

GAHC020002822020



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

Case No. : WP(C)/106/2020

VECHISA VENUH
S/O YIEKHURE VENUH,
R/O NEW MINISTERS HILL KOHIMA,
NAGALAND

VERSUS

STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

- 2) THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF NAGALAND, DEPARTMENT OF
SOCIAL WELFARE, NAGALAND, KOHIMA
- 3) THE DIRECTOR
DIRECTORATE OF SOCIAL WELFARE, NAGALAND, KOHIMA
- 4) SHRI. KUMAR RAMNIKANT IAS
FORMER JT. SECRETARY, SOCIAL WELFARE, CHAIRMAN OF
THE BOARD
- 5) SHRI. MERANGTSUNGBA AIER
FORMER DIRECTOR, SOCIAL WELFARE, MEMBER
- 6) SMTI. TULULA PONGEN
FORMER PROJECT DIRECTOR POSHAN ABHIYAN MEMBE/
SECRETARY (R/NOS. 4-6 ARE THE INTERVIEW BOARD
MEMBERS)
- 7) DR. YONGYA CHINGMAK
CONSULTANT HEALTH AND NUTRITION, SPMU, KOHIMA

Advocate for the Petitioner : A. ZHO

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER(ORAL)

Date : 29-05-2023

Heard Mr. Taka Kichu, learned counsel for the petitioner, Mr. Moa Imchen, learned Sr. Government Advocate for the respondent No. 1, 2 & 3 and Ms. Apila Sangtam, learned counsel for the respondent No. 4, 5 & 6. Also heard Mr. Sentiyanger, learned counsel for the respondent No. 7.

2. The present writ petition has been filed seeking for the following reliefs;

- (i) *Quash and set aside the common impugned appointment order No. SW/NNM-2/2018(pt) dated 25.10.2019 in respect of the private respondent No. 7 (ANNEXURE-H).*
- (ii) *Direct the State respondents to appoint the petitioner in place of the respondent No.7 as he was the lone candidate who applied for the post of Consultant (Health & Nutrition) and faced the interview.*
- (iii) *To pass any order/orders as Your Lordship may deem fit and proper.*

3. The case in brief is that the Government of Nagaland, Directorate of Social Welfare, Nagaland, Kohima, issued the advertisement dated 03/02/2019 inviting the applications from bonafide indigenous inhabitant of Nagaland for filling up of 1(one) post of Consultant (Health & Nutrition) along with 150 post under Rashtriya Poshan Abhiyaan (NNM) in the department of Social Welfare. The post

of the Consultant (Health & Nutrition) in the advertisement dated 03/02/2019 appeared at Sl. No.2. The advertisement further stipulated that for candidates applying for Sl. No. 1-5, a Walk-in-Interview will be conducted for which date and time will be notified separately. The petitioner applied for the said post of Consultant (Health & Nutrition) but was not appointed. On the other hand, the respondent No. 7 was appointed to the said post.

4. It is the case of the petitioner that he was the only candidate who applied and sat for the interview for the post of Consultant (Health & Nutrition) and therefore, the respondent No. 7 who did not apply for the said post nor faced the interview could not have been appointed. The petitioner therefore submits that the appointment of the respondent No.7 is illegal and deserves to be quashed and set aside and the petitioner appointed to the said post.

5. The respondents have contested the case by filing separate affidavit-in-opposition. The respondent No. 1, 2 & 3 submits that the appointment order dated 25/10/2019 of the respondent No. 7 was issued consequent to the recommendation made by the Interview Board. The appointment was made on contractual basis for a period of 1(one) year. On the expiry of the period of the appointment, the applicant applied for extension of service however since the appointment was sub-judice before the Hon'ble Gauhati High Court, the extension of the respondent No.7 was kept in abeyance. In the meantime, however the respondent No.7 submitted his resignation from service and accordingly, the respondent No.7 was released from service w.e.f. 01/04/2021. It is also the case of the State respondents that the post of Consultant (Health & Nutrition) has been discontinued by the department.

6. In the affidavit-in-opposition filed by the respondent No. 4, 5 & 6, it has been stated that the petitioner was not the lone candidate to participate in the Walk-in-Interview. It is also the case of the said respondents that the petitioner

did not possess the requisite qualification and was therefore not eligible to be appointed to the said post, whereas the respondent No. 7 had all the requisite qualification to be appointed to the post.

7. This Court by the order dated 21.02.2023 had directed the learned Sr. Government Advocate to produce the relevant records/files from the Directorate of Social Welfare, Nagaland, Kohima, which contains the appointment of the respondent No.7 as Consultant (Health & Nutrition). The records have been produced and a perusal of the Minutes of the Viva-voce conducted for the engagement of Consultant under National Nutrition Mission on 20/09/2019 shows that the respondent No.7 had appeared the interview for the post of Consultant (Health & Nutrition).

8. The affidavit-in-opposition of the respondent No. 7 has also been perused wherein it has been stated that the present petition has become infructuous since the respondent No. 7 has resigned from the said post and is no longer serving as Consultant (Health & Nutrition) under the department of Social Welfare.

9. Heard the learned counsel for the parties. The writ petition was filed for quashing and setting aside the appointment order dated 25/10/2019 appointing the respondent No.7 to the post of Consultant (Health & Nutrition) under Rashtriya Poshan Abhiyaan in the Social Welfare department and to appoint the petitioner in place of the respondent No.7. It is however observed that the respondent No.7 has resigned from the post of Consultant (Health & Nutrition) and to that effect the Government has issued the release order dated 01/04/2021 releasing the respondent No.7 from service w.e.f 01/04/2021 on resignation. Therefore, this Court is of the view that the petition filed by the petitioner has become infructuous and no cause of action survives for adjudication.

Insofar as the prayer of the petitioner to direct the State respondents to appoint the petitioner as Consultant (Health & Nutrition), the said post, as submitted by the learned Sr. Government Advocate, has been discontinued and therefore, no direction can be issued to the State respondents to consider the case of the petitioner for appointment to the post of Consultant (Health & Nutrition).

10. On the submission made by the learned counsel for the petitioner that the State respondents may be directed to conduct an enquiry into the fraudulent appointment of the respondent No. 7, the State respondents more particularly, the respondent No. 2 & 3 may cause an enquiry into the allegation made by the petitioner and if found true may initiate necessary action against the erring officials in accordance with law.

11. With the observations made above, the writ petition stands disposed.

12. The Registry shall forthwith return the official record in original to the learned Sr. Government Advocate.

JUDGE

Comparing Assistant