

GAHC020001442023



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

Case No. : WP(C)/59/2023

SHRI. C. SEKUM CHANG
S/O SHRI. I. CHINGMAK CHANG,
R/O P/KHEL, TUENSANG VILLAGE, TUENSANG,

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF ANIMAL HUSBANDRY AND VETERINARY SERVICES
NAGALAND

3:THE DIRECTOR

DEPARTMENT OF ANIMAL HUSBANDRY AND VETERINARY SERVICES
NAGALAND
KOHIMA

4:SMTI. NAONGLEMLA CHANG

D/O SHRI. IMTISANGBA CHANG

R/O YALI VILLAGE
NOKSEN AREA

DISTRICT TUENSANG

C/O THEAKUMZUK SOTED CHANG

HAKU SHANG SECTOR
TUENSANG TOWN

DISTRICT TUENSAN

Advocate for the Petitioner : TOSHI O. LONGKUMER

Advocate for the Respondent : GOVT ADV NL

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

ORDER

29.02.2024

Heard Mr. Toshi O. Longkumer, learned counsel appearing on behalf of the petitioner and Ms. A. Ayemi, learned Government Advocate appearing on behalf of the respondent Nos. 1 to 3.

None has appeared on behalf of the respondent No. 4 though service is duly complete.

2. The petitioner herein has assailed the impugned Letter dated 06.03.2023, whereby the Government of Nagaland in the Department of Animal Husbandary & Veterinary Services had approved the appointment of the respondent No. 4 against the retirement vacancy of Shri Tonpangmongko Chang and further seeking a direction upon the respondents to appoint the petitioner as a *Chowkidar* in terms with the policy adopted by the State Government for appointment on land ownership basis vide the Order dated 05.03.2018.

3. From the materials on record it reveals that the grandfather of the petitioner admittedly donated the land for the establishment of the District Piggery Farm under the Directorate of Animal Husbandry & Veterinary, Nagaland, Kohima. A dispute, however, arises as to whether the

grandfather of the petitioner had donated the said land along with the others 'free of cost' without any condition attached or with conditions in as much as it is the specific case of the petitioner that the grandfather donated the said land and there was an Oral Agreement that against the said donation the family members would be granted scope of employment.

4. The State, however, in their affidavit categorically denies to the said stand.

5. Be that as it may, a vacancy arose in the *Sedem* Piggery Farm at *Pilashi Khel*, Tuensang district on account of retirement of Shri Tonpangmongko Chang on 31.08.2020. The petitioner submitted an application to the Director, Animal Husbandry & Veterinary Sciences seeking appointment to the Grade-IV post. Be that as it may, the said application was forwarded by the Chief Veterinary Officer, Tuensang, on 14.08.2020, to the Director, Animal Husbandry & Veterinary Sciences, Nagaland, Kohima. Thereupon the application of the petitioner along with 2 (two) others were forwarded by the Directorate of Animal Husbandry & Veterinary Sciences to the Secretary, Government of Nagaland, Department of Animal Husbandry & Veterinary Sciences on 17.08.2022. In the said Communication dated 17.08.2022 various enclosures were made of which Annexure-3 was in respect to the statement showing the petitioner's name as a landowner. The petitioner was expecting that the petitioner would be given the approval and appointment pursuant thereto, however, to the shock and surprise of the petitioner, vide an Approval Order dated 06.03.2023, the Government of Nagaland in the Department

of Animal Husbandry & Veterinary Sciences had granted the Administrative Approval for appointment to various posts including the post to which the petitioner applied and thereby approving the name of the respondent No. 4. Being aggrieved, therefore, the petitioner has approached this Court under Article 226 of the Constitution.

6. The record reveals that the respondent Nos. 1, 2 & 3 have filed affidavit-in-opposition wherein it is the specific stand that in the Willingness Certificate enclosed as Annexure-A to the said affidavit-in-opposition, there were no conditions attached thereto regarding granting of any contracts or for granting appointments in lieu of the donation of the land. It was also mentioned that the respondent No. 4 being an Indigenous Inhabitant of Tuensang, the respondent No. 4 case was considered for appointment to the vacant post on the basis of OM dated 04.06.2016. Further to that, it was mentioned that the petitioner duly had submitted representation dated 12.04.2023, which was pending before the competent authority. In that regard, it is also very pertinent to take note of Annexure-C to the affidavit-in-opposition filed by the respondent Nos. 1, 2 & 3 wherein it has been categorically mentioned that the Directorate of Animal Husbandry & Veterinary Science neither received nor forwarded any application of the respondent No. 4 against the retirement vacancy to which Administrative Approval was issued.

7. It is also seen that the petitioner had filed an affidavit-in-reply to the affidavit-in-opposition filed by the respondent Nos.

1, 2 & 3. In the said affidavit-in-reply it was mentioned that there is a Communication dated 08.06.2023, issued by the Chief Veterinary officer, Tuensang, to the Director, Animal Husbandry & Veterinary Science to the effect that the grandfather of the petitioner was one of the land owners of the Piggery Farm, Tuensang, and that neither the grandfather of the petitioner or children have availed any Grade-IV posts.

8. This Court has duly heard the learned counsels appearing on behalf of the petitioner as well as the respondent Nos. 1, 2 & 3.

9. It is relevant to take note of that the Government of Nagaland has a policy for granting appointments to Grade-IV posts under the Government of Nagaland on land ownership basis. The said policy is contained in the Notification dated 05.03.2018. Clause 3 stipulates as to how the Department under the Government of Nagaland is to act if there is a written agreement or an oral agreement with the land owners in respect to lands acquired by the Government of Nagaland prior to 26.07.2005. Clause 3(a), 3(b) & 3(c) of the said Notification is reproduced herein under:

"3(a) In other cases prior to 26.07.2005 and subsequent up of Administrative and Bloc headquarters on freely donated land, where a specific written agreement exists providing for employment to the landowner, the claim of landowner for employment should be settled in terms of such agreement.

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.

3(c) It is also clarified that it is not the policy of the Government to provide employment to the landowner in perpetuity. The employment of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointed as landowner in Government service and does not entitle his descendants for further employment on his retirement from service. After the appointed landowner 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 applicants."

10. Taking into account that it is the specific case of the petitioner that his family had donated the land 'free of cost' on the basis of an oral agreement with the agents of the Government that the family of the petitioner would be duly granted an appointment as per the customs which was prevalent, and further, in view of the Notification dated 05.03.2018, issued by the Chief Secretary to the Government of Nagaland, Land Revenue Department it is the opinion of this Court that the petitioner should be given a liberty to avail his remedies in terms with Clause (3)(b) of the said Notification dated 05.03.2018.

11. Taking into account that there is a dispute as to whether the petitioner's family has donated the land 'free of cost' without any conditions or there was an oral agreement, it is the opinion of this Court that such verification can only be conducted by the Deputy Commissioner of the concerned district in terms with Clause 3(b) which has been quoted herein above.

Under such circumstances, this Court grants the liberty to the petitioner to submit all the documents along with statements of his witnesses before the Deputy Commissioner, Tuensang, within 30 (thirty) days from the date of the instant Order. The Deputy Commissioner, Tuensang, shall be at liberty to take the statement of those witnesses of the Government officials of the concerned Department and the District Administration in respect to the time when the land was donated, and thereupon shall make necessary recommendations. On the basis of the said recommendation, the respondent authorities, more particularly, the respondent Nos. 1, 2 & 3 shall take appropriate steps for filling up the vacancy. Taking into account the above observation and directions, this Court sets aside the Approval Letter dated 06.03.2023 in so far as the respondent No. 4 is concerned.

11. With the above observations and directions the writ petition stands disposed.

Sd/-
JUDGE

Comparing Assistant