

GAHC020000172022



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

Case No. : Review.Pet./1/2022

SHRI. M LAOPA KONYAK
S/O LT. MANKAI KONYAK
PERMANENT RESIDENT OF CHENLOISHO VILLAHE
P.O. ABOI, DISTRICT-MON, NAGALAND

VERSUS

SHRI. H POHPA KONYAK AND 4 ORS
R/O CHENLOISHO VILLAGE, P.O ABOI, MON NAGALAND

2:THE STATE OF NAGALAND
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

4:THE SUB DIVISIONAL EDUCATION OFFICER
ABOI
DISTRICT MON
NAGALAND

5:SHRI. LONGCHING S KONYAK
R/O CHENLOISHO VILLAGE
P.O. ABOI
DISTRICT MON NAGALAN

Linked Case : WP(C)/52/2022

SHRI. M. LAOPA KONYAK
S/O LT. MANKAI KONYAK
PERMANENT R/O CHENLOISHO VILLAGE
P.O. ABOI
DISTRICT MON
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA
3:THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA
4:THE SUB-DIVISIONAL EDUCATION OFFICER

ABOI
MON
NAGALAND
5:SHRI. H. POHPA KONYAK
S/O S.P.HANJAY KONYAK
PRESENTLY SERVING AS PEON
GOVERNMENT HIGH SCHOOL CHENLOISHO VILLAGE
UNDER THE ESTABLISHMENT OF SUB-DIVISIONAL EDUCATION
OFFICE
ABOI MON

Advocate for the Petitioner : Mr. Nisuka Chishi, Advocate

Advocate for the respondents : Mr. Limawapang, Advocate
Mr. V. Zhimomi, Govt. Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 10.06.2024

Date of Judgment : 10.06.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. Nisuka Chishi, the learned counsel for the petitioner in WP(C) No.52/2022 as well as Review Pet. No.1/2022. I have also heard Mr. V. Zhimomi, the learned counsel appearing on behalf of the State respondents as well as Mr. Limawapang, the learned counsel appearing on behalf of the respondent No.5.

2. A Government Middle School (GMS) at Chenloisho was constructed admittedly on a plot of land belonging to the father of the respondent No.5. Subsequently, the said GMC was upgraded to Government High School in the year 2014. Under such circumstances, another building was constructed in the year 2014 over the land belonging to the petitioner. In the year 2019, a vacancy arose on account of retirement of one Shalem Konyak, Peon at GMS, Chenloisho. The Government of Nagaland had forwarded the name of the writ petitioner herein, the respondent No.5 as well as one Shri Loching S. Konyak for further necessary action and decision. The Government of Nagaland vide the letter dated 26.07.2019 accorded approval for *ad hoc* appointment in favour of Shri Loching S. Konyak. This approval letter dated 26.07.2019 was challenged by the respondent No.5 in WP(C) No.123/2019 praying

for a direction to direct the State respondents to appoint him against the aforesaid post on land ownership basis and also for setting aside and quashing the approval letter dated 26.07.2019.

3. It is an admitted fact that the petitioner herein however did not challenge the said approval letter issued in favour of Shri Loching S. Konyak nor approached the authorities.

4. This Court vide the judgment and order dated 26.10.2021 disposed of the said writ petition being WP(C) No.123/2019 thereby directing the respondent State to consider the petitioner for appointment to the post of Peon lying at Government High School at Chenloisho Village. It was also directed that the said consideration shall be carried out within a period of 2 (two) months from the date of receipt of the order. Pursuant thereto, the respondent No.5 herein was appointed vide an order dated 25.01.2022. It is under such circumstances, the review application was filed being Review Pet. No.1/2022 seeking review of the order dated 26.10.2021 on the ground that the petitioner herein was not a party to the said proceedings. In addition to that, the present writ petition has also been filed challenging the appointment of the respondent No.5 on the ground that the petitioner herein has the better right.

5. The records reveal that in both the review petition as well as the in the writ petition, the State respondents have filed their affidavit as well as also by the private respondent No.5. In the said affidavit, it has been duly admitted that one building of the GMS at Chenloisho was constructed upon the land belonging to the father of the respondent No.5 and the second building was constructed on

the land donated by the father of the petitioner. It is also clear that the land of the respondent No.5 was taken prior to the land of the petitioner. It is also seen from the verification report dated 10.05.2021 that this aspect of the matter has been duly admitted.

6. The records also show that this Court vide the order dated 26.10.2021 in WP(C) No.123/2019 had duly considered that the case of the respondent No.5 ought to have been considered by the respondent authorities in as much as the father of the respondent No.5 had duly donated the land and accordingly passed such directions.

7. Under such circumstances, there cannot be any error apparent on the face of the record in the order dated 26.10.2021 passed in WP(C) No.123/2019 thereby to invoke the review jurisdiction of this Court. In addition to that, this Court also observes that there is no other ground available for reviewing the order dated 26.10.2021 passed in WP(C) No.123/2019. The consequential effect is that in view of the order dated 26.10.2021, the respondents have duly appointed the respondent No.5. The appointment of the respondent No.5 therefore has been in pursuant to the order passed by this Court. There is nothing on record which has been shown by the petitioner herein that the father of the respondent No.5 did not donate the land. It is also apparent that the petitioner's right had accrued at a later stage than that of the respondent No.5.

8. Under such circumstances, this Court is of the opinion that the appointment of the respondent No.5 vide order dated 25.01.2022 cannot be said to be illegal or arbitrary or in violation to the policy of

the respondent authorities.

9. Accordingly, this Court finds no merit in the review petition as well as also in the instant writ petition.

10. Before parting with the records, this Court however observes that it being an admitted fact by the respondent authorities in their affidavit that the petitioner's father had also donated land for construction of the second building in GMS at Chenloisho. Under such circumstances, whenever any vacancy arises, the petitioner or any other family member would be entitled to be considered for appointment on land ownership basis as per the extant policy of the Government.

11. In view of the above, both the review petition as well as the writ petition stands disposed of.

JUDGE

Comparing Assistant