.

[2.] The appellant in W.A No. 4/2021 was appointed to the post of Tourist Officer (Class - II) Gazetted with a scale of pay and allowances as permissible from time to time on temporary basis against sanctioned post vide order No. TRSM1/1/2009/440 dated 04.06.2016 issued by the Secretary to the Govt. of Nagaland, Tourism Department and his service was regularized vide another order No. TRSM/ESTT-2/10/2009 dated 06.12.2017 by the Commissioner & Secretary, Govt. of Nagaland, Tourism Department. However, his service was terminated vide termination order No. TRSM/ESTT-1/1/2019 dated 29.01.2019 without giving any notice to him or affording him a chance of being heard. Aggrieved, he filed WP(C) No. 21(K)/2019.

[3.] The appellant in W.A No. 4/2022 was also appointed as Tourist

Officer vide order No. TRSM-01/01/2009/441 dated 04.06.2016 issued by the Secretary to the Govt. of Nagaland, Tourism Department on temporary basis against sanctioned post and her service was regularized vide order No. TRSM/ESTT-2/11/2009 dated 06.12.2017, issued by the Commissioner & Secretary, Govt. of Nagaland, Tourism Department. The service of the appellant was thereafter terminated vide order No. TRSM/ESTT-1/1/2019 issued by the Secretary to the Govt. of Nagaland, Tourism Department. Being aggrieved that her service was terminated without being given any notice and a chance of being heard, she filed WP(C) No. 11/2019.

[4.] The learned Single Judge took up the 2 (two) writ petitions along with 3 other similar writ petitions and vide the impugned common judgment & order dated 12.03.2021, dismissed all the writ petitions. Aggrieved with the same, the 2 (two) petitioners are before this Court by filing the present 2 (two) writ appeals.

[5.] Mr. D.K. Bhattacharya, learned counsel for the appellants submits that the petitioners/appellants were terminated from their service without following the principles of natural justice i.e., without giving them an opportunity of being heard and that this aspect of the matter was not considered by the learned Single Judge. He submits that the learned Single Judge had relied upon paragraph No. 22 of the judgment rendered by the Apex Court in ***State of Manipur & Others -Vs- Y. Token Singh & Others***

(2007) 5SCC 65 but failed to appreciate the later part of paragraph No. 22 of the judgment which states that where the appointments have made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with, in view of the decision of the Apex Court in ***Murugayya Udayar & Another -Vs- Kothampatti Muniyandavar Temple by Trustee Pappathi Ammal***, reported in ***1999 Supp (1) SCC 331***. He therefore submits that the learned Single Judge was wrong in ignoring this aspect of the matter and the impugned judgment & order should be interfered with by this Court. The learned counsel further submits that the learned Single Judge failed to consider the fact that it was not the duty of the petitioners to prove that their appointment orders were issued by following the constitutional scheme when the legality of their appointment orders was not the question. The subject matter of the case otherwise was the legality or sustainability of the impugned termination order in absence of an independent enquiry. He therefore submits that without affording any opportunity to the petitioners, they could not have been terminated from service in the manner it was done. In support of his submission, the learned counsel relies upon the Apex Court decision rendered in ***Basudeo Tiwary -Vs- Sido Kanhu University & Others (1998) 8 SCC 194***.

[6.] Ms. V. Soukhrie, learned Addl. Advocate General on the other hand submits that there is nothing wrong with the impugned judgment & order

passed by the learned Single Judge and that the writ petitions filed by the appellants have rightly been dismissed. She submits that the appellants secured their appointment by means of fraud and without being qualified for the post in question. She submits that the family members of the appellants at the relevant time were holding key position in the Government and by taking advantage of the same, the petitioners were appointed as Tourist Officers. She submits that the appellant in WA No. 4/2021 is the son of the then Director, Tourism Department. He was initially appointed as Paramedical Worker on 24.01.2011 under the Health & Family Welfare Department. He applied for the post of Tourist Officer on deputation on 04.03.2013 and thereafter, by letter dated 02.06.2013, the Director of Health & Family Welfare forwarded the application to the Commissioner & Secretary, Tourism Department. The then Commissioner & Secretary endorsed the application to the Joint Secretary on 25.10.2017. The application for issuance of No Objection Certificate (NOC) for deputation was processed on 04.12.2017 and the Commissioner & Secretary appended his signature with a back date and endorsed the same directly to the Chief Minister without routing the same to the Parliamentary Secretary. The then Chief Minister approved the appointment against the vacancy in question back dated as 04.06.2016. She submits that the appointment and regularization of the appellants was done de hors the Nagaland Tourism Service Rules, 2014 (Service Rules of 2014), Officer Memorandum dated 06.06.2016 banning appointment

on contract basis and without obtaining the approval and clearance from the Department of Personnel & Administrative Reforms (P&AR) and Nagaland Public Service Commission (NPSC). To substantiate her submission about back dating of the NOC given in favor of the appellants, the learned Addl. Advocate General has drawn our attention to Annexure-7 of the affidavit-in-opposition filed by the respondent Nos. 1, 2 & 3 in WP(C) No. 21(K)/2019 which is at page 74 of the writ appeal.

[7.] By further referring to the Communication dated 12.12.2019, which is annexed as Annexure-11 of the same affidavit-in-opposition and which is at page 78 of the writ appeal, the learned Addl. Advocate General submits that the Under Secretary to the Govt. of Nagaland, Tourism Department vide letter dated 12.12.2017 had written to the Secretary, NPSC to examine the issue of giving NOC for deputation to the appellants but however, the appellants were already regularized as Tourist Officer (Class - II) Gazetted vide order dated 06.12.2017. Further, as per the record, regularization of the appellants was processed on 20.04.2018 as can be seen from the movement of the files which is annexed as Annexure-12 to the same counter affidavit and at page 79 of the writ appeal and therefore, the learned Addl. Advocate General submits that the appellants could not have been regularized vide order dated 06.12.2017. Therefore, the appellants having only committed fraud in securing their appointments, they have been rightly terminated from their service and the question of giving them

an opportunity of hearing under the circumstance does not arise. She thus submits that the Writ Appeals should be dismissed with heavy exemplary cost. In support of her submissions, the learned Addl. Advocate General relies upon the following authorities:-

(1) Union of India & Another -Vs- Raghuwar Pal Singh (2018) 15 SCC 463.

(2) Punjab Urban Planning And Development Authority & Another -Vs- Karamjit Singh (2019) 16 SCC 782.

[8.] We have heard the submissions made by the learned counsels for the rival parties and perused the materials available on record. Although elaborate submissions have been made by the learned counsels for the rival parties, the projection made by the appellants in their writ petitions is basically to set aside and quash the decision taken by the State Government in the P&AR through Communication dated 16.01.2019 and to set aside the termination order dated 29.01.2019 on the ground that the same was issued in violation of principles of natural justice as no opportunity was given to them to make their defense or to project their case. Against the writ petition, the State respondents have given a reply stating that initially, the appellants had sought for being posted as Tourist Officer on deputation and for which, NOC was granted by the parent Department. It was thereafter that they were appointed temporarily as

Tourist Officer (Class-II) Gazetted under the Directorate of Tourism with pay scale and allowances as permissible from time to time and against sanctioned post vide order dated 04.06.2016. They were then regularized vide order dated 06.12.2017 with immediate effect. However, they came to be terminated vide termination order dated 29.01.2019. The termination order in respect of the appellant in WA No. 4/2021 may be abstracted hereunder for ready perusal:-

**“GOVERNMENT OF NAGALAND
TOURISM DEPARTMENT
NAGALAND : KOHIMA**

NO. TRSM/ESTT-1/1/2019

Dated Kohima the 29th January, 2019

TERMINATION ORDER

To,

Shri Kevingutuo Sekhose

WHEREAS you were appointed as Tourist Officer under Department of Tourism vide Order No. TRSM-1/1/2009, dated 4th June, 2016.

AND WHEREAS, your appointment as Tourist Officer have been investigated by the Vigilance Commission, Directorate of Vigilance & Anti-Corruption Police, Nagaland, and found out that you have been illegally appointed by Tourism Department in gross violation of established Government norms and procedures,

AND WHEREAS, Department of Personnel & Administrative Reforms (Personnel 'A' Branch) has conveyed the decision of the Government to terminate your service vide letter No. PAR-A/13/13-AIS, dated 16th January, 2019.

NOW, therefore, the appointment order No. No. TRSM-1/1/2009, dated 4th June, 2016 is hereby nullified and your service stands terminated with immediate effect.

Sd/-

(T. MHABEMO YANTHAN)

Secretary to the Government of Nagaland

NO. TRSM/ESTT-1/1/2019/408

Dated Kohima the 29th January, 2019”

[9.] From the above abstract, it may be seen that the appointment of the appellant concerned was investigated by the Vigilance Commission, Directorate of Vigilance & Anti Corruption Police, Nagaland and it was found that he was illegally appointed by the Tourism Department in violation of established norms and procedures. The same was examined by the P&AR who conveyed the decision of the Government for termination of his service vide letter dated 16.01.2019. Accordingly, his service was terminated vide the termination order. Against the stand of the State respondents in the writ petition through their affidavit-in-opposition that the appointment of the appellants was illegal and was secured through fraudulent means, the appellants have simply denied that their initial appointment was made in gross violation of the Service Rules of 2014 and back dated. They have also stated that even if assuming but not admitting that the initial temporary appointment was irregular but the same has no relevance after their service have been regularized. As such, their service could not have been terminated in the manner it was done.

[10.] The learned Single Judge in examining the projection made by the appellants as writ petitioners and also the State respondents had taken into account the relevant provisions of the Service Rules of 2014 and came to the conclusion that the petitioners were directly appointed without routing such appointment through the NPSC as stipulated in the Rules. Likewise, both the petitioners were not in the feeder post to be considered for promotion to the

post of Tourist Officer as stipulated in the Rules and such being the position, the learned Single Judge found no ground to uphold their appointment orders by interfering with the termination orders. The learned Single Judge also was of the view that the principles of natural justice was not required to be complied with by giving them an opportunity or presenting their case in view of the fact that facts being not disputed, the same would result in futility as observed by the Apex Court in ***State of Manipur & Others -Vs- Y. Token Singh & Others*** (supra). As submitted by the learned counsel for the appellants, the Apex Court also in that case observed that where appointments have been made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with. However, the appointment of the appellants in the instant case undeniably was dehors the Service Rules of 2014 and also back dated as can be seen from the documents annexed by the State respondents in their counter affidavit. Therefore, the appointment of the appellants are only void ab initio and if such is the case, the observance of principles of natural justice cannot be insisted upon. In the case of ***Basudeo Tiwary -Vs- Sido Kanhu University & Others*** (supra), which is relied upon by the learned counsel for the appellants, the Apex Court in the given facts of that case held that it has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is

well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. However, in the instant case, as already noticed herein above, the appellants have secured their appointment dehors the Service Rules of 2014 and by means which can only be termed as deceitful. As such, the question of seeking fair and just treatment when the process by which they were appointed itself was not fair, just and dehors the Service Rules of 2014, affording them a chance will only be a futility. Therefore, the decision relied upon in our considered view cannot be applied to the facts and circumstance of the present case.

[11.] Thus, upon due consideration of the case in its entirety, we find no ground to interfere with the decision of the learned Single Judge. Accordingly, both the writ appeals are dismissed.

JUDGE

JUDGE

Comparing Assistant