

GAHC020000402017



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

Case No. : WP(C)/117/2017

IMTIMENLA LONGKUMER
D/O SAKUNEMBA, R/O MIDLAND,

VERSUS

STATE OF NAGALAND AND 3 ORS
KOHIMA

2:COMMISSIONER AND SECRETARY
HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:PRINCIPAL DIRECTOR
HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

4:CHIEF MEDICAL OFFICER
MO N

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

Date of hearing and judgment : 06.06.2024

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

06.06.2024

Heard Mr. Sentianger, learned counsel appearing on behalf of the petitioner and Ms. A. Ayemi, learned Government Advocate appearing on behalf of the State respondents.

2. The petitioner herein being aggrieved by the action of the respondents in not permitting her to continue in service as Medical Attendant in Primary health Center, Tizit, under the establishment of the Chief Medical Officer, Mon, and also for not releasing her salary since September, 2012 had filed the instant writ petition on 07.07.2017.

3. It is the case of the petitioner that she was appointed on the basis of an Order dated 22.02.2010, by the Principal Director, Health & Family Welfare Department, Nagaland, temporarily in a scale of pay. Pursuant thereto, the petitioner states that her Service Book was prepared on 22.02.2010 and on the very day, the petitioner had also joined her service.

4. It further appears that pursuant to filing of the instant writ petition the respondent Nos. 1 to 4 had filed an affidavit-in-opposition stating *inter alia*, that the petitioner, along with 3 (three) others were found to be illegal appointees and as such, the Principal Director, Health & Family Welfare Department, Nagaland, directed the Chief Medical Officer, Mon, to produce the original Appointment Orders of

the petitioner and 3 (three) others on 28.08.2012 at 2:00 P.M. and also bring along with him the petitioner along with 3 (three) other persons.

5. Pursuant thereto, the Screening Committee, on 28.08.2018 looked into the materials which were being placed. It is relevant herein, to observe that the petitioner did not appear before the Screening Committee. The Screening Committee, on the basis of the facts that there was no file numbered as DHFW-3/117/MON/APPT/08-09, came to a conclusion that the petitioner's appointment was an illegal appointment. The Screening Committee also expressed that the signature of the Appointing Authority in the Appointment Order as much as the signature of the Dealing Assistant in the Appointment Order were highly doubtful. Accordingly, the Screening Committee recommended amongst others, that the appointment of the petitioner be treated as null and void.

6. On the basis of the said recommendation, on 24.09.2012 the service of the petitioner along with 2 (two) others have been held to be treated null and void with immediate effect.

7. To the said affidavit-in-opposition, an affidavit-in-reply was filed by the petitioner stating *inter alia* that she had no notice about the Screening Committee and she have been terminated arbitrarily without affording the principles of natural justice.

8. It is relevant to take note of that the instant writ petition was taken up on 11.12.2018 and this Court, vide an Order directed the State respondents to file an affidavit indicating whether the purported signature of the Principal Director appearing on the Appointment

Order of the petitioner, at Annexure-3 to the writ petition, was genuine signature of the then Principal Director or not.

9. It is further seen that there was an additional affidavit filed on 03.03.2022, wherein an inquiry report dated 17.01.2021 was enclosed. The Inquiry Officer opined that the Directorate of Health & Family Welfare had consistently stated that the appointment file No. DHFW-3/117/MON/APPT/08-09 did not exist and as such, The Appointment Order was not genuine and there was no reason to doubt the statement of the Directorate. Additionally, it was also opined in the said report that the Appointment Order was issued on 22.02.2010 and on the very day the petitioner joined and her Service Book was also opened on the same day, which was difficult to believe in as much as the 3 (three) activities could not have been done in the same day unless it was pre-planned and orchestrated. It was also opined that in all Government appointment matters, on joining of the appointee, the Appointment Order is always to be returned to the Appointing Authority for authentication, however, this was not done on the case of the petitioner. It was also found that the Chief Medical Officer, Mon, as well as the Dealing Assistant, had to bear the responsibility for the lapse.

10. Taking into account the above, this Court have also heard the learned counsels appearing on behalf of the petitioner as well as the respondents.

11. From the materials on record as well as the inquiry report so placed, it *prima facie* shows that the appointment of the petitioner seems to be an illegal appointment. It is also seen that the petitioner

has not challenged the Order dated 24.09.2012 or even the Screening Committee report and as such the question of granting the relief as sought for in the writ petition do not arise.

12. It is also seen that the petitioner admittedly did not receive the salary for September, 2012 and was not permitted to continue with her service since then but the writ petition was filed in the year 2017. Under such circumstances, a question arises as to whether this Court should at all entertain the writ petition filed after a delay of 5 (five) years. This Court takes note of the fact that this Court had permitted the writ petition to remain pending since 2017 and it would not be reasonable to dismiss on that ground, more so when the petitioner had alleged that she had no notice of the Screening Committee and the action taken were in violation to the principles of natural justice.

13. Under such circumstances, this Court is of the opinion that interest of justice would be met if a liberty is granted to the petitioner to approach the respondent authorities, if she continues to be aggrieved with the Order dated 24.09.2012 or the finding so arrived at by the Screening Committee as well as the inquiry report dated 19.01.2021, which was placed before this Court.

14. This Court, therefore, disposes of the instant writ petition, thereby granting the liberty to the petitioner to approach the respondent No. 3 by submitting a representation as regards the genuineness of her Appointment Order and that she is entitled to be permitted to continue in service as a Medical Attendant. The said liberty, however, is given for a period of 2 (two) months from the date of the instant Judgment, failing which, the Order dated 24.09.2012

shall attain finality.

15. This Court, however, observes that in the circumstance the petitioner duly approaches the respondent No. 3 by submitting a representation, the respondent No. 3 along with other respondents shall duly consider the case of the petitioner without being influenced by the observation made herein above.

16. With the above, the instant writ petition stands disposed.

Sd/-
JUDGE

Comparing Assistant