



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

Case No. : WP(C)/115/2019

THUNGBEMO C. SHITIRI
S/O CHANCHI SHITIRI,
C/O TSANSO NGULLIE STENO GR - 1, DIRECTORATE OF VETY. AND
ANIMAL HUSBANDRY, N/L, KOHIMA, R/O PANGTI VILLAGE, WOKHA,
N/L

VERSUS

1: THE STATE OF NAGALAND AND 8 ORS
REPRESENTED THROUGH THE CHIEF SECRETARY TO THE
GOVT. OF N/L, KOHIMA

2: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
N/L KOHIMA

3: THE SECRETARY TO THE GOVT. OF N/L
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT, N/L
KOHIMA

4: THE SECRETARY TO THE GOVT. OF N/L
LAND REVENUE DEPARTMENT, N/L KOHIMA

5: THE DEPUTY COMMISSIONER
WOKHA, N/L

6: THE DIRECTOR
VETERINARY AND ANIMAL HUSBANDRY, N/L KOHIMA

7: THE CHIEF VETERINARY OFFICER
WOKHA N/L

8: E. ZUBENTHUNG NGULLIE
MEDICINE CARRIER, VHC, SUNGRO

UNDER THE ESTABLISHMENT OF CHIEF VETERINARY OFFICER
WOKHA N/L

9:TEK BAHADU
HEADMASTER, SPRINGDALE SCHOOL
WOKHA, N/L

Advocate for the Petitioner : I. IMTI LONGCHAR
SUPONGWATI WALLING
KIROBA
ATSULA KIPS
KEKHRIESENULO
H.ZELIANG

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

ORDER

Date : 24-03-2023

Heard Mr. Imti Longchar, learned counsel for the petitioner, Mr. Thiba Phom, learned Government Advocate appearing for respondent Nos. 1 to 7, Mr. N.K. Luikham, learned counsel appearing for respondent No.8 and Ms. Anungla Lkr, learned counsel appearing for respondent No.9.

2. The petitioner by filing this writ petition has challenged the Notification dated 5/3/2018 (Annexure-15) by which the Government of Nagaland, Land Revenue Department has notified the policy with regard to appointment to Grade-IV posts under the Government on land ownership basis. The petitioner has also challenged the communication dated 6/11/2018 (Annexure-10) by which approval of the Government was conveyed to the Director, Animal Husbandry & Veterinary Services for appointment of respondent No.8 as

and also the impugned office order dated 8/3/2019 (Annexure-13) by which the respondent No.8 was appointed to the post of Medicine Carrier at Veterinary Health Centre (VHC) Sungro under the establishment of Chief Veterinary Officer, Wokha.

3. The case of the petitioner in brief is that a vacancy in the post of Medicine Carrier occurred on account of the appointment of the incumbent occupying the said post as VFA vide order dated 19/5/2016 (Annexure-1). The petitioner then submitted an application to the Director, Animal Husbandry & Veterinary Services for appointment to the said post on 6/6/2016 (Annexure-2) being the local and land owner of the land where Stockman Centre, Sungro town was situated. Along with his application the petitioner submitted other testimonials such as land owner certificate dated 7/6/2016 issued by the head GB Pangti village, Wokha and No Objection Certificate dated 3/7/2016. However along with the application of the petitioner, there were other 2 applicants who applied for the same post. The Additional Director, Animal Husbandry & Veterinary Services vide his letter dated 4/8/2016 (Annexure-4) forwarded all the 3 applications to the Chief Veterinary Officer, Wokha Nagaland to initiate necessary action as per the Government standing order issued by the P & AR Department vide O.M. dated 4/2/2016. While the matter was pending before the Chief Veterinary Officer, all the 3 applicants came to an understanding that it should be the petitioner who alone should apply for the post. Accordingly, the other 2 applicants withdrew their applications and the Chief Veterinary Officer, Wokha vide his letter dated 21/11/2017 (Annexure-6) recommended the appointment of the petitioner to the post of Medicine Carrier. The Director Animal Husbandry & Veterinary Services thereafter, for-

warded the application of the petitioner along with the recommendation of the Chief Veterinary Officer to the Principal Secretary to the Government of Nagaland, Department of Animal Husbandry & Veterinary Services on 15/1/2018 (Annexure-7). However, while the petitioner was expecting favourable consideration and appointment to the post in question, the private respondent No.8 came to be appointed to the said post vide appointment order dated 8/3/2019 after his appointment was approved by the Government vide communication dated 6/11/2018. Therefore, being aggrieved the petitioner is before this Court.

4. Mr. Imti Longchar, learned counsel submits that there is no dispute to the fact that it is the clan of the petitioner i.e. Shitiri clan who donated the land for establishment of Stockman Centre which is now known as VHC, Sungro town covering an area of about 5 acres of land. The petitioner applied for the post in question through proper channel upon learning that the same became vacant on account of the promotion of the previous incumbent. The application of the petitioner was processed at different levels and was also considered along with 2 other applicants. However, upon coming to an understanding the other 2 applicants withdrew their application and it was the name of the petitioner which was recommended by the Chief Veterinary Officer, Wokha, Nagaland for appointment to the post and by which it was forwarded to the Director, Animal Husbandry & Veterinary Services. The same was again submitted to the State Government through the Principal Secretary, Government of Nagaland Department of Animal Husbandry & Veterinary Services. The same ought to have been approved by the State Government in view of the petitioner belonging to the Shitiri clan who had donated

the land. However, the State respondents instead considered and appointed the respondent No.8 solely on the basis of the recommendation made by the Advisor Horticulture to the Advisor Animal Husbandry & Veterinary Services on 17/7/2018 (Annexure-9). Therefore, the decision made in favour of the respondent No.8 and the appointment given to him as Medicine Carrier cannot be sustained and should be set aside.

5. The learned counsel further submits that the State respondents in their affidavit-in-opposition have taken the stand that the land for construction of the VHC was acquired by executing a Deed of Release dated 6/3/1981 which is annexed to the counter affidavit of the State respondents as Annexure-A. However, the signatory of the Deed of Release do not belong to the Shitiri clan but to the Ngullie clan who are not land owners of the land where the VHC is established. By referring to the additional affidavit filed by the State respondents subsequently, the learned counsel submits that the Animal Husbandry & Veterinary Services Department through its Director sought clarification from the head GB Sungro station at Wokha and the Head GB vide his letter dated 6/4/2022 clarified that the land where the VHC is established belongs solely to the Shitiri clan of Yenshia Rui C khel, Pangti village and is free from all encumbrances. The said clarification is annexed by the State respondents as Annexure-II to the additional affidavit dated 6/7/2022. As such, in view of this clarification and also to the admission one of the signatories who is still alive and also the son of the other signatory of the Deed of Release dated 6/3/1981, it is clear that the land belongs to Shitiri clan. As such, the petitioner should be appointed against the post of Medicine Carrier in place of the respondent No.8 who

was appointed without any process and that too, without being a member of the Shitiri clan who donated the land in question.

6. Mr. Thiba Phom, learned Government Advocate submits that although there is no dispute regarding the land belonging to the Shitiri clan but the fact remain that member of the Shitiri clan cannot claim appointment in the Department on the strength of being land owners in perpetuity. He submits that the State Government in the Land Revenue Department vide Notification dated 5/3/2018 has clearly laid down guidelines in that regard. According to paragraph 3(c) of the said Notification, the appointment given to land owner is personal and once he vacates the post on retirement, the post has to be filled up through open advertisement by giving opportunity to all interested applicants. Similar instruction was also issued by the State Government in the Land Revenue Department vide O.M. dated 16/8/2018 therefore, the petitioner cannot make a claim that he has the right to be given preferences over all others for appointment to the post in question. He therefore, submits that the writ petition should be dismissed.

7. Mr. N.K. Luikham, learned counsel for respondent No.8 adopting the arguments of the learned Government Advocate submits that the respondent No.8 being an indigenous inhabitant of Wokha district applied for the post in question and the authorities concerned upon finding him to be eligible, appointed him to the post with the approval of the Government. The petitioner on the other hand cannot claim to be employed under the department on the basis of being land owner. He submits that as per the standing policy of the Government, employment given to land owners is only a one time entitlement. As such, the appointment of respondent No.8 may

not be interfered with by this Court and the writ petition should be dismissed.

8. Ms. Anungla Lkr, learned counsel for respondent No.9 referring to the affidavit-in-opposition of the respondent No.9 submits that School certificate issued by the respondent No.9 was only due to oversight and the same has been nullified by issuing another certificate without any coercion or threat.

9. I have heard the submission made by the learned counsel for the parties and I have perused the materials available on record.

10. The claim of the petitioner is for appointment to the post of Medicine Carrier which became vacant on account of promotion of the incumbent as VFA. The petitioner applied for the said post by submitting his application on 6/6/2016 along with testimonials to show that he belongs to land owner clan. While such application was being made, 2 other applications were also submitted by 2 individuals before the Directorate of Animal Husbandry & Veterinary Services. As a result the Additional Director, Animal Husbandry & Veterinary Services forwarded all the 3 applications to the Chief Veterinary Officer, Wokha Nagaland for consideration as per the standing Government guidelines i.e guidelines issued by the P & AR Department by O.M. No.AR-3/GEN-174/2007 (pt) dated 4/6/2016. While the matter was pending before the Chief Veterinary Officer, the other 2 applicants, leaving aside the petitioner, submitted application to the Chief Veterinary Officer for withdrawing their applications. Upon such withdrawal, the Chief Veterinary Officer forwarded the name of the petitioner to the Director of Animal Husbandry & Veterinary Services recommending his appointment to the post of Medicine Carrier. The same was in turn forwarded by the Director of

Animal Husbandry & Veterinary Services to the Principal Secretary, Government of Nagaland. Despite the same, the petitioner was not recommended for appointment to the said post and instead, it is the respondent No.8 whose name came to be recommended vide communication dated 6/11/2018. As for the respondent No.8, the basis on which his name was approved by the Government for appointment to the post of Medicine Carrier was admittedly on account of the recommendation made by the Advisor Horticulture to the Advisor Animal Husbandry & Veterinary Services. In other words, no process was undertaken to consider the case of the respondent No.8. There is no dispute to the fact that on account of land ownership, various Departments under the State Government have been given the benefits of appointment to the members belonging to the clan of land owners. The same can be appreciated from the O.M dated 3/3/2022 issued by the Chief Secretary to the Government of Nagaland on the subject "Filling up of Group-D posts to the Department-corrigendum issued-Reg". The contents of the O.M may be abstracted herein under for ready perusal:-

"NO.AR-3/GEN-174/2007(Pt)

Dated Kohima the 3rd March, 2022

OFFICE MEMORANDUM

SUB:- Filling up of Group D posts in the Department-corrigendum issued-Reg

The procedure of filling up Grade IV posts in the Government has been laid down vide Office memoranda No.AR-3/GEN-174/2007(Pt) dated 26.10.2017 and 24.03.2018. The latter memorandum lays down that applications for recruitment to the posts should be called through open advertisement.

2. Following difficulties expressed by various departments on account of the fact that in many cases, Group-D posts, such as chowkidars, malis and peons, are filled by landowners or on compassionate ground, and locally at the district, sub division or village level, the matter was considered by the Cabinet in its meeting held on the 9th February 2022 and 22nd February 2022. In order to remove such difficulties, it is hereby directed that the condition of advertisement is dispensed with wherever such difficulties are faced by a department, as

long as a fair and transparent eligibility criteria and process is followed and in all such cases approval of the Government is obtained.

3. *All requirements as laid down by Government with regard to compassionate appointment, appointment of landowners as well as reservations for Backward tribes and Persons with Disabilities (PwD) shall be adhered to while following the instructions contained in this O.M.*

4. *This issues with the approval of the competent authority.*

Sd/- J. ALAM

Chief Secretary to the Government of Nagaland."

11. From the above abstract it can be seen that the requirement of floating advertisement can be dispensed with for filling up posts on account of difficulties faced by the Department as long as the procedure adopted is carried out in a fair and transparent manner and the approval of the Government is obtained. Such situation arises in case of compassionate appointment and also appointment from amongst land owners besides others. Therefore, it is clear that some consideration is to be given to land owners for being appointed against Group-D posts. The respondents have relied upon the Notification dated 5/3/2018 and 16/8/2018 which provides that appointment given to land owners cannot be carried out in perpetuity and that the same is one time benefit given to land owners. However, in the instant case, as may be seen, the post in question fell vacant on account of the promotion of the incumbent on 19/5/2016 and therefore, the two Notifications issued subsequently in my considered view cannot be made applicable retrospectively.

12. Now coming to the case of the respondent No. 8 again, as already stated in paragraph No.10 above, he was appointed as Medicine Carrier on the recommendation made by the Advisor, Horticulture to the Advisor, Animal Husbandry and Veterinary Services on 17.07.2018. There are no materials on record to show that any

process was undertaken to give him the benefit of such appointment. The respondent No. 8, although is said to be an indigenous inhabitant of Wokha district but he admittedly is not from the clan which donated the land in question. Therefore he does not qualify to be appointed from the category of land owner.

13. Thus, upon having due regard to the submissions made by the rival parties, I am of the considered view that there is merit in the writ petition and that appointment of respondent No.8 cannot be sustained. Accordingly, the same is set aside. The respondents are now directed to consider the case of the petitioner in terms of the recommendation forwarded by the Director, Animal Husbandry & Veterinary Services to the Principal Secretary to the Government of Nagaland, Animal Husbandry & Veterinary Services on 15/1/2018 (Annexure-7). Such consideration shall be done as expeditiously as possible and at any rate within a period of 6(six) weeks from the date of receipt of a certified copy of this order.

14. With the above observation and directions, the writ petition stands disposed of. No cost.

**Sd/-
JUDGE**

Comparing Assistant