

GAHC020000642023



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

Case No. : WP(C)/19/2023

SHRI. PELINGRANG HEGUI
OLD PEREN VILLAGE, PEREN, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND, DEPARTMENT OF HEALTH AND FAMILY
WELFARE, NAGALAND, KOHIMA 2:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:THE MEDICAL SUPERINTENDENT

DISTRICT HOSPITAL PEREN
PEREN
NAGALAND

4:SMTI. KECHEYINWANGLE A. IRANGBE

MEDICAL ATTENDANT

DISTRICT HOSPITAL PEREN
POST OFFICE-PEREN
NAGALAN

Advocate for the Petitioner : TAKA MASA, SR. ADV

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/22/2023

SHRI. KEYIRANGDAUBE
PEREN VILLAGE
PEREN
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

2:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:THE MEDICAL SUPERINTENDENT

DISTRICT HOSPITAL PEREN
PEREN
NAGALAND

4:SMTI. IRIAZEULE

MULTI TASKING STAFF/SWEEPER

DISTRICT HOSPITAL PEREN
POST OFFICE - PEREN
NAGALAND

Advocate for : TAKA MASA
SR. ADV

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 3
ORS

Linked Case : WP(C)/20/2023

SMTI. INGAUHEILE HEGALEI
PEREN VILLAGE
PEREN
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

2:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:THE MEDICAL SUPERINTENDENT

DISTRICT HOSPITAL PEREN
PEREN
NAGALAND

4:SHRI. PUIPEUSING

LABORATORY ATTENDANT

DISTRICT HOSPITAL PEREN
POST OFFICE -PEREN
NAGALAND

Advocate for : TAKA MASA
SR. ADV

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 3
ORS

Linked Case : WP(C)/21/2023

SHRI. KEYIKIETEING
BANA WARD
PEREN TOWN

PEREN
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

2:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:THE MEDICAL SUPERINTENDENT

DISTRICT HOSPITAL PEREN
PEREN
NAGALAND

4:SMTI. KIZIUYILE

MEDICAL ATTENDANT

DISTRICT HOSPITAL PEREN
POST OFFICE - PEREN
NAGALAND

Advocate for : TAKA MASA
SR. ADV

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 3
ORS

Linked Case : WP(C)/23/2023

SMTI. ILUNGDAULE
PEREN VILLAGE
PEREN
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF NAGALAND
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

2:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA

3:THE MEDICAL SUPERINTENDENT

DISTRICT HOSPITAL PEREN
PEREN
NAGALAND

4:SHRI. KULUBO RENTTA

MEDICAL ATTENDANT

DISTRICT HOSPITAL PEREN

POST OFFICE - PEREN
NAGALAND

Advocate for : TAKA MASA
SR. ADV

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 3
ORS

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

ORDER

12.02.2024

All the five (5) writ petitions are being disposed of by this common
Order since the issues involved are similar.

[2.] Heard Mr. Taka Masa, learned Senior Counsel assisted by Mr. Arenlong, learned counsel for the petitioners, Mr. N. Angami, learned State Counsel for the official respondents, Mr. Limawapang, learned counsel for the private respondent No. 4 in WP(C) Nos. 19, 21 & 23/2023 and Mr. L. Likhase Sangtam, learned counsel for the private respondent No. 4 in WP(C) Nos. 20 & 22/2023.

[3.] The petitioners are aggrieved with the administrative approval given by the State Government in the Health & Family Welfare Department for appointment of the private respondents to the Grade-IV posts of Laboratory Attendant, Medical Attendant and Sweeper in the District Hospital at Peren, Nagaland which was communicated vide letter dated 17.01.2023. The petitioners have also challenged the consequential appointment orders issued to all the private respondents against their respective posts on the same day i.e., 17.01.2023 which was issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima.

[4.] It is the case of the petitioners that Peren Township was established in the year 1947, within the territory of Old Peren Village. The Old Peren Villagers donated land measuring about 400 acres free of cost without any compensation but with a verbal agreement with the State Government that all Grade-IV appointments should be given to the Peren villagers during the establishment of the Government Departments.

According to the petitioners, their land was also included in the land donated for the establishment of Peren Township.

[5.] Thereafter, a written agreement was signed between the District Administration and the Old Peren Villagers when Peren Township was extended on 12.12.1995. It was agreed that no land compensation shall be paid to the land owners but in lieu of land compensation, a commercial plot of land measuring 50 by 60 feet shall be allotted to the concerned land owners who are having their own land within the town land extension area and that preference should be given to the land owners for appointment to the Grade-III and Grade-IV posts and in allotment of contract works. The Deed of Agreement was again modified on 23.11.1998 providing that the agreement covered all the Government establishments/departments established in Peren District Headquarters since its establishment in the year 1947 till date.

[6.] The petitioners contend that the Primary Health Center was established at Peren in the year 1958 and it was upgraded to Community Health Center in the year 2003. Thereafter, the Community Health Center was upgraded to a District Hospital in the year 2006. According to them, inspite of the initial verbal agreement in the year 1947 and the Deeds of Agreement dated 12.12.1995 and 23.11.1998, all the Grade-IV appointments made in the Department of Health & Family Welfare since the establishment of the Primary Health Center in the year 1958 in Peren

were not from amongst land owners. In other words, appointments were not on the basis of land ownership.

[7.] The petitioners contend that the State Government from time to time has been issuing administrative instructions laying down the criteria for appointment of land owners to various Grade-IV posts and one such instruction is Office Memorandum (O.M) dated 16.08.2018. As per Clause 3(a) and 3(b) of the said O.M, it is clearly stipulated that land owners who had donated their land free of cost for setting up of administrative and block headquarters where a specific written/oral agreement exist providing for employment or other facility to the land owners, the claim of the land owners shall be referred to the Deputy Commissioner of the District concerned for verification and upon the recommendation of the Deputy Commissioner, the same should be referred with relevant documents/explanations to the Department of Land Revenue for examination and approval. The O.M also provides that it is not the policy of the Government to provide employment or other facility to the land owner in perpetuity.

[8.] The petitioner in WP(C) No. 19/2023 upon the retirement of the Medical Attendant concerned with effect from 29.02.2020 under the establishment of District Hospital, Peren submitted his application for appointment on the basis of land ownership to the Medical Superintendent of District Hospital, Peren. The same was forwarded by

the Medical Superintendent to the Principal Director, Directorate of Health & Family Welfare, Nagaland vide his letter dated NIL June, 2020. In the said application, the petitioner enclosed all necessary documents including Certificate of Land Ownership but he did not retain photocopy of the same. The Principal Director, Directorate of Health & Family Welfare, Nagaland, thereafter vide letter dated 14.09.2020 directed the Medical Superintendent of District Hospital, Peren to verify the rightful owner/local candidate as provided vide O.M dated 07.12.2016 of the Department of Personnel & Administrative Reforms (DP&AR) and the Notification dated 05.03.2018 of the Land Revenue Department. Along with the said Communication, the names of three (3) other persons besides the petitioner was also forwarded.

[9.] However, while the petitioner was expecting that his name will be approved for being appointed to the Grade-IV post in the District Hospital, to his surprise, the impugned Administrative Approval dated 17.01.2023 approving the appointment of the respondent No. 4, who was not even one of the four persons being considered and mentioned in the letter dated 14.09.2020 was issued and an appointment order appointing the respondent No. 4 to the Grade-IV post on the same day were issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima. Aggrieved with the same, the petitioner is before this Court.

[10.] In respect of the remaining four (4) writ petitioners, the petitioners likewise applied for the Grade-IV post in the District Hospital, Peren against the retirement vacancy of the person concerned on the strength of their family having donated the land for establishment of Government Departments. However, without considering their application and to their surprise, the State respondents in the Health & Family Welfare Department issued the impugned Administrative Approval dated 17.01.2023 and appointed the private respondent No. 4 in all the four (4) writ petitions in a Grade-IV post similar to that in WP(C) No. 19/2023. Accordingly, they have filed their respective writ petitions.

[11]. Mr. Taka Masa, learned Senior Counsel submits that despite the verbal agreement as well as the two (2) Deeds of Agreement, none of the land owners have been appointed to a Grade-IV post. There being a clear provision provided in the Government instructions issued from time to time in the form of Office Memorandums including the O.M dated 16.08.2018, the appointment of the private respondent No. 4 in all the writ petitions should be set aside and in their place, all the petitioners should be appointed to the Grade-IV post under the District Hospital in Peren. The learned Senior Counsel also refers to the O.M dated 07.12.2020 mentioned in the letter dated 14.09.2020 [Annexure-E of WP(C) No. 19/2023] and submits that according to the O.M, all direct recruitment vacancies in Grade-IV post in District offices of the departments shall be filled up by the indigenous inhabitants of the

respective district. He submits that the said O.M dated 07.12.2016 has been issued in supersession of all the earlier instructions on the matter including the Departments O.M dated 04.06.2016. The learned Senior Counsel therefore submits that all the Office Memorandums shall have to be read harmoniously for considering the appointment of land owners to Grade-IV post under various departments including the Department of Health & Family Welfare.

[12.] The learned State Counsel Mr. N. Angami by referring to the affidavit-in-opposition filed by the State respondents submits that in fact land owners have been given Grade - IV appointment from time to time. In support of his submission, he refers to the annexures appended to the affidavit-in-opposition in WP(C) No. 19/2023 wherein, in the Birth Certificate of the appointee concerned, the place of birth has been shown to be Peren village. Also, in the affidavit, a Certificate/Testimonial certifying the appointee to be a native of Peren village and land donor issued by the Peren Village Council has also been annexed. He therefore submits that the claim of the petitioners that none of the land owners have been appointed to Grade-IV post is not correct and only misconceived.

[13.] Mr. Limawapang, learned counsel for the private respondent No. 4 in WP(C) Nos. 19, 21 & 23/2023 submits that from a bare perusal of the Deed of Agreement, it can be seen that the land does not belong to the

people of Peren village but to the Gaonburahs (GBs). He submits that at any rate, the petitioners have to prove that they are the owner of the community land where the District Hospital has been constructed. He further submits that the Certificate showing that the petitioner in WP(C) No. 19/2023 is a land owner in Peren where the District Hospital has been constructed has only been obtained after the filing of the writ petition and therefore, the same cannot be relied upon. Further, by referring to the Administrative Approval dated 17.01.2023, the learned counsel submits that a reference has been made to the letter of the District Recruitment Board (DRB) and therefore, it is only clear that the recruitment has been done with the approval of the said Board.

[14.] The learned counsel further submits that from the reply given to the petitioner against the clarification sought from the Medical Superintendent, District Hospital, Peren by the Principal Director, Health & Family Welfare, it is clear that as many as 10 Grade-IV employees under the Office of the Medical Superintendent, Peren has been appointed from the residents of Peren village. The learned counsel submits that as per the O.M. dated 04.06.2016, all indigenous inhabitants of the district concerned are in fact eligible to be appointed to a Grade-IV post and the private respondent No. 4 he represents also being an indigenous inhabitants of Peren district, there is nothing wrong in his appointment to a Grade-IV post.

[15.] Mr. L. Likhase Sangtam, learned counsel for the private respondent No. 4 in WP(C) Nos. 20 & 22/2023 submits that he adopts the argument of Mr. Limawapang and that there is also nothing wrong in the appointment of the respondent No. 4 he represents in the two (2) writ petitions.

[16.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. One thing which can be seen is that all the petitioners have applied for a Grade-IV post in the District Hospital, Peren against the vacancy that arose due to retirement or due to anticipated vacancy expected to occur shortly.

[17.] In respect of WP(C) No. 19/2023, the Principal Director, Directorate of Health & Family Welfare, Nagaland had written to the Medical Superintendent, Peren by enclosing four (4) names including that of the petitioner in the said case for verification through a Screening Committee/Selection Board in terms of the criteria laid down by the O.M dated 07.12.2016 and the Notification dated 05.03.2018 of the Land Revenue Department. O.M dated 07.12.2016 provides amongst others that all direct recruitment vacancies in Grade-IV post in District Offices of the department shall be filled up by indigenous inhabitants of the district concerned. The said O.M is in supersession of the O.M dated 04.06.2016 wherein, it was provided that all vacancies in the Grade-IV post occurring

in districts are to be filled up by Heads of Department through open advertisement by constituting a District Selection Committee.

[18.] The petitioners in the instant cases have relied upon the O.M dated 16.08.2018 wherein the manner of consideration for providing employment to land owner have been provided and also, with a clarification that such employment cannot be provided in perpetuity. From a perusal of the impugned Administrative Approval dated 17.01.2023, it is seen that some sort of communication has happened between the State Government in the Health & Family Welfare Department and the Directorate of Health & Family Welfare. However, there are no documents on record to show what has transpired leading to such communication. All that is stated in the counter affidavit of the State respondents is that the private respondent No. 4 had also applied for appointment against the Grade-IV post in question and on being qualified and eligible, his candidature was approved and conveyed accordingly for appointment vide the impugned letter dated 17.01.2023. There is no mention to the fact that the case of the other eligible candidates including the petitioner was also considered. Therefore, upon due perusal of the materials available on record, this Court finds no material to support and uphold the impugned Administrative Approval given vide Communication dated 17.01.2023.

[19.] It is also not the case of either of the parties that an open

advertisement for filling up of Grade-IV post in question had been floated and that a process of verification and selection was accordingly initiated. It is the case of the petitioners that they had submitted their respective applications and which in one (1) case i.e., WP(C) No. 19/2023 was in the process of being verified in terms of the Government instruction reflected in the impugned Communication. As per the Government instructions issued from time to time through Office Memorandums, the indigenous inhabitants of the district concerned and also the land owners are eligible to be considered for appointment to Grade-IV post and for making such consideration, proper screening and verification is required to be done by the Deputy Commissioner of the district. Such process is not discernible in the instant writ petitions. Even in the case of WP(C) No. 19/2023, only four (4) persons appear to have been mentioned for consideration. The consideration in the considered view of this Court should be made open to all those interested including the private respondents in these writ petitions. Therefore upon due consideration, the Administrative Approval dated 17.01.2023 and the appointment of the private respondent No. 4 in all the writ petitions are found to be not sustainable in law and they are accordingly set aside.

[20.] The State respondents shall now initiate a fresh process for filling up the vacancies in the Grade – IV post in a District Hospital, Peren by inviting applications from all interested and eligible persons to apply for the same. The applicants thereafter upon being screened and their claim

verified in terms of the standing guidelines issued by the State Government shall be shortlisted for appointment. Since it will be in the interest of the public that the vacancies are being filled up at an early date, the State respondents are directed to complete the entire process within a period of three (3) months from the date of receipt of a certified copy of this Order.

[21.] With the above observations and directions, all the writ petitions are disposed of. The interim order passed earlier stands merged with this Order.

Sd/-
JUDGE

Comparing Assistant