

GAHC020004702019



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

Case No. : WA/14/2019

MARSUPU AO AND 18 ORS
CHOWKIDAR, MAREPKONG SUB - CENTRE, ESTABLISHMENT OF
CMO, MOKOKCHUNG, N/L

2: BENDANGMONGLA AO

CHOWKIDAR

AONGZA SUB-CENTRE
ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

3: TEMSUWATI

MEDICAL ATTENDANT
MAREPKONG SUB-CENTRE

ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

4: TEMSUMONGLA

MEDICAL ATTENDANT

MOALENDEN SUB-CENTRE

UNDER ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

5: CHUNGPONGNUNGDEN AO

DRESSER
TULI CHC
ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

6: IMTITOSHI

NIGHT CHOWKIDAR

UNDER THE ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

7: IMKONGSUNUP

MEDICAL ATTENDANT

LONGCHEM PHC
ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

8: LIMASANGLA AO

MEDICAL ATTENDANT

UNGMA PHC
ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

9: IMLIYANGER

CHOWKIDAR

ALONGKIMA PHC
ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

10: TOSHISANGLA AO

MEDICAL ATTENDANT

TSURANGKONG PHC
ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

11: MARKENMENLA

MEDICAL ATTENDANT

DISTRICT TUBERCULOSIS CENTRE
MOKOKCHUNG
N/L

12: SAKUPOKLA AO

CHOWKIDAR

KUMLONG SUB-CENTRE

ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

13: TSUKNUNGMEREN AO

LABORATORY ATTENDANT

UNGMA PHC
ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

14: TSUKTILA AO

MEDICAL ATTENDANT

MAREPKONG SUB-CENTRE

ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

15: MASUNGLA AO

PEON

DIO
MOKOKCHUNG

MAREPKONG SUB-CENTRE

ESTABLISHMENT OF CMO

MOKOKCHUNG
N/L

16: TEMJENJONGLA AO

PEON
ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

17: MOARENLA AO

SWEEPER
ATTACHED CMS

ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

18: RISHILEMLA AO

MEDICAL ATTENDANT

MANGKOLEMBA CHC
ESTABLISHMENT OF CMO
MOKOKCHUNG
N/L

19: YASHINARO AO

LABORATORY ATTENDANT

MERANGKONG DISPENSARY
ESTABLISHMENT OF CMO

MOKOKCHUNG
N/

VERSUS

THE STATE OF NAGALAND AND 40 ORS

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF N/L,
KOHIMA

2:THE COMMISSIONER AND SECRETARY

HEALTH AND FAMILY WELFARE
N/L
KOHIMA

3:THE PRINCIPAL DIRECTOR

HEALTH AND FAMILY WELFARE
N/L
KOHIMA

4:THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

5:IMNAMEREN

MEDICAL ATTENDANT

CHC TULI
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

6:IMNAIENLA

MEDICAL ATTENDANT

TSURANGKONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

7:NUKSHISUNEP

LAB. ATTENDANT
TB CENTER
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

8:IMTIKUMZUK

PEON
ESTABLISHMENT OF THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

9:IMTISENLA

MEDICAL ATTENDANT

ALONGKIMA PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

10:IMSURENLA

MEDICAL ATTENDANT

PHANGSANG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

11:MEYANUNGLA

MEDICAL ATTENDANT

TSURANGKONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

12:TIARENLA

MEDICAL ATTENDANT

ALEMPANG SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

13:IMKUMNARO

MEDICAL ATTENDANT DTC

C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG

N/L

14:TIAKABA

MEDICAL ATTENDANT

MOKOKCHUNG VILLAGE SC
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

15:TASENYANGLA

MEDICAL ATTENDANT

MERANGKONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

16:R. ASANGLA AO

MEDICAL ATTENDANT

LAKHUNI PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

17:LANUNUKSUNG

SWEEPER

ESTABLISHMENT OF THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

18:OZUNGKALA

MEDICAL ATTENDANT

LONGSA SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

19:ASENLA JAMIR

MEDICAL ATTENDANT

CHANGTONGYA VILLAGE SC
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

20:RONGSENLAR

MEDICAL ATTENDANT

AO SETTSU SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

21:NUKRANGTILA

MEDICAL ATTENDANT

ALEMPANG SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

22:SUPONGTSUBA

MEDICAL ATTENDANT

JAPU SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

23:K. CHUBA

MEDICAL ATTENDANT

YAJANG - A SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

24:MONGSENSANGLA AIER

MEDICAL ATTENDANT

YAJANG - A SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

25:YASHILA AIER

MEDICAL ATTENDANT

AOSENDEN SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

26:BENDANGNARO

MEDICAL ATTENDANT

MERANGKONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

27:AOSANGLA

MEDICAL ATTENDANT

ALEMPANG SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

28:MEDEMKALA

MEDICAL ATTENDANT

LONGKHUM PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

29:TIATULA

SWEEPER

TSURANGKONG PHC

C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

30:IMLITOLA

PEON
MANGMETONG

C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

31:TEMSUIENLA

MEDICAL ATTENDANT

CHAKPA SC
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

32:Y. MOANUNGLA

MEDICAL ATTENDANT

AOSENDEN SC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

33:I. NAROLA

MEDICAL ATTENDANT

ALONGKIMA PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

34:IMTISENLA

MEDICAL ATTENDANT

ALONGKIMA PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG

N/L

35:DESTINY

MEDICAL ATTENDANT

LONGKHUM PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

36:PANGERMANGYANG

MEDICAL ATTENDANT

LONGKHUM PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

37:TEMSUNARO

MEDICAL ATTENDANT

LONGKHUM PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

38:IMSUMANEN

MEDICAL ATTENDANT

UNGMA PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

39:YUDANGBA

MEDICAL ATTENDANT

SC TOWN
C/O THE CHIEF MEDICAL OFFICER(CMO)

MOKOKCHUNG
N/L

40:IMLIYANGER

MEDICAL ATTENDANT

MANGMETONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/L

41:ASENJONGBA

MEDICAL ATTENDANT

MANGMETONG PHC
C/O THE CHIEF MEDICAL OFFICER(CMO)
MOKOKCHUNG
N/

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER [ORAL]

22.11.2023

[Manish Choudhury, J.]

Heard Mr. Tongpok Pongener, learned counsel for the writ appellants and Mr. Imti Imsong, learned Additional Government General, Nagaland for the State respondents. Though the notices upon the respondent nos. 5 – 41 were served in substituted manner by paper publication, none has appeared on behalf of the said respondents.

2. This intra-court appeal is directed against a Judgment and Order dated 06.09.2019 passed in a writ petition, W.P.[C] no. 162[K]/2015. The writ appellants herein were the writ petitioners in W.P.[C] no. 162[K]/2015. The facts leading to the institution of the writ petition, W.P.[C] no. 162[K]/2015, can be narrated, in

brief, as follows :-

2.1. The writ appellants-writ petitioners [hereinafter referred to as 'the appellants', for easy reference] came to be appointed in a number of posts, purportedly in Grade-IV, in the establishment of the Chief Medical Officer, Mokokchung during the period from 2004 to 2009. The orders of appointments in the post designated as Chowkidars and Medical Attendants in respect of the appellant nos. 1 – 4 were issued under the hand of the Joint Director, Health Services, Kohima. On the other hand, the orders of appointments in favour of the appellant nos. 5 – 19 were issued under the hand of the Chief Medical Officer, Mokokchung. The appellant nos. 5 – 19 were shown to have been appointed in the posts like Dresser, Night Chowkidar, Medical Attendant, Library Attendant and Peon. The appellant nos. 1 – 4 were appointed on contingency basis initially. After extending their services from time to time, they were shown to have been regularized vide orders, dated 25.02.2009, dated 25.03.2009, dated 27.02.2009 & dated 27.01.2009, respectively and thereafter, service books were also opened in respect of the appellants.

2.1. When the appellants were so continuing, the Principal Director, Health & Family Welfare, Nagaland by his Communication dated 30.04.2012, directed the Chief Medical Officers of all the districts to hold up salaries of a total of 159 employees of the Directorate of Health & Family Welfare, Nagaland on the premise that their matters were under investigation by the Vigilance & Anti-Corruption Commission. The appellants were amongst those 159 employees whose cases were being investigated by the Vigilance & Anti-Corruption Department. In the said Communication, it was conveyed that the appellants were appointed without there being any sanctioned posts. Consequent to the Communication dated 30.04.2012, the Chief Medical Officer, Mokokchung put the appellants on notice vide the impugned notice dated 18.05.2012 to the effect that they were allegedly appointed in non-existent posts by the earlier Chief Medical Officer and an investigation by the Vigilance & Anti-Corruption Commission was in progress. By the notice dated 18.05.2012, the Chief Medical Officer, Mokokchung informed the appellants that their salaries would be held up w.e.f. 01.05.2012 on the ground that the

investigation was in progress. The notice dated 18.05.2012 mentioned that the same was issued as per instruction contained in the Communication dated 30.04.2012 of the Principal Director, Health & Family Welfare, Nagaland. The appellants were thereafter, served notices dated 24.05.2012 by the Chief Medical Officer, Mokokchung to report at the Vigilance Police Station, Kohima along with their testimonials in original, on 06.06.2012. The appellants accordingly appeared before the Vigilance Police Station, Kohima along with their testimonials. The appointment orders issued in favour of the appellants were seized by the officers of the Vigilance Police Station. It is noticed that the Vigilance and Anti-Corruption Commission, after completion of the investigation, submitted an Inquiry Report before the Commissioner & Secretary to the Government of Nagaland, Health & Family Welfare Department on 12.12.2012 with the observation that the appellants were found appointed vide appointment orders without mention of any specific vacancies.

2.2. Finding themselves serving without salaries since 01.05.2012, the appellants submitted a representation before the Principal Director, Health & Family Welfare, Government of Nagaland on 02.08.2013 seeking release of their arrear and current salaries. The said representation stood forwarded by the Principal Director, Health & Family Welfare to the Commissioner & Secretary to the Government of Nagaland, Health & Family Welfare Department vide his letter dated 27.11.2013. In the meantime, a Screening Committee under the Chairmanship of the Chief Secretary to the Government of Nagaland came to be constituted on 17.07.2013 subsequent to the submission of the Inquiry Report by the Vigilance & Anti-Corruption Commission. As per the decision of the said Screening Committee, the Principal Director, Health & Family Welfare, Government of Nagaland issued an Office Memorandum on 05.05.2014 wherein a decision was taken to serve notices of one month to those employees who were found to have been appointed on regular basis without there being any sanctioned posts. A Corrigendum dated 06.05.2014 was issued in continuation of the Office Memorandum dated 05.05.2014 whereby a decision was taken to serve show cause notices of one month to the allegedly illegally appointed employees in the establishment of the Chief Medical Officers asking them to show cause as to why their services should not be terminated. The

show cause notices were thereafter, served upon the appellants to which the appellants submitted their replies. In the show cause notices, the appellants were informed that from the Final Report of the Vigilance & Anti-Corruption Commission, it was revealed that a number of appointees in the establishment of the Chief Medical Officers/Medical Superintendants under the Directorate of Health & Family Welfare, Nagaland were found to have been appointed illegally. Enclosing the list of such employees wherein the names of the appellants had also figured, the noticees were asked to show cause as to why their services should not be terminated. The show cause notices were of 12.03.2015 and the appellants submitted their joint reply on 27.05.2014.

2.3. In the joint reply dated 27.05.2014, the appellants stated to have *inter alia* highlighted that subsequent to the Communication dated 30.04.2012 of the Principal Director, Health & Family Welfare, Nagaland and the notice dated 18.05.2012 issued by the Chief Medical Officer, Mokokchung, the respondent authorities had made about 50 temporary/ad-hoc appointments against existing vacancies in Grade-IV post under the Chief Medical Officer, Mokokchung. The appellants represented that if some employees were to be terminated then the respondent authorities should apply the principle of first come and last go.

2.4. When the action sought for by the appellants in their joint reply dated 27.05.2014 was not given effect to, the appellants as writ petitioners preferred a writ petition, W.P.[C] no. 182[K]/2014 seeking quashing and setting aside of [i] the Communication dated 30.04.2012 of the Principal Director, Health & Family Welfare, Nagaland; [ii] the notice dated 18.05.2012 of Chief Medical Officer, Mokokchung; [iii] the Office Memorandum dated 05.05.2014; [iv] the Corrigendum dated 06.05.2014 and for a direction to release their salaries which were held up since 01.05.2012. The writ petition was disposed of by an order dated 16.09.2014 directing the respondent authorities to pass a speaking order by taking into consideration all the facts and circumstances obtaining in the case of the appellants.

2.5. Thereafter, the Director, Health & Family Welfare, Nagaland sent a

Communication dated 12.11.2014 informing the learned counsel of the appellants that the Government would look into the matter and decide it judicially. A show cause notice dated 20.11.2014 came to be issued thereafter under the hand of the Director, Health & Family Welfare, Nagaland whereby the appellants were directed to submit their individual replies as per the Corrigendum dated 06.05.2014. As the appellants stated to have submitted their individual replies on 05.04.2014 taking the same stand that was taken in their joint reply, filed earlier on 27.05.2014, on 15.05.2015, another show cause notice bearing no. DHFW-3/117GD-IV/General/2010 [Pt]/12799-805 dated 12.03.2015 under the Principal Director, Directorate of Health & Family Welfare, Nagaland came to be published in the newspaper on 15.03.2015. In the show cause notice so published in the newspaper, a list of employees wherein the names of the appellants also figured, under different establishments of Chief Medical Officers/Medical Superintendents was published. Observing that their appointments were shown as regular without any sanction post, the employees were given one month's time to respond as to why their services should not be terminated. Responding to the show cause notice published in the newspaper the appellants submitted their replies once again on 26.03.2015.

2.6. After receipt of the replies from the appellants, the impugned order came to be passed on 29.04.2015 under the hand of the Principal Director, Health & Family Welfare Department whereby the noticees including the appellants herein were informed that since their appointments were made on regular basis without any sanctioned posts, they had been dismissed and their appointments were declared null and void w.e.f. 30.04.2012. The issuance of the impugned order dated 29.04.2015 led the appellants to institute the writ petition, W.P.[C] no. 162[K]/2015 as the writ petitioners.

3. After exchange of pleadings, 5 [five] issues fell for consideration before the learned Single Judge. On the first issue as to whether the appellants were appointed against duly sanctioned posts or not, finding was recorded that in the appointment orders issued to the appellants, there was no mention of any sanction order/ number of the posts against which the appellants were shown

appointed/regularised. By observing that mention about the sanction post was normal practice and non-mention of the sanction orders/numbers in the appointment orders/regularisation orders of the appellants had gone to establish that the appellants were appointed against non-sanctioned posts, it was held that existence of a sanction post is a *sine qua non* for regular appointment. As the appellants were not appointed against any specific sanctioned posts, they had no legal right to claim continuance in those posts and have also no legal right to seek mandamus for that purpose. After perusal of the Inquiry Report of the Vigilance & Anti-Corruption Commission and other relevant documents, the learned Single Judge did not find any reason to doubt the findings made by the Vigilance & Anti-Corruption Commission. As the Vigilance & Anti-Corruption Commission was found to have conducted thorough inquiry before recording its findings, it was observed that there could be no other conclusion other than one that the appellants were appointed without any sanctioned post.

3.1. On the second issue as to whether there was violation of the principle of natural justice, the appellants were found to have been served with show cause notices and were found to have been afforded with the opportunity of making representation. As the appellants were found to have been granted sufficient opportunities, the learned Single Judge was of the view that there was no violation of the principles of natural justice.

4. The main contention raised by Mr. Pongener, learned counsel for the appellants in this writ appeal is that even it is assumed that the appointments of the appellants were of contingent/temporary in nature, the respondent nos. 5 – 41 were also similarly situated as the appointments of the respondent nos. 5 - 41 were also of contingent/temporary nature and they were also appointed without any kind of prior selection process. In such situation, the State respondents ought not to have terminated the appointments of the appellants in view of the settled principle of law that one set of ad-hoc employees should not be replaced with another set of ad-hoc employees and the principle of first come last go would be applicable. To buttress his such submission, he has referred to an Office Memorandum dated 13.01.2010 issued by the Personnel and Administrative Reforms Department

[Administrative Reforms Branch], Government of Nagaland.

5. Mr. Imsong, learned Additional Advocate General, Nagaland opposing such contention of Mr. Pongener, has submitted that the appellants were appointed during the period from 2004 to 2009 whereas the respondent nos. 5 – 41 were appointed during the period from 2012 – 2013. It is his submission that while in the case of the appellants there was no prior approval of the Government and they were appointed unauthorizedly by the Joint Director, Health Service, Nagaland and the Chief Medical Officer, Mokokchung, the appointments of the respondent nos. 5 – 41 were made only after prior approval of the Government and for exigencies of service. He has further contended that the appointments of the respondent nos. 5 – 41 were made in the offices other than the offices where the appellants were serving and as such, the principle that one set of ad-hoc employees should not be replaced with another set of ad-hoc employees would not be applicable in the case between the appellants vis-à-vis the respondent nos. 5 – 41.

6. The learned Single Judge did not find any kind of discrimination committed against the appellants in view of the fact that the appellants failed to prove that they have any legal right to continue in the posts which were not sanctioned posts. While deciding the last issue as to whether the appellants would be entitled to their salaries from the date their salaries were held up, that is, w.e.f. 01.05.2012 till the dates their services were terminated, that is, 29.04.2015, the learned Single Judge came to a finding that it is not a case of 'no work no pay' and since the service of the appellants were utilized by the State respondents during the said period, the appellants were entitled their salaries during the said period. A direction was given by the learned Single Judge to the State respondents to release the salaries of the appellants within a period of 3 [three] months.

7. In so far as the contention raised on behalf of the appellants to the effect that the appellants should not have been replaced by the respondent nos. 5 – 41 on the strength of the Office Memorandum dated 13.01.2010, this Court on perusal of the said Office Memorandum, is of the considered view that such contention does not have substance. The Office Memorandum dated 13.01.2010 came to be issued by the State Government after it came to the notice of the Government that

a number of unauthorized appointments had been made by certain Heads of Departments without following the prescribed procedure. A conscious decision was shown to have been taken by the Government that all those irregular appointments made by such Heads of Departments should immediately be cancelled by the concerned Administration Heads of Departments, in addition to initiation of criminal prosecution against the guilty officials. In the said Office Memorandum, a decision was taken by the State Government to the effect that notwithstanding any provision in the delegation of Financial & Cognate Power Rules, as amended from time to time, thenceforth in the case of appointments of Government Servants, either against regular posts or ad-hoc/fixed/contingency basis against non-existing posts, appointment could be made only with the prior approval of the Government. The policy decision contained in the Office Memorandum taken was to the effect that thenceforth, any appointment made without prior approval of the Government should be considered invalid, null and void and all such appointments of work-charged and casual employees without sanctioned posts should also be done only within the strength approved by the Nagaland Work-Charged and Casual Employees Commission.

8. Mr. Pongener, learned counsel for the appellants has referred to an order dated 28.07.1999 and another document [page-324 of the case papers] to submit that the appointments of the appellants were made by the competent authorities. By the order dated 28.07.1999 [page 322 of the case papers], the Directorate, Health & Family Welfare, Government of Nagaland delegated the power of transfer/posting/placement to the Civil Surgeon/Sub-Divisional Medical Officer, within the District/Sub-Division for the field staff available under their jurisdiction and by the document shown to have been issued by the Secretary, Medical & Public Health, Nagaland, Kohima, the Financial & Cognate Powers were shown to have been delegated to District Level Officers in respect of appointment to Class-IV staff. Even if it is assumed that powers were delegated to the said authorities by the order dated 28.07.1999 and the document [Page-324], such delegated powers cannot be exercised to make appointment in non-sanctioned and non-existent posts. Exercise of such delegated power to make appointments in posts purportedly in Grade-IV, without there being any sanction for such posts is clearly an exercise of

power, not authorized by such order of delegation.

9. It has emerged that the appointments of the appellants were in the offices other than the offices where the respondent nos. 5 – 41 were appointed. From the periods of appointment of the two contesting sides, it has clearly emerged that the appellants were appointed during the period from 2004 to 2009 whereas the respondent nos. 5 - 41 were appointed during the period from 2012 to 2013. Thus, the principle that one set of ad-hoc employees should not be replaced with another set of ad-hoc employees is not found applicable in the case in hand.

10. The Government has the discretion and authority to engage any person in case of administrative exigency as an interim measure. Such appointment in view of exigency on certain situation could be without any selection process. But it is settled law that for any appointment in a regular post, the constitutional principle embedded in Article 14 and Article 16 of the Constitution of India are to be scrupulously followed. It is settled that any appointment to a regular post must be after a proper selection process preceded with wide publication and by providing opportunities of participation to all the eligible candidates. Thus, it is clear that the appointments of the respondent nos. 5 – 41 cannot, by any means, be regularised in any manner, in the subsequent period.

11. Moreover, there is a clear distinction between the cases of the appellants and the cases of the respondent nos. 5 – 41 in that the appointments of the appellants were without any prior approval of the Government whereas the appointments of the respondent nos. 5 – 41 were with prior approval of the Government, meaning thereby, the appellants cannot be said to be similarly situated with the respondent nos. 5 – 41. In view of the discussion made above and for the reasons assigned, this Court is of the considered view that there is no good and sufficient ground to depart from the views reached by the learned Single Judge with the Judgment and Order dated 06.09.2019 in the writ petition, W.P.[C] no. 162[K]/2015. Consequently, the writ appeal is found devoid of any merits and the same is accordingly dismissed.

12. Mr. Pongener, learned counsel for the appellants has, however, submitted that despite such a direction to make payment of salaries to the appellants for the

period from 01.05.2012 to 29.04.2015 by the Judgment and Order dated 06.09.2019, the same have not yet been disbursed till date. Mr. Imsong, learned Additional Advocate General, Nagaland appearing of the State respondents has submitted that he has no instructions as regards the payment of salaries to the appellants for the period from 01.05.2012 to 29.04.2015. It is submitted by him that if the salaries of the appellants for the said period have not yet been disbursed, the same would be looked into.

13. While parting with, this Court is of the considered view that if the direction of the learned Single Judge to disburse the salaries to the appellants for the period from 01.05.2012 to 29.04.2015 have not yet been disbursed, the State respondents shall disburse such salary amounts to the appellants within a period of 3 [three] months from today. Taking note of the situations that the services of the appellants were terminated by the impugned order dated 29.04.2015 but the appellants had rendered their services for a substantial period of time without there being any other blemishes on their part during the said period, this Court is of the considered view that in the event the respondent authorities decide in future to fill up any sanctioned post in the offices where the appellants had served, by publication of advertisement and by way of a process of selection, the respondent authorities shall consider the cases of the appellants for providing due weightage for the period they had rendered in the previous periods and for due consideration also to the matter of relaxation of their ages.

JUDGE

JUDGE

Comparing Assistant