

GAHC020001762023



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

Case No. : WP(C)/77/2023

SHRI. MHASHEKHOL RICHHA
S/O THINUZHOSA RICHHA,
R/O JAKHAMA VILLAGE,
KOHIMA DISTRICT, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY

ANIMAL HUSBANDRY AND VETERINARY SERVICES
NAGALAND
KOHIMA

3:THE DIRECTOR

DIRECTORATE OF A.H AND VETERINARY SERVICES
NAGALAND
KOHIMA

4:THE CHIEF VETERINARY OFFICER

KOHIMA DISTRICT

KOHIMA
NAGALAND

5:SHRI. SWEYIEVIKUL TASE

C/O VETERINARY DISPENSARY JAKHAMA
KOHIMA
NAGALAND

Advocate for the Petitioner : A. SOPHIE

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

Date : 06.10.2023

Heard Mr. A. Sophie, learned counsel for the petitioner along with Mr. Moa Imchen, learned senior Government Advocate for the State respondent Nos. 1 to 4 and Mr. Joshua Sheqi, learned counsel for respondent No. 5.

2. The instant writ petition filed under Article 226 of the Constitution of India is for a direction to the State respondents to appoint the petitioner to the post of Animal Attendant, Grade-IV at Veterinary Dispensary (VD), Jakhama under the Chief Veterinary Office, Kohima, Nagaland, on the strength of being one of the land owners and for setting aside the order dated 31.03.2023, in appointing the respondent No. 5 and to adhere to the agreement dated 08.12.1975, wherein, the land owners were made to declare that they will part with their respective plots of land for the establishment of Animal Husbandry and Veterinary Outpost at Jakhama, for a consideration of Rs. 1,500/- per acre of land and with a condition that they will be given first opportunity in case a vacancy being created to a grade IV post.

3. Mr. A. Sophie, learned counsel for the petitioner submits that the petitioner is one of the land owners where the present Veterinary Dispensary is situated at Jakhama Village. The petitioner submits that till date no one from the petitioner's family has been appointed to Grade-IV in terms of the agreement made with the respondents while the respondent No. 5, *vide* order dated 31.03.2023 was appointed to Grade-IV post on the retirement of one Shri Tepuseo Tase. The petitioner is aggrieved by the appointment of respondent No. 5 since both Tepuseo Tase and the respondent No. 5 are the descendants of the same land owner, *i.e.* Shri Khuzon. The petitioner, anticipating his appointment on the retirement of the mentioned Shri Tepuseo Tase had made a representation for his appointment on 09.07.2021. However, the State respondents instead of considering his representation had appointed the instant respondent no. 5 *vide* order dated 31.03.2023. The learned counsel for the petitioner submits that the appointment of respondent No. 5 is *mala fide*, discriminatory and arbitrary and in violation of the Office Memorandum issued by the Government, Land Revenue Department dated 16.08.2018, where it was clarified "(b) *that it is not the policy of the Government to provide employment or other facility to the land owner in perpetuity. The employment or other facility of landowner, if permitted by a verifiable and valid agreement, is limited to the first person appointed as landowner in the Government service and does not entitle his descendants for further employment or other facility on his retirement from service.*" The learned counsel therefore submits that since Shri Tepuseo Tase is the descendants of one of the land owners Shri Khuzon and he was already appointed as Grade –IV, on his retirement, it

is the chance of the instant petitioner, who is the grandson of Shri Kuosa, one of the land owners and marked as Sl. No. 2 in the agreement deed, to be appointed. That Shri Kuosa was one of the largest contributors of the land for the construction of the present Veterinary Dispensary, Jakhama. That the appointment of Respondent no.5 was done without any newspaper publication/advertisement and the petitioner was never made aware of the rejection of his application.

4. The learned counsel for the petitioner also submits he had applied for the post of Grade-IV at Veterinary Dispensary (VD), Jakhama on 09.07.2021 and on the retirement of Shri Tepueo Tase on 30.09.2021, a vacancy was created in the Grade-IV post. The learned counsel submits that even though he was over-aged then, the Office Memorandum dated Kohima, 16.07.2021 Office Memorandum issued by Government of Nagaland, Department of Personnel and Administrative Reforms (Administrative Reforms Branch) which provided age relaxation for entry into Government service for a period of one year w.e.f. 22.04.2020 and a further Office Memorandum dated 28.02.2022 provided age relaxation for an additional period of 2 years w.e.f. 22.04.2021. As such, the petitioner is sheltered by the above Office Memorandums and is eligible for entering into the service even though he was above 35 (thirty five) years when he had applied for the post on 09.07.2021.

5. The learned counsel for the petitioner, therefore submits that the instant writ petition may be allowed since the petitioner is eligible for the post of Grade-IV on the resulting vacancy, on the retirement of Shri Tepuseo Tase since he was of qualified age at the time of filling his

application in view of the relaxations of age limit in the O.Ms dated 16.07.2021 and 28.02.2022 . The learned counsel for the petitioner has relied on the judgment of the Apex Court in **State of Andhra Pradesh –Vs- T. Ramakrishna Rao & Ors.** reported in (1972) 4 SCC 830 and the judgment of the High Court of Calcutta in the case of **Dilip Kumar Roy –Vs- Eastern Coalfields, Ltd. & Ors.** reported in 2004 (4) L.L.N. 977.

6. The learned senior Government Advocate, Mr. Moa Imchen, on the other hand submits that the petitioner was already above 35 years and over- aged when he had applied for the post of Grade-IV on 09.07.2021 and since he was over-aged at the time of submission of his application, his application was liable to be rejected outright and his application was therefore not under the zone of consideration and not covered by the later Office Memorandums issued on 16.07.2021 and 28.02.2022. That the petitioner was not vigilant since he made no attempt to enquire about his application dated 09.07.2021 and has approached this court only after the appointment of the respondent no. 5 on 31.03.2023 . He further submits that the respondent No. 5 was appointed due to the exigency of service requirement and in the interest of public service. The learned senior Government Advocate also submits that the respondent No. 5 was found to be most suitable amongst all the applicants and as such, the appointment was given to him on consideration of all aspects of the matter and it is found that since his appointment on 31.03.2023, the respondent No. 5 has been executing his duties with utmost sincerity and dedication. The learned senior Government Advocate further submits that after the establishment of the Veterinary Dispensary at Jakhama Village, five landowners were appointed which includes respondent No. 5, who

was appointed to the post of Animal Attendant against the vacancy caused by the retirement of one Shri Tepuseo Tase. The learned senior Government Advocate also submits that if the court showed indulgence in the instant case it will set a precedent and have a far reaching effect since others would also claim for age relaxation.

7. Mr. Joshua Sheqi, the learned counsel for respondent No. 5 submits that the petitioner was already over-aged when he applied for the post of Grade-IV, he was 37 (thirty seven) years of age, his Birth Certificate shows that his date of birth is 20.06.1985, while the maximum year of entering into Government service is 35 years. The learned counsel for respondent No. 5 submits that the age relaxation of one year as per the Office Memorandum dated 16.07.2021 w.e.f. 22.04.2020 would expire on 22.04.2021 and as per the Office Memorandum dated 22.02.2022 additional 2 years relaxation was granted w.e.f. 22.04.2021 as one time relaxation due to COVID-19 pandemic had expired on 22.04.2023. The petitioner approached this Court for age relaxation after 22.04.2023 and therefore the writ petition itself should be dismissed since the petitioner is without *locus standi*. The learned counsel for respondent N0.5 also submits that the petitioner has not challenged the Office Memorandum dated 28.02.2022, even though the same had barred the petitioner from entering into Government service after 22.04.2023.

8. The learned counsel for the respondent no.2 further submits that the appointment of the respondent no.5 is a policy decision and it is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable and that what is being prayer for

under the guise of Covid-19 is nothing but a lame excuse. In support of his submissions he has relied on the following authorities ; **Rachna & Others –Vs- Union of India & Anr.** reported in (2021) 5 SCC 638, **Navdeep Singh Brar & Others –Vs- State of Punjab & Anr.** reported in 2021 SCC Online P&H 4555 , **Chandigarh Administration and Anr. –Vs- Jasmine Kaur & Others** reported in (2014) 10 SCC 521.

9. I have heard the submissions made by both the parties and perused the documents on record. From the submissions of the learned counsels of the rival parties, the points for consideration are

i. whether the case of the petitioner who who was over-aged when he applied for the post for the post of Grade-IV on 09.07.2021, is covered by the Office Memorandum issued by Government of Nagaland, Department of Personnel and Administrative Reforms (Administrative Reforms Branch) dated 16.07.2021 wherein there is one year relaxation w.e.f. 22.04.2020 and by the Office Memorandum dated 22.02.2022 where there is additional 2 years relaxation w.e.f. 22.04.2021 which would expire on 22.04.2023.

ii. If so, whether the petitioner should have be considered for appointment to post of Grade IV instead of respondent no.5 in view of the Office Memorandum dated 16.08.2018.

10. It is seen that the application for appointment to the post of Animal Attendant, Grade-IV at Veterinary Dispensary (VD), Jakhama under the Chief Veterinary Office, Kohima, Nagaland, was made on 09.07.2021 when

he was already over-aged, however, the vacancy was created only on 30.09.2021 on the retirement of Shri Tepueo Tase. Thus, this court finds that the application of the petitioner can be considered only after the creation of the vacant post. Meanwhile the Office Memorandums dated 16.07.2021 wherein there is one year relaxation w.e.f. 22.04.2020 and the Office Memorandum dated 22.02.2022 where there is additional 2 years relaxation w.e.f. 22.04.2021 which would expire on 22.04.2023, were issued. Thus on plain reading of the office memorandums, it is cleared that there is an age relaxation of three years from the maximum year of entering into Government service which is 35 years, which is extended to 38 years and is applicable only during period between 22.04.2020 to 21.04.2023. The petitioner had applied for the post of Grade –IV on 09.07.2021, which is within the applicable period, as per the Office memorandums referred to. *His date of birth is 20.06.1985* thus when he applied for the job on 09.07.2021 he was of 36 years and when vacancy for the post was created on the retirement of Shri Tepueo Tase on 30.09.2021 he was 36 years and 3 months. This court is therefore of the considered view that the case of the petitioner is fairly covered by the aforesaid Office Memorandums dated *16.07.2021 and dated 22.02.2022* and find that he was qualified at the time when he had applied for the post. It may be noted that the Apex Court was of the view that the qualified age may be considered from the date the application was filed in **State of Andhra Pradesh –Vs- T. Ramakrishna Rao & Ors. (Supra)** in a different set of circumstances, wherein, fresh applications were to be called for by the Commission and the State, the Apex Court held that if the candidates who had applied earlier had by this time became age

barred by reason of the delay in holding the examination, he should not be disqualified from appearing in the examination if he was of the qualified age at the time when he had filed his application. The same reasoning maybe applied in the instant case and I find no substance in the submission made, that the petitioner is without locus standi since he approached this Court by way of writ petition for age relaxation after 22.04.2023.

11. This court also finds that there is no substance in the claim that, if the case of the petitioner is allowed, it will set a precedent and have a far reaching effect since others would also claim for age relaxation, since the learned Sr. Government Advocate has not made out a case that, there are other similarly applications as that of the petitioner, filed for consideration.

12. This court also takes note that neither of the counsels for the respondents have denied that the petitioners is one of the land owners of Jakhama and that there is the agreement dated 08.12.1975 wherein, the land owners were made to declare that they will part with their respective plots of land for the establishment of Animal Husbandry and Veterinary Outpost at Jakhama, for a consideration of Rs. 1,500/- per acre of land and with a condition that they will be given first opportunity in case a vacancy being created to a grade IV post. This court has also noted that the respondents have not made any counter-claim nor any submission, on the submission that *petitioner* should have been considered for appointment to post of Grade IV instead of respondent no.5, on the strength of the Office Memorandum Government, Land Revenue Department dated 16.08.2018, where it was clarified "(b) *that it is not the*

policy of the Government to provide employment or other facility to the land owner in perpetuity. The employment or other facility of landowner, if permitted by a verifiable and valid agreement, is limited to the first person appointed as landowner in the Government service and does not entitle his descendants for further employment or other facility on his retirement from service.” This court also finds that the respondents have not refuted the claim, that the respondent no.5 and Shri Tepuseo Tase are both the descendants of the same land owner, i.e. Shri Khuzon.

13. This court is also of the view that the appointment of the respondent no.5 to the post of Animal Attendant, Grade-IV at Veterinary Dispensary (VD), Jakhama cannot be termed as a policy decision of the government as claimed by the learned counsel for respondent no.5. A simple understanding of the policy decision of the Government would be, decisions those that determine how the Government will act in the future. Government policy is a declaration of government political activities, plans and intentions relating to a particular cause..

14. In view of the above discussions and findings, this court finds it fit to allow the instant writ petition and direct the state respondents to consider the application of the petitioner, dated 09.07.2021 and take immediate necessary steps for his appointment to a Grade-IV post at Veterinary Dispensary (VD), Jakhama, being covered by the Office Memorandums dated 16.07.2021 and 22.02.2022 and by the Agreement Deed dated 08.12.1975 made by land owners of Jakhama and the Office Memorandum issued by the Government, Land Revenue Department dated 16.08.2018. This court also finds that if the appointment of

respondent no.5 was made by virtue of him also being the descendants of the same land owner, *i.e.* Shri Khuzon, it will not be inconsonance with the said Office Memorandum dated 16.08.2018, and therefore his appointment order dated 31.03.2023 is liable to be set aside.

15. Accordingly Writ Petition(C) No.77 of 2023 is allowed and stands disposed of.

JUDGE

Comparing Assistant