

GAHC020000742022



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

Case No. : WP(C)/38/2022

SHRI. INOKA SEMA
S/O NIHOZU SEMA, VEKHUHO NEW VILLAGE, AROIZU TOWN,
ZUNHEBOTO, NAGALAND

VERSUS

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

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF A.H. AND VETERINARY SERVICES
NAGALAND KOHIMA

3:THE DIRECTOR
DEPARTMENT OF A.H AND VETERINARY SERVICES
NAGALAND KOHIMA

4:THE ADDL. DEPUTY COMMISSIONER
ATOIZU
NAGALAND (PERFORMA RESPONDENT)

5:SMTI. PHUTOLI SEMA
CHOWKIDAR
VETERINARY DISPENSARY
ATOIZU SUB-DIVISION
ZUNHEBOTO NAGALAN

Advocate for the Petitioner : Z. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

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

Date of hearing : **06/08/2024**

Date of judgment : **28/08/2024**

JUDGMENT & ORDER (CAV)

Heard Ms. Z. Zhimomi, learned counsel for the petitioner, Ms. A. Ayemi, learned Government Advocate for the State respondents and Ms. Imnasenla, learned counsel for the respondent No.5.

2. The present writ petition has been filed for a direction to quash and set aside the appointment/regularisation of the respondent No.5 as the Chowkidar, Veterinary Dispensary, Atoizu and to appoint the petitioner to the said post on landownership basis.

3. The facts of the case in brief, as projected by the petitioner is that, the petitioner is the owner of the land where the present Veterinary Dispensary, Atoizu is located. The Dispensary was established in the year 1978. The petitioner on 05/07/2018 submitted the application to the Principal Director, Veterinary & Animal Husbandry, Nagaland, Kohima, for appointment to the post of Chowkidar at Veterinary Dispensary, Atoizu against the resultant vacancy caused due to the death of the incumbent late Vinito Sema. The Chief Veterinary & A.H. Officer, Zunheboto, Nagaland, by the letter dated 23/07/2018, forwarded the application submitted by the petitioner, to the Director, Animal Husbandry & Veterinary Service, Nagaland, Kohima. Consequent thereto, the Director, A.H & Veterinary Services, Nagaland, Kohima, by the letter dated 06/09/2018 forwarded 2(two) applicants, namely the petitioner and one Shri. Vinito Aye to the Commissioner & Secretary, Department of A.H & Veterinary Services, Nagaland, Kohima for considering the appointment to the said post. The Government of Nagaland in the department of A.H & Veterinary Services

thereafter issued the letter dated 18/01/2019 conveying the administrative approval for appointment of Shri. Vinito Aye to the post of Chowkidar at Veterinary Dispensary, Atoizu under CVO, Zunheboto. The petitioner immediately submitted the complaint dated 03/02/2019 to the Director, A.H & Veterinary Services, Nagaland, Kohima, for cancelling the appointment of Shri. Vinito Aye to the said post. However, the Government of Nagaland, Directorate of A.H & Veterinary Services, Nagaland, Kohima has issued the appointment order dated 09/03/2019 regularising the contingency (fixed pay) service of the respondent No.5 to the post of Chowkidar at Veterinary Dispensary, Atoizu, consequent to the approval of the Government. That against the appointment of the respondent No.5, the petitioner has submitted the representation dated 10/06/2019 to the Director, A.H & Veterinary Services, Nagaland, Kohima, however as the representation has not been considered by the authorities, the present writ petition has been filed.

4. Ms. Z. Zhimomi, learned counsel for the petitioner, at the outset, submits that the petitioner's family had conveyed the land to the department for establishment of the Veterinary Dispensary at Atoizu, under an oral agreement, that the land owners will be considered for appointment to Grade-IV post and for award of the contract works in the said establishment. The ownership of the land of the petitioner being undisputed, Ms. Z. Zhimomi submits that there can be no reason as to why the petitioner should not be appointed to the said post. Ms. Z. Zhimomi in support of her submission has relied on the notification dated 05/03/2018 and the Office Memorandum dated 16/08/2018, both issued by the Government of Nagaland, Land Revenue Department laying down the policy of the Government for appointment of land owners to Grade-IV post under the Government of Nagaland.

5. Ms. Z. Zhimomi, in particular, has laid stress on Clause-3(b) of the notification dated 05/03/2018 which provides as follows;

“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."

6. The learned counsel accordingly submits that since there is an oral agreement between the department and the landowner to provide Grade-IV appointment for the land acquired and since none of the family members of the petitioner has been considered, for appointment, against the land donated, the State Government should be directed to take recourse to Clause-3(b) of the notification dated 05/03/2018 for considering the appointment of the petitioner, to the post, on landownership basis.

7. Secondly, Ms. Z. Zhimomi, submits that the appointment of the respondent No.5 is also in violation of the Office Memorandum dated 26/10/2017 issued by the Government of Nagaland, P& AR Department (Administrative Reforms Branch), which inter-alia provides that '*All direct recruitment vacancies in Grade-IV posts in District offices of the department shall be filled up by the indigenous inhabitants of the respective District*'. The learned counsel submits that the respondent No.5, who was initially appointed as a contingency paid employee under the Dimapur District Veterinary Hospital and regularise in service by the impugned appointment order dated 09/03/2019 is neither a landowner nor an indigenous inhabitant of Atoizu under Zunheboto District and therefore, not eligible to be appointed to the said post, in violation of the O.M dated 26/10/2017.

8. Ms. Z. Zhimomi, further submits that, similarly situated persons, as the petitioner herein, had earlier approached this Court in W.P.(C) No. 156/2019 and this Court by the order dated 27/01/2020 had disposed the writ petition with a direction to consider the case of the petitioner therein, by causing an enquiry as stipulated in the notification dated 05/03/2018 and thereafter, to dispose the representation submitted by the petitioner by a speaking order and

to complete the exercise directed therein as expeditiously as possible within the outer limit of 3(three) months from the date of receipt of the order. Ms. Z. Zhimomi accordingly submits that in the present case too, the respondents should be directed to adhere to the provisions of Clause-3(b) of the notification dated 05/03/2018 for considering the appointment of the petitioner, against the post to which the respondent No.5 has been appointed.

9. Ms. A. Ayemi, the learned Government Advocate referring to the affidavit-in-opposition filed by the State respondents, submits that, no written record exist in the department, for considering the appointment of the land owners to Grade-IV post nor for awarding any contract works to the land owners, for acquiring the land, for establishment of the Veterinary Dispensary at Atoizu. Ms. A. Ayemi however by referring to the letter dated 08/08/2019 written by the Chief Veterinary & A.H. Officer, Zunheboto, Nagaland, to the Director, A.H & Veterinary Services, Nagaland, Kohima, submits that 3(three) persons namely, Shri. Hotokhu, Shri. Hotovi and Shri. Kuhuto has been appointed as Bull Attendant, Medicine Carrier and Chowkidar (Contingency) on land owner basis and therefore, the right of the petitioner to claim for appointment is hit by Clause-3(c) of the notification dated 05/03/2018 making the petitioner ineligible to be appointed to the post in question, on the basis of landownership.

10. With regard to the appointment of the respondent No.5, the learned Government Advocate submits that, the husband of the respondent No.5 died-in-harness on 29/06/2001 while serving as the Veterinary Field Assistant (VFA) in the department. The respondent No.5 accordingly applied for appointment, in the department, on compassionate ground. Pursuant thereto, the respondent No.5 was appointed as an Attendant on contingency fixed pay basis. The respondent No.5 filed W.P.(C) No. 29(K)/2018 for consideration of her appointment on regular basis by invoking the scheme for compassionate appointment. The writ petition was disposed by the judgment & order dated 23/08/2018 directing the State respondents to consider regularisation of the petitioner's service against a regular post within a period of 4(four) months. Pursuant thereto, the Government of Nagaland, Directorate of A.H. & Veterinary

Services, Nagaland, Kohima, issued the order dated 09/03/2019 regularising the contingency service of the respondent No.5 and appointing the said respondents to the post of Chowkidar at Veterinary Dispensary, Atoizu, under the establishment of the Chief Veterinary & A.H. Officer, Zunheboto. Ms. A. Ayemi further submits that the respondent No.5 is an indigenous inhabitant of Zunheboto District and therefore, eligible to be appointed to the post in question.

11. Ms. Imnasenla, the learned counsel for the respondent No.5 adopting the line of submission of the learned Government Advocate further submits that late Yenito Zhimomi, the husband of the respondent No.5, died in harness on 29/06/2001 while serving as Veterinary Field Assistant under the establishment of Veterinary & Animal Husbandry Dimapur. The respondent No.5 accordingly submitted the application seeking for appointment on compassionate ground as per the scheme dated 17/09/2015 formulated by the Government. The Kilomi Village authorities also submitted the representation dated 02/07/2001 requesting the department to appoint the respondent No.5 to any suitable post on humanitarian and compassionate ground.

12. Pursuant to the application submitted by the respondent No.5, the Department issued the letter dated 25/06/2002, conveying the approval of the Government for appointing the respondent No.5 as an Attendant on contingency basis under the establishment of Dy. DOV Dimapur and consequent thereto, the order No. VET/DD/EST-26/2002-2003 dated 03/05/2002 was issued by the Deputy Director of Vet. & A.H. Dimapur, Nagaland, appointing the respondent No.5 as an Attendant in the Office of the Dy. DOV Dimapur.

13. Ms. Imnasenla further submits that subsequent to the appointment of the respondent No.5, as an Attendant on contingency basis, in the Office of the Dy. DOV Dimapur, the respondent No.5 submitted series of representation to the Department for regularisation of her service, however as the representation submitted by the respondent No.5 did not evoke any response from the authorities, the respondent No.5 filed W.P.(C) No. 29(K)/2018. In the said writ petition, in view of the stand taken by the Government that the service of the

respondent No.5 will be considered for regularisation against a regular post, the writ petition was disposed by the judgment & order dated 23/08/2018 directing the respondents to consider the regularisation of the service of the respondent No.5 (petitioner herein) against a regular post within a period of 4(four) months.

14. Subsequent to the order passed by this Court, the department issued the appointment order dated 09/03/2019 regularising the contingency (fixed pay) service and appointing the respondent No.5 to the post of Chowkidar at Veterinary Dispensary, Atoizu under the establishment of the Chief Veterinary & A.H Officer, Zunheboto, in the Pay Band of Rs. 4400-17200 with Grade Pay of Rs. 1300/- in Level-1 of 7th ROP with all other allowances as are admissible under the rules from time to time in the State.

15. Ms. Imnasenla, the learned counsel, by further placing the copy of the Office Memorandum dated 17/09/2015, issued by the Government of Nagaland, P&AR department (Administrative Reforms Branch), submits that the compassionate appointment, under the scheme, can be made only on regular basis to direct recruitment post only if regular vacancies meant for that purpose are available in the department where the deceased government employee was serving. In the instant case, although the respondent No. 6 was appointed on compassionate ground, she was initially appointed only on contingency fixed pay basis and it was only after serving the department for about 17 years in that capacity that, the service of the respondent No.5 was regularised by the order dated 09/03/2019 against the resultant vacant post of Chowkidar on the expiry of the incumbent. Ms. Imnasenla accordingly submits that there is no infirmity in the order dated 09/03/2019 passed by the Government regularising the service of the respondent No.5 in the post of Chowkidar at Veterinary Dispensary, Atoizu and the same is in conformity with the scheme formulated by the Government for compassionate appointment of government employees who die in harness.

16. Ms. Imnasenla, further submits that the respondent No.5 is an indigenous inhabitant of Zunheboto District, in the State of Nagaland, and in support

thereof, the learned counsel has referred to the Certificate Of Indigenous Inhabitant of Nagaland, dated 15/05/2018, issued by the Addl. Deputy Commissioner, Pughoboto, Nagaland, certifying that the respondent No.5 belongs to Kilomi village under Zunheboto district and the respondent No.5 and her family ordinarily resides in Kilomi village under Zunheboto district, Nagaland. The learned counsel therefore submits that the Office Memorandum dated 26/10/2017 laying down Procedure for filling up of Non-Gazetted Posts in the Departments and inter-alia providing that 'All direct recruitment vacancies in Grade-IV posts in District Offices of the department shall be filled up by the indigenous inhabitant of the respective Districts', is equally applicable to the respondent No.5 and the said respondent cannot be debarred from appointment to the said post only on the mere contention/objection of the petitioner.

17. The petitioner in the affidavit-in-reply while reiterating the averments made in the writ petition has further stated that the land where the Veterinary Dispensary, Atoizu is established is an ancestral land belonging to two clans namely, Chophimi and Ayemi. The petitioner has admitted that two persons from Chophimi clan namely, Shri. Hotovi and Shri. Kahoto has been appointed as Medicine Carrier and Chowkidar (Contingency) while Shri. Hotokhu from the Ayemi clan has been appointed as Bull Attendant on land ownership basis. It is however submitted that none from the petitioner's family who hails from the Ayemi clan has been considered for appointment to Grade-IV post as per the agreement entered between the two clans and therefore, the petitioner claim for appointment to a Grade-IV post on the basis of land ownership should be considered by the State respondents.

18. Heard the learned counsel for the parties. From the pleadings exchanged, it is discernible that the land where the Veterinary Dispensary, Atoizu is established belongs to the petitioner and his family and there is no dispute on the issue.

19. However, the issue, as to whether the petitioner is eligible to be appointed to the post of Chowkidar, at Veterinary Dispensary, Atoizu, on the

basis of land ownership has to be examined in the light of the notification dated 05/03/2018 and the O.M dated 16/08/2018, both issued by the Government of Nagaland, Land Revenue Department, laying down the policy of the Government with regard to the appointment of land owners in Grade-IV post under the Government of Nagaland.

20. For the present case, it will be relevant to refer to Clause-3(c) of the notification dated 05/03/2018 which is reproduced as under;

“3(C). It is also clarified that it is not the policy of the Government to provide employment to the land owner in perpetuity. The employment of land owner, if permitted by a verifiable and valid agreement, is limited to the person first appointed as land owner in Government service and does not entitle his descendants for further employment on his retirement from service. After the appointed land owner retires or vacates the post, the vacancies will be filled up through open advertisement in consonance with the existing policy giving equal opportunity to all applicants.”

21. Clause-3(c) of the notification dated 05/03/2018 is also reproduced and reaffirmed in Clause-3(d) of the O.M dated 16/08/2018.

22. The petitioner replying to the affidavit filed by the Government has clearly averred that, the land where the Veterinary Dispensary, Atoizu, is established was donated by two clans namely, Chophimi and Ayemi and two persons from the Chophimi clan namely, Shri Hotovi and Shri. Kahoto has been appointed as Medicine Carrier and Chowkidar (Contingency) and Shri. Hotokhu from the Ayemi clan has been appointed as Bull Attendant on land ownership basis. The contention of the petitioner is that though he hails from the Ayemi clan and is one of the land donors, none from his family has been appointed in service.

23. Clause-3(c) of the notification dated 05/03/2018, makes it abundantly clear, that it is not the policy of the Government to provide employment to land owners in perpetuity and employment extended to the land owner is limited to the person first appointed in Government service and does not entitle his descendants for further employment on his retirement from service. After the land owner 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 the applicants. In the present case, the land owners from

both the clans have already been compensated with the appointment to Grade-IV post and the appointees are continuing in service. Clause-3 of the notification dated 05/03/2018 accordingly stands fulfilled, insofar as the appointment of the land owner, is concerned. Accordingly, the right of the petitioner to be appointed to the post in question stands extinguished. In other words, the petitioner's right to be appointed to a Grade-IV post is hit by Clause-3(c) of the notification dated 05/03/2018.

24. The petitioner's claim for appointment under Clause-3(b) of the notification dated 05/03/2018 could have been considered assuming that an oral agreement existed to provide Grade-IV post to the land owner by directing an enquiry to examine the claim of the petitioner. However, in view of the petitioner's own admission that the land owner have been compensated with Grade-IV appointment, the claim/right of the petitioner stands extinguished by operation of Clause-3(c) of the notification dated 05/03/2018 and land owner now have no right to be appointed to any Grade-IV post, irrespective of the fact that no individual family members of the petitioner has been appointed.

25. Further, on the contention raised by the petitioner, that the appointment of the respondent No.5 is in violation of the O.M dated 26/07/2017 which provides Procedure for filling up of Non-Gazetted Posts in the Department and lays down that all direct recruitment vacancies in Grade-IV post in the District Offices of the Department shall be filled up by the indigenous inhabitants of the respective District, this Court has perused the 'Certificate of Indigenous Inhabitant of Nagaland' dated 15/05/2018, issued to the petitioner, by the Addl. Deputy Commissioner, Pughoboto, Nagaland, stating that the respondent No.5 hails from Kilomi village, Zunheboto district, Nagaland and the respondent No.5 and his family ordinarily resides in Kilomi village, district Zunheboto. Therefore, in the absence of any other evidence to the contrary to disprove that the respondent No.5 is not an indigenous inhabitant of Zunheboto district, the objection raised by the petitioner, that the appointment of the respondent No. 5 is in violation of the O.M dated 26/10/2017, is liable to be rejected.

26. On the submission made by the learned counsel for the petitioner, that the

respondent authorities should be directed to adhere to Clause-3(b) of the notification dated 05/03/2018 for making an enquiry, to consider the appointment of the petitioner, as was done in the case of the similarly situated person in W.P.(C) No. 156/2019, this Court having held that the claim of the petitioner being barred under Clause-3(c) of the notification dated 05/03/2018, no enquiry can be directed under Clause-3(b) of the said notification to examine the claim/right of the petitioner.

27. In regard to the appointment of the respondent No.5, it is seen that the said respondent was appointed as a Contingency employee on compassionate ground consequent to the approval of the Government vide the letter dated 25/06/2002. It is only after serving the department in that capacity for about 17(seventeen) years, the respondent No.5 was regularised in service in the post of Chowkidar at Veterinary Dispensary, Atoizu, by the department by issuing the order dated 09/03/2019. This Court has perused the O.M dated 17/09/2015, issued by the Government of Nagaland, formulating the scheme for compassionate appointment of State Government employees who die in harness, where it is provided inter-alia that the appointment on compassionate ground should be made only on a regular basis to direct recruitment post only if vacancies meant for that purpose are available in the department where the deceased government employee was serving. This Court has also perused the judgment & order dated 23/08/2018 passed by this Court in W.P.(C) No. 29(K)/2018 directing the State respondents to consider the regularisation of the petitioner (respondent No.5 herein) against a regular post within a period of 4(four) months and consequent to which the order dated 09/03/2019 was issued by the department regularising the service of the respondent No. 5 against the resultant vacant post of Chowkidar at Veterinary Dispensary, Atoizu. The order regularising the service of the petitioner in the resultant vacancy was consequent to the order passed by this Court and is in accordance with the scheme formulated by the Government for compassionate appointment. This Court is therefore of the view that the appointment/regularisation of the service of the respondent No.5, by the order dated 09/03/2019, needs no interference.

28. In the light of the discussion made above, this Court finds no merit in the case and the writ petition is accordingly dismissed. No cost.

Sd/-
JUDGE

Comparing Assistant