

GAHC020001752018



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

Case No. : WP(C)/73/2018

THEJAKHRIELIE MECHULHO
KOHIMA

VERSUS

THE STATE OF NAGALAND AND 4 ORS
KOHIMA 2:PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION

3:PRINCIPAL DIRECTOR
SCHOOL EDUCATION

4:ZEDIKUOLIE CHAKRUNO

5:DEPUTY COMMISSIONER
KOHIMA NAGALAN

Advocate for the Petitioner : N. MOZHUI

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/110/2018

ZEDIKUOLIE CHAKRUNO
KOHIMA

VERSUS

THE STATE OF NAGALAND AND 17 ORS
KOHIMA

2:COMMISSIONER
KOHIMA NAGALAND
KOHIMA
NAGALAND

3:DEPUTY COMMISSIONER
KOHIMA NAGALAND
KOHIMA
NAGALAND

4:DR. S. JOHN ZHALE
CHAIRMAN
VEC CHEDEMA
KOHIMA

5:KEYIENYU KEYHO
HEAD GB
CHEDEMA VILLAGE

6:SEYIEKHRIETUO
CHAIRMAN
RHIEPFU CLAN
CHEDEMA

7:KENIETUO
CHAIRMAN
USOU CLAN
CHEDEMA VILLAGE

8:THEPFUSATUO
CHAIRMAN
TSIRA CLAN
CHEDEMA VILLAGE

9:DUOLHOUTUO
CHAIRMAN
THEVO CLAN
CHEDEMA VILLAGE

10:TSEZIO
CHAIRMAN
KIWE CLAN

CHEDEMA VILLAGE

11:VIDILIE
CHAIRMAN
SAKOU KHEL
CHEDEMA VILLAGE

12:VILELHOULIE
CHAIRMAN
RHIEPFU CLAN
CHEDEMA VILLAGE

13:KHRIEMEIKUO
GB
CHEDEMA VILLAGE

14:VIKHITUO
GB
CHEDEMA VILLAGE

15:MEDOVILIE
GB
CHEDEMA VILLAGE

16:THEJAKHRIELIE MECHULHO
S/O LATE
MR. BISO MECHULHO
CHEDEMA VILLAGE

17:PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
KOHIMA
NAGALAND

18:PRINCIPAL DIRECTOR SCHOOL EDUCATION NAGALAND
KOHIMA
NAGALAND

Advocate for : JUSTIN MAGH

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 17
ORS

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

ORDER

Date : 14-03-2023

1. The petitioner in W.P.(C) No. 73(K) of 2018 has sought for the following relief;

“A. Quash and set aside:

1) *Impugned Approval Letter bearing No. DSE/ESTT/KMA/1-82/2016/261 dated 01.09.17 (Annexure-J).*

2) *Impugned Order bearing No. ED/EST/GR-IV/APPT/SDEO-KMA/2011-12/314 dated 12.09.17 (Annexure-K).*

B. Direct the State respondent to consider the case of the petitioner for appointment on compassionate ground as per the Scheme.”

2. The petitioner’s case is that his father died in harness while serving as Carpentry Helper at Govt. Middle School Chedema Village under the establishment of the Deputy Inspector of School, Kohima. Consequent thereto, the petitioner applied for the post on compassionate ground under the scheme formulated by the Government vide O.M dated 17.09.2015. The appointment of the petitioner was also recommended by the Chairman, Village Education Committee, Chedema. When the matter was thus situated, the Addl. Director School Education, Nagaland, Kohima, by the letter dated 13.07.2016 address to the Commissioner & Secretary, School Education, forwarded 4(four) applications for appointment to the post of Carpentry Helper at GMS, Chedema, which also included the applications submitted by the petitioner as well as the respondent No.4. In the letter dated 13.07.2016, the Addl. Director has stated that regarding the ownership of the land where the school is located, the village authorities had clarified that it is the common land of the village and does not belong to any particular clan or member of the village.

3. That on 03.07.2016, the Chedema village authorities passed a resolution

declaring that 8(eight) clans of the village had donated the land for the establishment of the school and the local ground and therefore, the land is a common village property and accordingly, the landownership certificate cannot be issued to any particular clan or person. The Deputy Commissioner, Kohima, Nagaland, however on 23.11.2016 issued a landownership certificate stating that the land presently occupied by the Government Middle School, Chedema measuring 150x110 ft. was donated by Lt. Zebu-o Chakruno and the Chakruno clan and therefore, the respondent No. 4 and one Mr. Vibeilhoulie Chakruno are both eligible to avail the benefit of appointment to the post of Carpentry Helper on the basis of the landownership. The Head GB, Chedema village and the Chairman, Village Education Committee thereafter wrote the letter dated 22.04.2017 to the Deputy Commissioner, Kohima, stating that the land over which the Government Middle School is constructed is a common village land which had been donated by the 8(eight) clans of the village and therefore, landownership certificate cannot be issued to any particular clan or person.

4. That the Government of Nagaland, department of School Education however by letter dated 01.09.2017 address to the Principal Director, Directorate of School Education, Nagaland, Kohima, forwarded the approval of the Government recommending the appointment of the respondent No. 4 as Carpentry Helper at GMS, Chedema on adhoc basis. The letter conveyed that the approval is given as per the inquiry report submitted by the Departmental Inquiry Board constituted to examine the ownership of the land of GMS, Chedema. Pursuant to the approval, the Principal Director of School Education, Nagaland, Kohima, also issued the appointment order dated 12.09.2017 appointing the respondent No.4 as Carpentry Helper at GMS, Chedema.

5. That the Deputy Commissioner, Kohima, in the meantime, passed the order dated 20.12.2017 cancelling the landownership certificate issued earlier to the respondent No. 4 on 23.11.2016. Subsequent thereto, the petitioner has again applied for appointment to the post of Carpentry Helper at GMS, Chedema on compassionate ground.

6. Mr. N. Mozhui, learned counsel for the petitioner submits that the land where the present GMS, Chedema is located was donated by the 8(eight) clans

of Chedema village and this is evident by the resolution adopted by the village on 03.07.2016 wherein it clearly states that the 8(eight) clans of the village had donated the land for the school and the local ground and the land is therefore a common village land belonging to every clan and everyone in the village and accordingly the landownership certificate cannot be issued to any particular clan or person. The learned counsel has further relied on the letter dated 22.04.2017 written by the Head G.B Chedema village and the Chairman, Village Education Committee Chedema to the Deputy Commissioner, Kohima, stating that the land on which the GMS, Chedema is located is a common property donated by the 8(eight) clans of the village and therefore, the landownership certificate cannot be issued to one particular clan or person. Mr. N. Mozhui has further contended that since by the order dated 20.12.2017, the Deputy Commissioner, Kohima, Nagaland, has cancelled the landownership certificate earlier issued to the respondent No. 4 on 23.11.2016, the respondent No. 4 can no longer claim to be the owner of the land and his appointment which is on the basis of the landownership should be terminated forthwith and the petitioner appointed to the said post by giving effect to the O.M dated 17.09.2015.

7. Mr. K. Angami, learned Sr. Govt. Advocate submits that both the petitioner as well as the respondent No. 4 applied for the post of Carpentry Helper at GMS, Chedema. The petitioner applied for the post on compassionate ground in place of his father who died in harness while the respondent No. 4 applied for the post on landownership basis. The learned Sr. Govt. Advocate submits that the application of the petitioner for appointment on compassionate ground was forwarded to the P&AR department. However, his case for appointment could not be considered as the petitioner was placed at Sl. No. 86 of the list maintained by the department for appointment of Grade-III & IV post on compassionate ground. Insofar, as the appointment of the respondent No. 4 is concerned, it is submitted that his appointment was considered by the Government basing on the inquiry report submitted by the Departmental Inquiry Board constituted to examine the ownership of the land. The learned Govt. Advocate therefore submits that the case of the petitioner for

compassionate appointment will only be considered as per the O.M dated 17.09.2015 as and when his turn comes and accordingly there is no infirmity in the appointment of the respondent No.4 on landownership basis.

8. Mr. Justin Magh, learned counsel for the respondent No. 4 adopts the same line of submission advanced by the learned Sr. Govt. Advocate and submits that since the respondent No.4 and his clan are the true and the bonafide owner of the land where the GMS, Chedema is located, the Government has taken a conscious decision and there is no illegality in the action of the Government favouring the respondent No. 4 with the appointment.

9. In W.P.(C) No. 110(K) of 2018, the petitioner who is the respondent No.4 in W.P.(C) No. 73(K) of 2018 has impugned the following;

(a) Resolution dated 03.07.2016 adopted by the Chedema village authorities declaring that the land where the GMS, Chedema and the local ground has been constructed is the common land of the village and no land ownership certificate can be issued to one particular clan or person.

(b) Letter dated 03.07.2016 written by the Head G.B Chedema village and the Chairman Village Education Committee to the sons of Lt. Zebu-o conveying that the land where the school is located is the common land of the village and no land ownership certificate can be issued to one particular clan or person.

(c) Order dated 20.12.2017 issued by the Deputy Commissioner, Kohima cancelling the earlier landownership certificate dated 23.11.2016 certifying that Lt. Zebu-o Chakruno and the Chakruno clan are the rightful owner of the land where the GMS, Chedema is located.

10. Mr. Justin Magh, learned counsel for the petitioner submits that the petitioner is the grandson of Lt. Zebu-o Chakruno who donated the land for the establishment of the GMS Chedema sometime during the year 1950 for

advancement of the education in the village. Acknowledging the generous contribution made by the petitioner's grandfather, the then village authorities adopted a resolution for providing one Grade-IV post to the petitioner's grandfather which however never materialized. In the year 1980, the land adjacent to the school building was required for construction of toilet etc. The School Managing Board and the representatives of the other clans who had donated the land for the school therefore approached the petitioner for more land which was initially declined by the petitioner. However, on insistence and on the assurance that a Grade-IV post will be offered to the petitioner, the petitioner parted with the land. On 02.11.1983, the Managing Board of the School and the village authorities adopted the resolution that the first appointment for Grade-IV post in the School shall be given to the petitioner's clan and accordingly, the school authorities on 26.09.1987, submitted an application to the DIS, Kohima for appointment of the petitioner as a Grade-IV staff. Surprisingly thereafter the village and the school authorities have completely taken a U-turn denouncing the rights of the petitioner on the land in question by issuing the impugned resolution and the letters solely with the intent to deprive the petitioner with the appointment.

11. Mr. Justin Magh, learned counsel also submits that consequent to the application submitted by the petitioner for appointment to the post on landownership basis, the Government had issued the letter dated 21.04.2017 directing the Addl. Director, School Education, to conduct an inquiry into the genuineness of the claim made by the petitioner as the land owner of GMS Chedema. Pursuant thereto, the Addl. Director directed the 2(two) Joint Directors in the department to inquire into the matter and to submit report. The inquiry was accordingly conducted and the inquiry report dated 08.06.2017 was submitted to the Principal Director of School Education, Nagaland, Kohima. It is the case of the petitioner that it is on the basis of the inquiry report conducted by the department that the letter dated 01.09.2017 was issued by the Government approving the adhoc appointment of the petitioner as Carpentry Helper at GMS Chedema on landownership basis. Lastly, it is submitted that the impugned order dated 20.12.2017 cancelling the landownership certificate

earlier issued to the petitioner on 23.11.2016 was passed by the Deputy Commissioner, Kohima, without affording any opportunity thereby violating natural justice.

12. Mr. N. Mozhui, the learned counsel representing the respondent No.16 (petitioner in W.P.(C) No. 73(K) of 2018) while adopting the submission made in W.P.(C) No. 73(K) of 2018 submits that as the inquiry committee report of the department, revealed that, there was a claim and a counter claim between the village authorities and the petitioner for the ownership of the land, the committee submitted its report to the respondent No. 18 for thorough examination and for onward submission to the Government for necessary action. However, the respondent No. 18 without forwarding the inquiry report to the Government or without consulting the respondent No. 3 appointed the petitioner on landownership basis. Mr. N. Mozhui further submits that the School Managing Board might have earlier taken certain steps or decisions in favour of the petitioner, however all such decisions earlier taken were superseded by the resolution dated 03.07.2016 and therefore no right now accrues to the petitioner to claim ownership on the land.

13. Mr. K. Angami, learned Sr. Govt. Advocate by referring to the affidavit-in-opposition filed by the respondent No. 2 & 3 submits that the respondent No.3 had issued the land owner certificate on 23.11.2016 to the respondent No. 4 after ascertaining that the respondent No. 4 and his clan have donated the land for establishment of GMS Chedema. However, the land ownership certificate was cancelled on 20.12.2017 after receiving the letter dated 22.04.2017 from the Chairman of Chedema Village conveying that the land is a common village property and landownership certificate cannot be issued to one particular clan or person.

14. Mr. Z. Kulnu, the learned counsel for the respondent No. 4 to 15 has more or less adopted the submissions made by Mr. N. Mozhui, the learned counsel for the respondent No.16.

15. Heard the learned counsel for the parties. The first W.P.(C) No. 73(K) of 2018 shall be referred to, for this common judgment & order.

16. The petitioner and the respondent No.4 have both applied for appointment to the post of Carpentry Helper at GMS Chedema village. The petitioner has applied for the post on compassionate ground in place of his father who died in harness while serving in the said post, while the respondent No.4 has applied for the post on landownership basis. The Government by the order dated 12.09.2017 has however appointed the respondent No. 4 on landownership basis. It is this appointment which has been impugned by the petitioner by filing the writ petition primarily on the ground that the land where the GMS Chedema is located is a common village land since the land was equally donated by 8(eight) clans of the village and not by the respondent No. 4 alone. In support of his submission, Mr. N. Mozhui has relied on the resolution dated 03.07.2016 passed by the Chedema village authorities, the letter dated 22.04.2017 written by the Head G.B Chedema village and the Chairman VEC Chedema. Mr. N. Mozhui has also relied on the order dated 20.12.2017 issued by the Deputy Commissioner, Kohima, cancelling the landownership certificate earlier issued to the respondent No.4 on 23.11.2016. The case of the petitioner therefore is that the respondent No.4 and his clan are not the sole landowners who had donated the land for the establishment of GMS Chedema but the land was jointly donated by 8(eight) clans of the village and it is in this background that the village authorities has rightly resolved that the land is a common village land. Mr. N. Mozhui has further submitted that the landownership certificate dated 23.11.2016 issued to the respondent No.4 by the Deputy Commissioner, Kohima, has been cancelled by the same authority by the order dated 20.12.2017 and therefore, the appointment of the respondent No. 4 which was issued on land ownership basis must stand terminated and the petitioner should be considered for appointment in the said post on compassionate ground.

17. This Court has perused the affidavit filed by the State respondents wherein in paragraph-7, it is categorically stated that in the waiting list of the applicants for compassionate appointment to Grade-III & IV post as maintained by the department, the petitioner is placed at Sl. No. 86 of the list. This averment is supported by the relevant documents which is Annexure-D to the

writ petition. This Court has also perused the O.M dated 17.09.2015 framed by the Government formulating the scheme for compassionate appointment where inter-alia it has been provided that '*All departments shall maintain a waiting list in chronological order for compassionate appointments*'. This being the intent of the scheme, the petitioner can only be appointed on compassionate ground as and when his turn comes and the fact that the petitioner's father died in harness while serving the said post does not give any right to the petitioner to be appointed in the said post in place of his father. The petitioner's claim for compassionate appointment is therefore premature.

18. Insofar as the appointment of the respondent No. 4 is concerned, the approval letter dated 01.09.2017 issued by the Government of Nagaland, Department of School Education states that the approval has been conveyed in line with the inquiry report submitted by the Departmental Inquiry Board constituted to examine the genuineness of the landowners of GMS, Chedema. This Court has perused the inquiry report which is Annexure-G to the affidavit filed by the official respondent No. 1, 2 & 3. The inquiry report, it appears, records only the brief history of the land, the sequence of events leading to the present crisis and the claims and objections raised by the village authorities and the landowners. No finding on the ownership of the land has however been recorded by the Inquiry Board assigned to inquire into the ownership of the land. The inquiry report therefore, without a proper finding as to the ownership of the land, in the considered opinion of this Court is an '*inconclusive report*'.

19. The Deputy Commissioner, Kohima, shall accordingly make a detail enquiry on the ownership of the land where the GMS Chedema is located with the participation of all the stakeholders including the petitioner, the village authorities and the clans who have donated the land for the school. On completion of the inquiry, the Deputy Commissioner, Kohima, shall submit his findings to the Government of Nagaland, department of School Education. This exercise shall be carried out and completed by the Deputy Commissioner, Kohima, within a period of 90(ninety) days from the date of this judgment.

20. In the event, the Deputy Commissioner, Kohima, comes to a definite finding that the respondent No. 4 is not the rightful owner of the land, the

Government shall take necessary steps for terminating the appointment of the petitioner as Carpentry Helper, GMS Chedema, keeping in view, that the respondent No. 4 was appointed to the post on the landownership basis. The post in question shall thereafter be filled up by the department in accordance with law.

21. The official respondents shall consider the appointment of the petitioner on compassionate ground strictly in terms of the O.M dated 17.09.2015 and as per the list maintained by the department.

22. With the above directions and observations, the W.P.(C) No. 73(K) of 2018 and the linked case W.P.(C) No. 110(K) of 2018 stands disposed. No cost.

Sd/-

JUDGE

Comparing Assistant