

GAHC020005072021



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

Case No. : WP(C)/250/2021

SHRI. KAHOSHE CHISHI
S/O NIKUTO, R/O SAPOTAMI VILLAGE, DISTRICT - ZUNHEBOTO,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND, NAGALAND, KOHIMA

2: THE COMMISSIONER AND SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3: PRINCIPAL DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION NAGALAND KOHIMA

4: DISTRICT EDUCATION OFFICER
ZUNHEBOTO NAGALAND

Advocate for the Petitioner : I. APOK PONGENER

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/309/2021

SMTI. KHEKALI S CHISHI
D/O SUHOYI SUMI
R/O SUMI
R/O SAPOTIMI VILLAGE

DISTRICT
ZUNHEBOTO
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND
NAGALAND
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2:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA

3:THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
KOHIMA
NAGALAND

4:THE DISTRICT EDUCATION OFFICER

ZUNHEBOTO
NAGALAND

Advocate for : I. APOK PONGENER
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 3 ORS

Linked Case : WP(C)/335/2021

SHRI. BEPETO CHISHI
S/O HENITO SUMI
R/O SAPOTIMI VILLAGE
DISTRICT- ZUNHEBOTO
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND
NAGALAND KOHIMA

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3:PRINCIPAL DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION
KOHIMA NAGALAND

4:DISTRICT EDUCATION OFFICER
ZUNHEBOTO NAGALAND

Advocate for : I. APOK PONGENER
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 3 ORS

Linked Case : WP(C)/336/2021

SHRI. JOSEPH CHISHI
S/O VC SUMI
R/O SAPOIMI CILLAGE
DISTRICT- ZUNHEBOTO NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED THROUGH THE CHIEF SECRETARY TO THE
GOVERNMENT OF NAGALAND

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3:PRINCIPAL DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION NAGALAND KOHIMA

4:DISTRICT EDUCATION OFFICER
ZUNHEBOTO NAGALAND

Advocate for : I. APOK PONGENER
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 3 ORS

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

JUDGMENT & ORDER

Date : 04-09-2023

Heard Mr. I. Apok Pongener, learned counsel for the petitioners and Ms. Livika, learned Government Advocate for the State respondents.

2. All the writ petitions, has been filed by the petitioners, on the same set of facts, seeking for appointment to Grade-IV post, at Government High School, Sapotimi, district-Zunheboto, Nagaland, on the basis of landownership. The writ petitions are therefore disposed of by this common judgment and order.

3. The pleadings in W.P.(C) No. 309/2021, is referred to, for this judgment.

4. The petitioner in W.P.(C) No. 309/2021 hails from Sapotimi village, in the district of Zunheboto, Nagaland. The petition has been filed seeking for a direction to the State respondents to consider the appointment of the petitioner to the vacant post of Lady Hostel Attendant, at Government High School, Sapotimi, on landownership basis.

5. The petitioner in W.P.(C) No. 250/2021 hails from Sapotimi village, in the district of Zunheboto, Nagaland. The petition has been filed seeking for a direction to the State respondents to consider the appointment of the petitioner to the vacant post of Chowkidar, at Government High School, Sapotimi, on landownership basis.

6. The petitioner in W.P.(C) No. 335/2021 hails from Sapotimi village, in the district of Zunheboto, Nagaland. The petition has been filed seeking for a direction to the State respondents to consider the appointment of the petitioner to the vacant post of Peon, at Government High School, Sapotimi, on landownership basis.

7. The petitioner in W.P.(C) No. 336/2021 hails from Sapotimi village, in the district of Zunheboto, Nagaland. The petition has been filed seeking for a direction to the State respondents to consider the appointment of the petitioner to the vacant post of Helper Carpentry Instructor (HCI), at Government High School, Sapotimi, on

landownership basis.

8. The case in a nutshell, as submitted by Mr. I. Apok Pongener, the learned counsel for the petitioners is that, all the petitioners are the descendants of late Khakhu Chishi of Sapotimi village. Late Khakhu Chishi sometime in the year 1920 purchased a portion of the jhum land from one Yimsen Jamir of Longsa village for a sum of Rs. 40/- (Rupees Forty) only. In the year 1953, a Primary School was established, by the village, on the land purchased by late Khakhu Chishi. The School was taken over by the Government and up-graded to Government Middle School in the year 1965, thereafter in the year 2016, the School was again up-graded to Government High School. Mr. I. Apok Pongener submits that the land where the present Government High School Sapotimi is located belongs to the Chishi clan which was originally donated for establishing the Primary School. The learned counsel for the petitioners also submits that a dispute arose over the land between the Chishi clan and the Chophi clan of the village which dragged on for quite some time, but was resolved in favour of the Chishi clan, by the D.B customary court, Suruhoto, Nagaland, by the settlement order dated 14/12/2019. It is submitted that no appeal has been preferred against the settlement order thereby establishing the rights of the Chishi clan on the land in question. The learned counsel for the petitioners further submits that persons from the other clans in the village have wrongly enjoyed the benefits of appointment from the Government on the basis of landownership, but no members from the Chishi clan has ever been appointed nor has enjoyed any privilege, against the School, despite being the lawful owners of the land.

9. The learned counsel for the petitioners also submits that, being the lawful owners of the land, the petitioners had applied for the different posts of Lady Hostel Attendant, Chowkidar, Peon and Helper Carpentry Instructor (HCI) against the School, which had fallen vacant due to the non extension of service of the adhoc employees and the death of the incumbent chowkidar. The applications submitted by the petitioners was forwarded by the District Education Officer, Zunheboto, Nagaland, to the Principal Director, School Education, Nagaland, Kohima, by the letter dated 28/10/2020 and thereafter by the Principal Director, School Education, Nagaland,

Kohima, to the Special Secretary, Department of School Education, Nagaland, Kohima, by the letter dated 17/04/2021. However, the State Government has not taken any action to appoint the petitioners to the posts in question. It is further submitted that the G.B of the Sapotimi village hailing from the Chishi clan has also submitted the letter dated Nil to the Principal Director of School Education, Nagaland, Kohima, for appointment of the petitioners to the post in question and the Sub-Divisional Officer(C) Suruhoto has also issued the certificate dated 17/12/2020 certifying that the Government High School Sapotimi is established on the land belonging to Chishi clan and there is no objection to the petitioners pursuing appointment to Grade-IV posts.

10. Mr. I. Apok Pongener further submits that the land holding system in the State of Nagaland is different, as the land belongs either to an individual or to the clan and accordingly whenever the land is required for developmental purposes the land is either acquired by the Government or donated by the landowners and in lieu of which Grade-IV posts are offered to such landowners as compensation for the land donated and to this end, the Government has also formulated the policy for appointment of landowners to Grade-IV posts by issuing the notification dated 05/03/2018. However, despite there being a policy for appointment of landowners, the case of the petitioners for appointment to Grade-IV post has been totally ignored. Leaving with no other option, the petitioners have filed the present writ petitions.

11. Ms. Livika, the learned Government Advocate on the other hand submits that the school which was initially established on the land donated by the landowner was taken over by the Government and up-graded to Government Middle School more than 5(five) decades back and therefore, the question of appointing the petitioners to Grade-IV post, who are not the original land donors, does not arise for consideration. Ms. Livika also submits that the notification dated 05/03/2018 itself provides that old cases where administrative and block headquarters are set up in various parts of the State on lands donated freely by the individual, villages or the people of the area should not be re-opened for compensation or for employment. The learned Government Advocate also submits that there is not even a whisper made in the writ petition about any written or oral agreement executed with the Government with

regard to the land in question and therefore, the notification dated 05/03/2018 does not come to the aid of the petitioner to seek for appointment on landownership basis. It is further submitted that even in the absence of any agreement, written or oral, with the landowners, the Government has been generous to appoint one Shri Vihuto Sumi from the Chishi clan as C/Helper at Government Middle School Sapotimi on adhoc basis on 10/09/1992 and his service has thereafter been regularized by the order dated 10/08/1994. So also by the order dated 17/06/2002, Shri V. Bokato Chophi from the Chophi clan has been appointed as Peon at G.M.S Sapotimi in a scale of pay on adhoc basis. Both Shri Vihuto Sumi and Shri V. Bokato Chophi, it is submitted, has been appointed in their respective posts against landownership and therefore, the rights of the petitioners to be appointed, even assuming it exist, stands obliterated by Clause-3(c) of the notification dated 05/03/2018.

12. In the affidavit-in-reply, the petitioners have reiterated that the land was gifted by their great grandfather, free of cost, in the year 1953 for the establishment of the primary school and as the school was managed by the village itself the question of executing any agreement for the land in question did not arise. It is also stated that the land where the school is located was embroiled in litigation between the Chishi clan and the Chophi clan of Sapotimi village which was resolved by the D.B's court at Suruhoto on 14/12/2019 in favour of the Chishi clan and because of which the landowners could not execute any agreement with the Government prior to the year 2019. It is also stated that when the primary school was taken over by the Government in the year 1965 and up-graded to Government Middle School, the department did not acquire the land but only took over the school. With regard to the appointment of Shri. Vihuto Sumi as C/Helper, the petitioners states that the appointment was not on the basis of landownership but as a consensus candidate of the village on economic consideration.

13. By filing the additional affidavit, the petitioners has also brought on record, the Office Memorandum dated 03/03/2022, which is a corrigendum issued by the Government for filling up of Grade-D post in the departments under the Government of Nagaland.

14. Heard the learned counsels for the parties and perused the pleadings. The petitioner's case is that, in the year 1953, late Khakhu Chishi, the great grandfather of the petitioners donated/gifted his land for the establishment of the primary school to cater to the educational needs of the village. The school was initially managed by the village but was subsequently taken over by the Government in the year 1965 and upgraded to Government Middle School. Thereafter, in the year 2016, the school was upgraded to Government High School. It is however, the case of the petitioner that when the school was taken over by the Government, the land on which the school was located was never acquired by the Government and therefore, the petitioners being the descendant of the lawful landowner has a right to be compensated with appointment in lieu of the land. The question which therefore arises for the consideration of this Court is whether the petitioners have a right to claim for appointment against the land donated/gifted by the original owner for the establishment of the school – The answer is an emphatic "No". When the land has been originally donated for the establishment of the school, the fact that the school was subsequently taken over by the Government, for the benefit of the village, in no way alters or changes the intent or the purpose for which the land was conveyed. The contention, therefore, that the land was not acquired by the Government while taking over the school is illogical and without merit. No right therefore accrues to the petitioners to claim appointment against the land donated by the lawful landowner. It is also not the case of the petitioners that an agreement was executed between the original landowner and the Government to provide appointment or other benefits to the landowners in lieu of the land donated. The Hon'ble Supreme Court in the case of the **Commissioner of Expenditure Tax Andhra Pradesh -versus- PVG Raju Rajah of Vizianagaram**, reported in **AIR 1976 SC 140**, while defining the word 'donation' has held that;

"8. ...When a person gives money to another without any material returns, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. A gift or gratuitous payment is, in simple English, a donation."

15. The original landowner having donated/gifted the land unconditionally for establishment of the school, the petitioners who are only the descendant of the original landowner therefore can have no right to claim appointment in lieu of the land donated.

16. Secondly, the notification dated 05/03/2018 issued by the Government of Nagaland, Land Revenue Department, which is the policy formulated by the Government for appointment of landowners to Grade-IV post under different departments of the Government, inter-alia provides as follows;

“2. Old cases where administrative headquarters and block headquarters were set up in various parts of the State on lands donated freely by individuals, villages or people of that area should not be re-opened 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 specified written agreement exists providing for employment to the landowner, the claim of landowner 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 or 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 landowner in perpetuity. The employment of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointed as landowner in Government service and does not entitled his descendant 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.”

17. On a pointed query as to which of the conditions will apply to the petitioners in support of their claim for appointment, Mr. I. Apok Pongener, the learned counsel for the petitioners submits that the case of the petitioners should be considered in the light of the Condition-3(b) of the said notification.

18. Ms. Livika, the learned Government Advocate has however vehemently objected to the submission made by the learned counsel for the petitioners by contending that in the present case there is no agreement whatsoever, written or oral, on the basis of which the claim of the petitioners, for appointment to Grade-IV post can be considered. Ms. Livika has also relied on Condition No.2 of the notification dated 05/03/2018 which provides that the old cases where administrative and block headquarters are set up on the lands freely donated should not be re-opened for compensation or employment. Ms. Livika further submits that in the present case even in the absence of any written or oral agreement, the Government has generously appointed Shri. Vihuto Sema from the Chishi clan on the basis of the landownership and therefore, even assuming that the petitioners have a right to be appointed against the land donated, the rights of the petitioners, if any, is barred under Condition-3(c) of the said notification, which provides that employment to landowner, if permitted, shall be limited to the person first appointed and does not entitle his descendant for further employment on his retirement from service.

19. On a careful perusal of the conditions stipulated in the notification dated 05/03/2018, I am in agreement with the submission made by the learned Government Advocate that the petitioners are not eligible to be appointed to Grade-IV post under any of the conditions of the notification dated 05/03/2018 more particularly Condition-3(b) of the said notification. Though, the petitioners have also contended that Shri. Vihuto Sumi was not appointed to the post of C/Helper on landownership basis, this Court does not find any justification as to why only the said person was picked up from the entire village, for appointment on economic consideration. Even otherwise, the notification dated 05/03/2018 clearly provides that the appointment of landowner shall

be limited to only one person and not more.

20. Furthermore, the O.M dated 03/03/2022 relied upon by the petitioners only provides that in cases where difficulties are faced by the department for appointment of landowners to Grade-D post, the condition of advertisement shall be dispense with, but a fair and transparent eligibility criteria shall be adopted for the appointment with due approval of the Government. The said O.M however provides that all the requirements as laid down by the Government with regard to compassionate appointment, appointment of landowners, reservation for backward tribes and person with disabilities (PwD) shall be adhered to. The O.M dated 03/03/2022, in the considered opinion of this Court, therefore, is not relevant and does not support the case of the petitioner.

21. In view of the findings made in the forgoing paragraphs, this Court does not find any merit to allow the writ petitions.

22. All the writ petitions are accordingly dismissed. No cost.

JUDGE

Comparing Assistant