

GAHC020003302019



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

Case No. : WP(C)/122/2019

YANGTSAPI SANGTAM
FATHER'S NAME- SHRI.TEMSU,
PLACE OF DOMICILE - CHARE OLD TOWN, TUENSANG, N/L

VERSUS

1. The State of Nagaland
Represented through the Chief Secretary to the Govt. of
Nagaland, Kohima, Nagaland
2. The Commissioner and Secretary to the Govt. of
Nagaland, Dept. of Health and Family Welfare Nagaland,
Kohima
3. The Principal Director Health and Family Welfare
Nagaland, Kohima
4. The Chief Medical Officer,
Tuensang, Nagaland
5. Achemla S. Sangtam, Medical Attendant Chare Primary
Health Centre, Tuensang, Nagaland

Before
Hon'ble Mr. Justice Mridul Kumar kalita

For Appellant	:	Mr. C. T. Jamir, Sr. Advocate Mr. I. Imchen, Advocate
For respondent(s)	:	Ms. Livika, Advocate, (R.1-4) Mr. L. L. Sangtam, Advocate, (R.5)
Date of hearing	:	23.05.2023
Date of judgment	:	30.05.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. C. T. Jamir, learned senior counsel assisted by Mr. I. Imchen, learned counsel for the Petitioner. Also heard Ms. Livika, learned Government Advocate for the Respondent Nos. 1 to 4 as well as Mr. L. L. Sangtam, learned counsel for the Respondent no.5.
- 2.** The present Petitioner has approached this Court by filing this present writ petition under Article 226 of the Constitution of India, impugning the order No. DHFW-3/VACANCY/GR-IV/TSG/2017-18/7546-50 dated 26.10.2018, whereby the Respondent No.5 was appointed to the post of Medical Attendant at Primary Health Centre (PHC), Chare.
- 3.** The Petitioner has also prayed for directing the respondent authorities to appoint the Petitioner to the post of Medical Attendant at PHC, Chare on the land ownership basis.
- 4.** The Petitioner's case, in brief, is that he is a permanent resident of Chare Old Town, under Tuensang district in the State of Nagaland and the

land where the present Primary Health Centre, Chare has been set up was a farm land belonging to three different land owners, namely (1) Likingchem, (2) Imtimeren, and (3) Likoktemjen. The Medical Department have taken over the said land from the aforesaid three owners for setting up the Primary Health Centre with a condition that appointment to Grade-IV post shall be given to the land owners. The Chare Village Council stood as a mediator between the medical department and land owners and it was through their initiative that the land owners had agreed to part away their lands to the Department for construction of Primary Health Centre at Chare. In order to keep on record the aforementioned agreement, the Chare Village Council had issued a certificate dated 11.02.1998 certifying about the terms and conditions for appointment of land owners to Grade-IV post.

5. That the Petitioner, on coming to know that a post of cook is going to become vacant at Primary Health Centre at Chare on retirement of one Shri Akhingba Sangtam, had, on 14.03.2015, applied for appointment to the said post on land owner basis to the Chief Medical Officer, Tuensang, Nagaland claiming to be the grandson of the third land owner namely, Likoktemjen.

6. The Petitioner also contended that out of the three land owners who donated the land over which the PHC, Chare was constructed, two land owners have already got appointments. Only the third land owner, i.e., the Petitioner side is yet to get an appointment on the basis of agreement which was entered into at the time of donation of the said land by the predecessor of the present Petitioner.

7. It is further contended that the application for appointment filed by

the Petitioner was duly forwarded by the Chief Medical Officer, Tuensang to the Principal Director, Health and Family Welfare, Nagaland, Kohima (*Respondent no. 3*). It is further contended that Shri Akhingba Sangtam, who was the incumbent of the post to which the petitioner had applied for appointment was released from service by order dated 14.04.2015, on his retirement, w.e.f. 31.01.2015. It is further contended that the said vacant post of cook under PHC, Chare was later on converted to the post of Medical Attendant by an Office Memorandum dated 11.02.2016. It is also contended by the Petitioner that by letter dated 21.12.2017 the Principal Director, Directorate of Health and Family Welfare, Nagaland (*Respondent No.3*) forwarded a list of applicants to the government for appointment to Grade-IV post against different Health units under various districts of Health and Family Welfare Department. In the said list, in respect of Tuensang district, against the retirement vacancy of Shri Akhingba Sangtam, i.e., to the post of cook which was converted to the post of Medical Attendant, names of four applicants were forwarded including that of the Petitioner.

8. It is further contended that the name of the respondent no.5, nowhere figured in the said list of applicants which was forwarded by Respondent no.3 to the Respondent no. 2. The Petitioner has further contended that being a genuine land owner he was expecting that his case for appointment to the said post will be considered in terms of the agreement. However, to his utter surprise one Ms. M. Tontinaro was approved, by the Government, for appointment to the post of Medical Attendant, Chare PHC vice Shri Akhingba Sangtam by letter dated 29.06.2018. The name of Ms. M. Tontinaro figured at Serial No. 3 of the

appointment list. The Petitioner submitted a legal notice dated 16.07.2018 to the authorities, against the approval of Ms. M. Tontinaro and requesting immediate cancellation of the approval letter in respect of Ms. M. Tontinaro and to consider the case of the present Petitioner.

9. After issuance of said legal notice, the approval of the Ms. M. Tontinaro for appointment to the said post was cancelled. However, the respondent authorities again, by impugned order No. DHFW-3/ VACANCY/ GR-IV/ TSG/ 2017-18/ 7546-50 dated 26.10.2018 appointed the respondent No. 5 to the post of Medical Attendant in Chare PHC.

10. It is contended that the respondent No. 5 is neither the land owner nor his application was forwarded by the Respondent No. 4 or by Respondent No. 3. It is further contended that the impugned appointment order in favour of Respondent no.5 was purportedly issued on strength of Government approval letter no. HFW(A)-8/32/2015 (PT) dated 10.10.2018.

11. The Petitioner has further contended that in the meanwhile he came to know that the respondent no. 5 has already been appointed to the post of Medical Attendant at Primary Health Centre Chare, and she also filed a writ petition before this Court which was registered as WP(C)/99(K)/2019 wherein she has prayed for release of her salary and the said writ petition is pending before this Court for disposal.

12. After coming to know about the appointment of Respondent no.5, the Petitioner approached this Court by filing instant writ petition impugning the appointment order of Respondent no. 5 and also praying for consideration of his appointment on the basis of land ownership and

on the basis of agreement entered into at the time of donation of land for construction of PHC at Chare by the grandfather of the Petitioner.

13. Mr. C. T. Jamir, learned senior counsel for the petitioner has submitted that Government of Nagaland by notification dated 05.03.2018 have notified a policy in regard to appointments to Grade-IV post under Government of Nagaland on land ownership basis. The relevant portion of the Notification is reproduced as under:

“2. Old cases where Administrative Headquarters and Block Headquarters were set up in various parts of the State on the lands donated freely by individuals, villages or people of that areas should not be reopened for compensation or for employment in consonance with the policy brought out vide Memorandum No. LR/2-135/76 dated 20.06.1977.

3(a) In other cases prior to 26.07.2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land where a specific written agreement exists providing for employment to the land owners the claim of land owner for employment should be settled in terms of such agreement.

3(b) If there is any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned who shall examine such claim carefully including whether any employment of any other facility including contract or supply order has been given in the past. Written statements from the witnesses that is, Government officials of the concerned department and the District Administration and Village functionaries present at the time of such oral agreement should be taken by the Deputy Commissioner. The recommendation of

the Deputy Commissioner should be referred with relevant documents to the Department of Land Revenue for advice in such cases by the Department concerned.

3(c) It is also clarified that it is not the policy of the Government to provide employment to the landowner in perpetuity. The employment of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointment as landowner in Government service and does not entitle his descendants for further employment on his retirement from service. After the appointed landowner retires or vacates the post, the vacancy will be filled up through open advertisement in consonance with the existing policy giving equal opportunity to all applicants."

14. Mr. C. T. Jamir, learned senior counsel for the Petitioner has further submitted that Government subsequently issued another Office Memorandum dated 16.08.2018 directing the concerned departments to strictly comply with the laid down rules/policies for employment to Government services or contractual work or other facilities on land ownership basis. Mr. C. T. Jamir, learned senior counsel for the Petitioner, further submits that the present Petitioner, being the land owner of the land over which the Primary Health Centre, Chare has been constructed has accrued a right to be considered for appointment to the post in question on land ownership basis and also on the basis of notifications dated 05.03.2018 and 16.08.2018, issued by Government in this regard.

15. Mr. C. T. Jamir, learned senior counsel for the Petitioner, further submits that the Government of Nagaland has also issued an Office Memorandum No. AR-3/Gen-174/2007 (Pt) dated 04.06.2016, wherein it has been prescribed that "*all direct recruitment vacancies occurring in*

Grade-IV posts in the District Offices shall be filled by inhabitants of the respective District”.

16. However, Mr. C. T. Jamir, learned senior counsel for the Petitioner has submitted that the Respondent No. 5 who is not an indigenous habitant of Tuensang District, but a permanent resident of Seyochung Village under Kiphire District of Nagaland was appointed to the post of Medical Attendant in violation of the aforesaid Office Memorandum and therefore, his appointment is liable to be quashed.

17. Mr. C. T. Jamir, learned senior counsel for the Petitioner, has further submitted that this Court by the order dated 09.06.2022 had directed the Deputy Commissioner, Tuensang to conduct an enquiry in terms of Clause (3) (b) of the notification dated 05.03.2018 and to place a report before this Court in that regard and accordingly, an Additional affidavit was filed by the Respondent side on 23.05.2023 before this Court, wherein it was stated that an enquiry in terms of Clause 3 (b) of the Notification dated 05.03.2018 was conducted on 22.07.2022, wherein it was found that the PHC Chare occupies a total approximate area of 760 square meters wherein a portion of land measuring 222 square meters belong to Likoktemjen and it was found that the present Petitioner Shri Yangtsapi Sangtam is the grandson of Likoktemjen and till date no appointment has been made from their family.

18. In view of the findings of the aforesaid enquiry, Mr. C. T. Jamir, learned senior counsel for the Petitioner has submitted that the Petitioner being the sole land owner contender to the said vacant post has accrued a right to be considered for appointment against the said vacant post in terms of the Government policies regarding appointment to such posts on

the basis of land ownership and hence, he has prayed for a direction from this Court for quashing the impugned order, whereby the Respondent No. 5 was appointed to the said post and to further a direction to the respondent authorities to appoint the present Petitioner to the said post.

19. Ms. Livika, learned Government counsel appearing for Respondent nos. 1 to 4 has submitted that the appointment of Respondent No. 5 to the post of Medical Attendant, PHC Chare has been kept in abeyance by the Government Authorities. She has also pointed out that by order dated 13.08.2019, this Court had directed that the appointment of Respondent No. 5 as Medical Attendant by impugned order dated 26.10.2018 shall be subject to outcome of this writ petition.

20. On a specific query, by this Court she has further submitted that the appointment of Respondent No.5 to the said post was not made through any advertisement.

21. Learned Government counsel, Ms. Livika has admitted that the land on which Primary Health Centre Chare, has been setup originally belong to three different land owners and in the enquiry conducted in pursuant to this Court order dated 09.06.2022, it was found that the present Petitioner is a grandson of one of the land owner namely, Likoktemjen. However, she has submitted that there was no written agreement between the land owner and the Government so as to give effect to the claim of the petitioner and the certificate dated 11.02.1998 relied upon by the present Petitioner is only a certificate issued by office of the Chare Village Council.

22. Mr. L. L. Sangtam, learned counsel for the Respondent No.5, has countered the submissions of learned counsel for the Petitioner by stating that the son of third land owner, late Athriba was appointed as Medical

Attendant, Primary Health Centre, Chare and after the death of the third land owner's son, the grand-daughter of third land owner Ms. Lipongla was appointed on compassionate ground by order No. DHFW-3/117/Grade-IV/TSG/11 dated 16.12.2017 as Medical Attendant, Primary Health Centre, Chare on compassionate ground and she is still serving till date and hence, the claim of the present Petitioner that none of the descendant of the third land owner has been appointed is not true. However, Mr. C. T. Jamir, learned senior counsel has referred to the affidavit-in-reply filed by the Petitioner against the affidavit-in-opposition of the Respondent No. 5 wherein it is stated that late Athriba was not appointed on the basis of land ownership and as the nature of appointment of Ms. Lipongla was on compassionate ground on demise of late Athriba, the present Petitioner's right to be considered for appointment on the basis of land ownership is not exhausted.

23. Hon'ble Supreme Court of India in "***State of Orissa v. Mamata Mohanty***" reported in "***(2011) 3 SCC 436***" has observed as follows:-

"35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to

invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : AIR 1992 SC 789] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130] , Excise Supdt. v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , Arun Tewari v. Zila Mansavi Shikshak Sangh [(1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331] , Binod Kumar Gupta v. Ram Ashray Mahoto [(2005) 4 SCC 209 : 2005 SCC (L&S) 501 : AIR 2005 SC 2103] , National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319] , Telecom District Manager v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] , State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and State of M.P. v. Mohd. Abraham [(2009) 15 SCC 214 : (2010) 1 SCC (L&S) 508] .)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16

requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

24. On perusal of materials available on record, there is nothing to suggest that the Respondent No. 5 was appointed to the post of Medical Attendant, Chare by the impugned order DHFW-3/VACANCY/GR-IV/TSG/2017-18/7546-50 dated 26.10.2018 after issuing advertisement through a fair selection process by giving opportunity to all eligible persons to apply for the said post, hence, the said appointment is violative of guidelines of Hon'ble Supreme Court of India as discussed in “***State of Orissa v. Mamata Mohanty***” (*supra*). Learned counsel for the Respondent No. 5 has also failed to indicate anything which would suggest that the appointment of Respondent No. 5 was appointed on the basis of a fair selection process. Further, the fact that she is neither an indigenous inhabitant of Tuensang district nor a land owner of the land, over which Chare PHC has been constructed, is not disputed by learned counsel for the Respondent No. 5. In view of above, this Court is constrained to hold that the appointment of Respondent No. 5 to the post of Medical Attendant PHC, Chare is violative of the principle of fair recruitment process and Government's own policy in this regard, hence, same is liable to be interfered into.

Accordingly, the impugned appointment order No. DHFW-3/VACANCY/GR-IV/TSG/2017-18/7546-50 dated 26.10.2018 of Respondent No. 5 is hereby quashed and the appointment of Respondent No. 5 to the post of Medical Attendant, Chare is hereby set aside.

25. As regards the present Petitioner is concerned, in view of the

additional affidavit, on the enquiry report of the Deputy Commissioner, filed by the learned Government counsel in this writ petition, on 23.05.2023, no dispute remains that the present Petitioner is the grandson of Likoktemjen, who was the owner of 222 square meters of land which was donated by him and over which Chare, PHC is situated. It also appears from the said enquiry report of the Deputy Commissioner that till date no appointment has been made from the family of the present Petitioner. In view of the said report, this Court is of considered opinion that the present Petitioner is entitled to get preferential treatment in appointment to the vacant post of Medical Attendant in Chare PHC, if he is otherwise found eligible.

26. However, in view of the observations made by Hon'ble Supreme Court of India in “***State of Orissa v. Mamata Mohanty***” (*supra*) even if, there exist an agreement which prescribes giving of preference to land owners in appointment to Grade-IV post, for making any appointment to such post, a fair recruitment process, as indicated by Hon'ble Supreme Court of India in “***State of Orissa v. Mamata Mohanty***”(supra), has to be adopted. No one can claim right to be picked and chosen for appointment to any Government employment *de hors* the fair and transparent recruitment process as indicated by Hon'ble Supreme Court of India as discussed herein above.

27. In view of what has been discussed herein above, the State Respondents are directed to publish an advertisement, following the guidelines of Hon'ble Supreme Court of India in “***State of Orissa v. Mamata Mohanty***”(supra), for filling up the vacant post of Medical Attendant, Chare giving option to all eligible candidates to apply for the same and

thereafter, a proper selection process should be held wherein the Petitioner and Respondent No. 5 may also be allowed to participate, if otherwise found eligible. The Petitioner's claim for preferential treatment on the basis of land ownership may also be considered by the respondent authority in the said recruitment process. Mention about such a preferential treatment on the basis of land ownership may be made there in the advertisement itself. This does not preclude Respondent No. 5 from applying to the said post in terms of advertisement to be issued by the respondent authorities, if she is otherwise found eligible to apply for the same. Further, in view of the fact that the present Petitioner and the Respondent No. 5 have already spent a substantial period of time (*more than four years*) in pursuing/defending the present litigation, the State respondents are hereby directed to consider for appropriate relaxation of age of the Petitioner and the Respondent No. 5 and other similarly situated person.

28. The State respondents are directed to comply with the aforesaid directions and complete the selection process for filling up the vacant post of Medical Attendant, Chare within a period of 6(six) months from the date of this order.

29. This Writ Petition is accordingly disposed of.

JUDGE

Comparing Assistant