

GAHC020001092024



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

Case No. : WA/9/2024

MAJ. MERENWATI JAMIR (RETD)
P/R OF KHENSA VILLAGE
HOUSE NO. 484
MOKOKCHUNG NAGALAND

VERSUS

MAJ. VIKUTO ASUMI (RETD)
R/O HOUSE NO. 18, LHOMITHI VILLAGE, SIGNAL BASTI
DIMAPUR NAGALAND

2:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
KENDRIYA SAINIK BOARD
GOVT. OF INDIA
MINISTRY OF DEFENCE
WEST BLOCK-IV
R.K. PURAM
NEW DELHI

3:THE HOME COMMISSIONER
HEAD ADMINISTRATIVE DEPARTMENT OF EX-SERVICEMEN
WELFARE AND RE-SETTLEMENT
NAGALAND KOHIMA

4:THE SPECIAL SECRETARY
HOME DEPT
POLICE B BRANCH
NAGALAND KOHIMA

5:LT. COL (TA) DAVID TOSHI JAMIR (RETD.)
DY. DIRECTOR
ZILA SAINIK WELFARE OFFICER
KOHIMA NAGALAN

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : Z. ZHIMOMI

**BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 06-03-2024

Heard Mr. Limawapang, learned counsel for the appellant. Also heard Ms. Z. Zhimomi, learned counsel for the private respondent no. 1, who has entered appearance by filing caveat. None appears on call for the respondent Nos. 2 & 5. Also heard Mr. Mosem Longkumer, learned Government Advocate appearing for respondent Nos. 3 and 4.

2. By filing this Intra-Court appeal, the appellant, who was the respondent No. 5 in WP(C)/176/2022, has assailed the judgment and order dated 27.02.2024, passed by the learned Single Judge of this Court in the said writ petition filed by the respondent no. 1.

3. The writ petition was allowed by the impugned judgment and order on the ground that the respondent authorities had taken into account the application submitted by the appellant after 4:00 P.M. of 21.03.2020, without any corrigendum and accordingly, the appointment of the appellant as Deputy Director, *Zila Sainik* Welfare Officer, was interfered with.

4. In brief, the submissions of the learned counsel

for the appellant is to the effect that as per the advertisement dated 12.02.2020, the last date of submission of application was 4:00 P.M. on 21.03.2020. By the said advertisement, applications were invited from Ex-Servicemen who were otherwise eligible, having retired from Army, Navy and Air Force as Commission Officers for filling up various Class-I (Gazetted) posts in the Directorate of *Sainik* Welfare and Resettlement Board, Nagaland. It is submitted that during the period of last date of application, COVID-19 pandemic had set in and therefore, interview for the said posts could not be conducted for more than a year. It is submitted that after the relaxation of the lockdown, the appellant submitted his application on 22.11.2021 to the concerned State respondents, requesting the concerned State respondents to re-publish the advertisement dated 12.02.2020 on the ground that by passage of time number of officers might have retired in the meantime and who were otherwise eligible to apply for the post advertised may apply. It is submitted that the State Government had favourably considered his request and permitted the appellant to submit his candidature and accordingly, on 25.11.2021, the appellant had applied for the post of Deputy Director.

5. It is not in dispute that initially the candidature of the appellant was not recommended on the ground that 'Discharge Book' was not furnished. However, it is submitted that the second application of the appellant, which was made on 04.12.2021 was accepted. It is projected that on the same date, i.e. 04.12.2021, the name of the appellant along with

others were forwarded to the *Kendriya Sainik* Board and by a communication dated 09.12.2021, the name of the appellant was recommended as the person qualified to be considered for the post of Secretary, *Zila Sainik* Welfare Officer post. Thereafter, the interview was conducted on 13.12.2021 and the appellant came out successful and was appointed to the post of Deputy Director, *Zila Sainik* Welfare Officer vide Notification dated 21.07.2022.

6. It has been submitted that the appellant had the knowledge of the change in the selection criteria and the selection process as well as the recommendation of the name of the appellant as one of the candidates for Grade-I post advertised and accordingly, it is submitted that as the appellant did not challenge the selection process and therefore, the private respondent no. 1 was estopped from challenging the selection and appointment of the appellant.

7. It is also contended that the learned Single Judge had failed to appreciate that the private respondent no. 1, having participated in the selection process could not have turned around and assailed the selection process and therefore, it is submitted that the challenge to the appointment of the appellant was not maintainable and therefore, the impugned judgment and order is not sustainable.

8. In support of his submissions, learned counsel for the appellant has placed reliance on the case of *Amlan Jyoti Borooah vs. State of Assam and Others*, (2009) 3 SCC 227. The said case was cited for the point that the candidates who

had appeared in the recruitment process, could not have assailed the selection process. He has also placed reliance on the case of *Madras Institute of Development Studies and another vs. K. Shivasubramaniyan and others*, (2016) 1 SCC 454, which is on the point that even if the selection was not done strictly as per the qualifications mentioned in the advertisement, after being unsuccessful, the affected candidate who was in knowledge of the change in criteria was estopped from challenging the recruitment process.

9. The learned counsel for respondent no. 1/caveator, has submitted that the employment advertisement contained the guidelines that the applications on plain paper shall be submitted so as to reach the Special Secretary to the Government of Nagaland, Home Department, by registered post before 4:00 PM on 21.03.2020. It was submitted that there was no corrigendum/advertisement to extend the said date. Moreover, there is nothing on record to show that the appellant had sent the application by registered post. In the said context it was submitted that the respondent authorities had accepted the application made by the appellant by hand after the last date of submission. Accordingly, it is submitted that the application of the appellant submitted on 25.11.2021 was much beyond the last date of applying. It is submitted that initially the name of the appellant was not recommended but his second application dated 04.01.2021, submitted by hand was entertained and the name of the appellant was entered in the empanelled list and accordingly, the learned counsel for respondent no. 1 has made submissions to support

the judgment impugned in the present appeal.

10. We have given our anxious thoughts on the rival submissions made at the Bar and have also considered the 2 (two) cases cited by the learned counsel for the appellant.

11. The employment advertisement which was published on 12.02.2020 clearly laid down the criteria for applying and in clause (6) of the said Advertisement it was provided as follows:-

"Simple application in plain paper with following details/documents may be submitted by registered post to the undersigned by name so as to reach by 4:00 PM on 21.03.2020. Application by hand will not be accepted. Enquiry regarding result of application will not be entertained and canvassing in any form will disqualify for empanelment..."

12. The appellant has not enclosed any document in this memo of appeal to show that the advertising authority had issued any corrigendum to extend the last date of application. There is also no material on record to show that the respondent authorities had relaxed the condition that application can be sent only by registered post by permitting applications to be received by hand. The learned counsel for the respondent No. 1 has referred to document on page No. 190 of the memo of appeal, which is an email from the Director General, Department of Ex-Servicemen Welfare and Resettlement, Government of India, to Gaurav Mehra, at the email address, sshnagaland@gmail.com. The contents of the said e-mail is extracted below:-

*"From: rhanovis83@gmail.com
To: sshnagaland@gmail.com
Cc: "Sharad kapur" dgr@desw.gov.in*

Sent: Monday, December 6, 2021 8:27:24 PM

Subject: Request for strict adherence guidelines

Respect Sir

I am sending this mail for kind consideration and necessary action please

As per your guide line published on daily newspaper No POL-B/SWR/Est-1/2/20 dt 25 Nov 2021

(a) Any application submitted after 4pm on 21 Mar 2020 should not be accepted as per the guide issued by your kind office

(b) Any application submitted by hand or through any other channel other than Registered post addressed to the undersigned, i.e. Special Secretary to the Govt of Nagaland should not be accepted as per the guidelines issued by your office"

13. The learned Single Judge of this Court has assigned reason in the impugned judgment that admittedly the appellant herein had not submitted the application within 21.03.2020, but application was submitted on 25.11.2021, followed up with another application dated 04.12.2021. The learned Single Judge had also taken note of the fact that in the application dated 04.12.2021 by the appellant, it was mentioned therein that the appellant was found ineligible with a remark of "Discharge Book not furnished". Therefore, it appears that after rejection of the candidature of the appellant, holding him ineligible, the Special Secretary, Department of Home, Kohima (respondent No. 4), appears to have entertained the second application of the appellant which was submitted on 04.12.2021. It appears that on the same day, i.e. on 04.12.2021, the Under Secretary to the Government of Nagaland, Home Department, Police 'B' Branch, had forwarded the application of the appellant to the *Kendriya Sainik* Board, Government of India, and the name of the appellant was recommended by Letter dated 09.12.2021

by the *Kendriya Sainik* Board, Government of India. Therefore, the Court finds that in entertaining the application of the appellant, there are three violations of the conditions mentioned in the Advertisement; viz., *firstly*, the application was entertained after the last date of applying; *secondly*, the application of the appellant was entertained although it was not sent in the manner prescribed, which is by sending through registered post; and *thirdly*, the Special Secretary to the Government of Nagaland, Department of Home, Kohima, by accepting the second application of the appellant on 04.12.2021, is deemed to have accepted canvassing the appellant for the post.

14. If the Department of Home, Kohima, desires that application should be accepted even after the last date of applying, the appropriate manner to do so was to extend the period of applying by issuing a corrigendum or to scrap the initial process and to issue a fresh advertisement seeking application for the Class-I posts in reference. As per the representation of the appellant which was made on 22.11.2021, the appropriate authority in the Department of Home as well as in the Department of Ex-Servicemen Welfare and Resettlement, Government of Nagaland, were made aware that between the date of advertisement and 22.11.2021, more officers would have retired and were otherwise eligible to apply. Therefore, by not extending the time for applying, the authorities in the Department of Home, Government of Nagaland, had adopted a 'pick and choose' policy for the appellant and in the process deprived other

eligible persons who may have retired between the date of advertisement and acceptance of the application of the appellant to apply. This process adopted by the authority cannot be said to be a transparent process or a process to give benefit to more ex-servicemen. Therefore, this Court is of the considered opinion that the decision of the learned Single Judge in the impugned judgment and order dated 27.02.2024 warrants an approval in this appeal. We endorse the finding of the learned Single Judge that entertaining of the application of the appellant without extending the due date amounts to violation of rights under Articles 14 and 16 of the Constitution of India.

15. In so far as the case cited at the Bar is concerned, we are unable to concur with the submission of the learned counsel for the appellant that this is a case where the unsuccessful candidate has challenged the selection process. We are also unable to accept the submission of the learned counsel for the appellant that this was a case where the respondent No. 1 had participated in the selection process with prior knowledge that the selection was not done strictly in accordance with the qualifications mentioned in the advertisement and the Service Rules. In this writ appeal, no document has been shown that the respondent No. 1 was duly informed by the authorities in the Department of Home, Government of Nagaland, that they had permitted the appellant to apply after the last date of applying and that despite rejection of the candidature of the appellant, his second application was also entertained in gross violations of

the 'terms and conditions' of the advertisement which are already referred above. Therefore, this is not a case where the selection process is being assailed by the respondent No. 1. It is gross illegality in the manner of selection and appointment of the appellant that was questioned by the respondent no. 1. Therefore, the cases cited at the Bar by the learned counsel for the appellant has no relevance in the present case.

16. Accordingly, interference of the appointment order dated 21.07.2022, in respect of the appointment of the appellant by the judgment dated 27.02.2024, passed in WP(C)/176/2022 is not liable to be interfered with. Accordingly, this writ appeal is dismissed at the Motion stage without issuance of notice on the respondents.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant