

GAHC020004452021



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

Case No. : WP(C)/210/2021

SHRI MEDOKERHE SOLO ALIAS ARHE SOLO
S/O LATE MIALO-O SOLO

R/O KEZIEKE COLONY
NORTH BLOCK

KOHIMA TOWN
NAGALAND- 797001

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE HOME COMMISSIONER

GOVERNMENT OF NAGALAND
GENERAL ADMINISTRATION BRANGC

HOME DEPARTMENT
NAGALAND CIVIL SECRETARIATE
KOHIMA

2:THE PRINCIPAL SECRETARY
DEPARTMENT OF JUSTICE AND LAW
GOVERNMENT OF NAGALAND
NAGALAND CIVIL SECRETARIAT
KOHIMA

Advocate for : T. KHEZHIE
Advocate for : GOVT ADV NL appearing for
THE STATE OF NAGALAND AND ANR

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BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (CAV)

Date : 25-04-2023

Heard Mr. L. Iralu, learned counsel for the petitioner and Ms. V. Suokhrie, learned Addl. Advocate General for the State respondents.

2. Ms. V. Suokhrie, the learned Addl. Advocate General, at the outset, submits that the State respondents will not be filing the affidavit-in-opposition since the issue raised in the present writ petition only pertains to the issue of law as to whether the Political Assistant to the Deputy Commissioner (P.A to D.C) can be appointed as Assistant to the Deputy Commissioner under Rule-1(C) of the Rules for Administration of Justice & Police in Nagaland, 1937.

3. The petition has been filed to quash and set aside the Notification No. GAB-1/KMA/70/2008/450 dated 05/05/2017 issued by the Government of Nagaland, Home Department, General Administration Branch-1, appointing the Political Assistant to the Deputy Commissioner (P.A to D.C), Kohima/Tseminyu/Chiephobozou as Assistant to Deputy Commissioner under Rule-1(C) of the Rules for Administration of Justice & Police in Nagaland, 1937.

4. The Notification dated 05/05/2017 reads as follows;

“GOVERNMENT OF NAGALAND

HOME DEPARTMENT

GENERAL ADMINISTRATION BRANCH-1

NOTIFICATION

Dated Kohima, the 5th May, 2017

No. GAB-1/KMA/70/2008:- The Governor of Nagaland is pleased to notify that the following officers have been appointed as Assistants to the Deputy Commissioner, Kohima under Rule-1(C) of the Rules for Administration of Justice & Police in Nagaland, 1937.

1. *The SDO(C) Sadar/Jakhama/Secu-Zubza*
2. *The Revenue Officer.*
3. *The EAC, Kohima/Kezocha/Botsa/Tsogin/Tseminyu.*
4. *The PA to DC, Kohima/Tseminyu/Chiephobozou*

Sd/-

ABHIJIT SINHA, IAS,

Home Commissioner, Nagaland."

5. The present petition is concerned with the Sl. No. 4 of the notification dated 05/05/2017 appointing the P.A to D.C, Kohima/Tseminyu/Chiephobozou as Assistant to the Deputy Commissioner.

6. The brief facts of the case leading to the filing of the writ petition impugning the notification dated 05/05/2027 is that, the petitioner had lodged the complaint dated 04/07/2019 against his brother for illegally disposing the parental land. The complaint was filed before the Addl. Deputy Commissioner (ADC), Kohima, who in turn referred the matter to the Dobashis (DB's) at Kohima. The DB's after adjudicating the matters passed the order dated 11/09/2019 against the petitioner. The order dated 11/09/2019 was assailed by the petitioner by filing the Civil Appeal No. 03/2019 before the Deputy Commissioner (DC) Kohima under Rule-31 of the Rules for Administration of Justice & Police in Nagaland, 1937. The Deputy Commissioner Kohima, however by the letter dated 28/04/2021 directed the P.A to D.C, Kohima, to take up the said civil appeal filed by the petitioner. Pursuant thereto, the P.A to D.C Kohima has issued the summon dated 07/09/2021 directing the parties to appear on 21/09/2021. Being aggrieved by the letter dated 28/04/2021 issued by the Deputy Commissioner, Kohima, and the summon dated 07/09/2021 issued by the P.A to D.C Kohima, the petitioner has preferred the Civil Revision Petition (CRP) No. 9/2021 before the Hon'ble Gauhati High Court, Kohima Bench, which is pending disposal. It is however the

case of the petitioner that the basis/source for the Deputy Commissioner in issuing the letter dated 28/04/2021 referring the matter to the P.A to D.C Kohima to take up the Civil Appeal No. 3/2019 lies in the notification dated 05/05/2017 which is impugned in the writ petition. Hence, the present petition.

7. The case of the petitioner, in brief is that, the P.A to D.C, cannot be appointed as Assistant to the Deputy Commissioner by issuing the impugned notification dated 05/05/2017 under Rule-1(C) of the Rules for Administration of Justice & Police in Nagaland, 1937 as it is in conflict with Rule-31 of the Rules, 1937 and Rule-23 A of the said rules (Second Amendment) Act, 1982. It is further the case of the petitioner that the said notification is in violation of the Nagaland Dobhasi Service Rule, 1970, and the amendment carried out to the said rules by the notification dated March, 1980.

8. In order to examine the issue raised by the petitioner, this Court will first refer to the relevant rules under the Nagaland Dobhasi Service Rule, 1970 and the amendment to the rules carried out by the notification dated March, 1980 and also to the relevant rules under the Rules for Administration of Justice & Police in Nagaland, 1937.

9. Rule-4 of the Nagaland Dobhasi Service Rule, 1970 provides that the Dobhasi service shall comprise the following grades or classes in the service;

- Dobhasi Service :-
1. Selection Grade
 2. Special Grade
 3. (i) Grade-I Dobhasi.
(ii) Grade-II Dobhasi.

The Schedule I, II & III of the rules refers the Selection Grade as the Political Assistant to the Deputy Commissioner (P.A to D.C) and is a Class-II Gazetted post.

10. Furthermore, as per Rule-8 of the Service Rule, 1970 which was

amended vide Notification No. APA.5/2/71(Vol.II) dated March, 1980, the Selection Grade Dobhasis has been unambiguously referred to as P.A to D.C's and the recruitment to the said post shall be made by promotion from amongst the Special Grade Dobhasis who have put in at least six years of service as Special Grade Dobhasis.

11. Rule-1(C) of the Rules for Administration of Justice & Police in Nagaland, 1937, defines the Assistant to the Deputy Commissioner as under;

“Assistant to Deputy Commissioner” in these rules shall mean and include officers appointed as such to exercise powers assigned under these Rules and shall also include officers designated as Assistant to the Deputy Commissioner (Judicial) as and when appointed to administer criminal and civil justice under these Rules;

12. Rule-31 of the Rules, 1937 provides as follows;

“An appeal shall lie from the decision of the mauzadar, gaonbura, chief headman of khels, dobhasis or other duly recognized village authority to the tribal court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. A record shall be made of the matter in dispute and the decision of the village authorities. If necessary, the court shall examine the parties, and if the decision appears to be just, shall affirm and enforce it as one of its own. If the court sees reasons to doubt the justice of the decision, it will try the cases denovo, or refer it to a panchayat as above.”

13. Rule-23A of the Rules which was brought in by the Rules for Administration of Justice & Police in Nagaland (Second Amendment) Act, 1982 (Nagaland Act No.4 of 1983) then provides as follows;

“The Dobhasis hence forward shall try and decide such civil cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to the Deputy Commissioner as the case may be.”

14. Firstly, a reading of the Dobhasi Service Rule, 1970 and the amendment to the Rule-8 by the notification dated March, 1980 makes it abundantly clear that post of P.A to D.C is a Dobhasi post simpliciter and not a post different from Dobhasi or a post created outside the Dobhasi service. The P.A to D.C therefore for all intent and purpose is a Dobhasi and remains to be so till retirement. The P.A to D.C is only a Dobhasi in the Selection Grade and governed by the Rules, 1970. This being so, the question which arises for consideration of this Court is whether the P.A to D.C can be appointed to a higher post, in the present case as Assistant to the Deputy Commissioner, then that of a Dobhasi outside the Dobhasi Service Rule, 1970, as sought to be done by the impugned notification dated 05/05/2017. The answer, in the considered opinion of this Court, is an emphatic 'No' as it will be in clear violation of the Rules, 1970. In this context it is also relevant to refer to Rule-23A of the Administration of Justice & Police in Nagaland (Second Amendment) Act, 1982, which provides that the Dobhasi hence forward shall try and decide such civil cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to the Deputy Commissioner. There is no ambiguity in the wording of the said rule that the Dobhasi can only try civil cases which is endorsed to them by the designated authorities including the Assistant to the Deputy Commissioner. Rule 23A has not specified which Class or Grade of the Dobhasi shall take up the case as and when endorsed by the designated authorities. It only uses the word '*Dobhasis*', which in the considered opinion of this Court will also mean and include the P.A to D.C. Therefore, the P.A to D.C being only a Dobhasi, if appointed as Assistant to the Deputy Commissioner, as sought to be done by the impugned notification will militate against the provisions of Rule 23A of the Rules (Second Amendment) Act, 1982 and make the intent of the legislature in enacting the said rule redundant.

15. Secondly, if the impugned notification dated 05/05/2017 is allowed to take effect, the appeal provisions provided under Rule-31 of

the Rules, 1937 will be rendered nugatory. Rule-31 of the rules inter-alia provides that an appeal shall lie from the decision of mauzadar, gaonbura, chief headman of khels, dobhasis or other duly recognized village authority to the tribal court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. The rule then provides the manner in which such appeal is to be adjudicated and disposed. Rule-31 amongst other confer power to the Assistant to the Deputy Commissioner to hear appeals from the decision of Dobhasis etc. which will also mean and include the decision rendered by the P.A to D.C. The impugned notification dated 05/05/2017 has however conferred appellate authority to the P.A to D.C which is against the intent of Rule-31 and therefore ex-facie illegal. By appointing the P.A to D.C as Assistant to the Deputy Commissioner and empowering the P.A to D.C with appellate powers it would mean that any decision rendered by the Dobhasi will again be heard in appeal by P.A to D.C exercising concurrent power and jurisdiction as that of Dobhasi. The impugned notification, therefore if allowed to stand, will go against the very intent of the appeal provision provided by the rules. The impugned notification, therefore, in the considered opinion of this Court, cannot create an appellate forum not intended by the rules without first amending the rules. This Court therefore even on this count has no hesitation in holding that the impugned notification dated 05/05/2017 is prima facie illegal and liable to be interfered with.

16. In the case of **Alemtemshi Jamir & Others -versus- State of Nagaland & Others**, reported in **(2021) 4 GLR 248**, the Hon'ble Division Bench of this Court has held that;

“23. Having discussed the points of reference, we now answer the issues of reference as under :

(1) Dobashis cannot be empowered as appellate court by the exercise of powers under rule 23A. Rule 31 debars DC/ADCs and his assistants from such authority.

(2)..... “

17. So also in the case of **Hevuto Chishi & Others -versus- State**

of Nagaland & Others passed in W.P.(C) No. 210(K) of 2014, the learned Co-ordinate Bench of this Court after referring to Rule-31 of the principle rule and Rule-2(C) of the rules as amended has held as follows;

“21. Going by provisions as contain in the Rules and Rule-2(C) in particular, this Court is of the considered opinion that the Political Assistant to the Deputy Commissioner is not vested with any judicial powers by the rules and therefore has no power to hear appeals against the order passed by the Dobashi Court.”

18. Further in the case of **Toshiho Zhimo & Others** -versus- **Kahuto Zhimo**, reported in **(2022) 3 GLT 179**, this Court has held as follows;

“17. It is now a well settled legal position that the Dobashis’s Courts have concurrent jurisdiction to try and decide cases and therefore one D.B’s Court cannot sit in appeal over the decision of another D.B’s Court either to affirm or set aside the order/decision of the former D.B’s Court. In the present case, this settled proposition of law was ignored by the Deputy Commissioner, Zunheboto by endorsing the application filed by the respondent to the District Head D.B’s Court on a matter already decided by the D.B’s Court Satakha, though without jurisdiction.

*18. A learned Co-ordinate Bench of this Court in the case of **Nguzukhe & Another** -versus- **Yetomo**, reported in **(1992) 2 Gau LR 212** has held that;*

“11. The next submission of the learned counsel for the petitioner that one D.Bs court do not have any jurisdiction to set aside another D.Bs court is well founded in law and therefore must prevail.

12. Rule 31 of the rules for the administration of justice in Naga Hills district 1937 provides that an appeal shall lie from the decision of the Mauzadar, Gaonbura, Chief, Headmen of a khel or others duly recognised authorities (to the tribal court whenever constituted or otherwise) to the Deputy Commissioner or his Assistant. It is noticed that no mention of D.Bs court is found under Rule 31 however, by (Nagaland Act No. 4/1983) the rules for administration of justice and Police in Naga Hills district was further amended and by this amendment the word Dubashis has been inserted after the word "Headmen of a Khel."

13. A cursory reading of Rule 31 of the rules as amended by the Second amendment Act (Nagaland Act No. 4 of 1983) it

clearly posits that an appeal from the decisions of D.Bs and other authorities mentioned under Rule 31 lies to the Deputy Commissioner or his Assistants. The D.Bs are not Assistant to the Deputy Commissioner under the Rules. Therefore one D.Bs court have no jurisdiction to set aside the judgment and order passed by another D.Bs court.”

19. In the light of the discussion made above, this Court has no hesitation in holding that the Notification No. GAB-1/KMA/70/2008/450, dated 05/05/2017, issued by the Government of Nagaland, Home Department, General Administration Branch-1, insofar as the Sl. No. 4 is concerned, appointing the P.A to D.C Kohima/Tseminyu/Chiephobozou as Assistant to the Deputy Commissioner is ultra vires the rules more particularly, Rule-31 of the Rules, 1937 and Rule-23A of the Rules (Second Amendment) Act, 1982 and also in violation of the Nagaland Dobhasis Service Rule, 1970 (as amended). Accordingly, the notification dated 05/05/2017 (Annexure A-1) is quash and set aside.

20. Writ petition allowed. No cost.

Sd/-
JUDGE

Comparing Assistant