

GAHC020001462020



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

Case No. : WP(C)/60/2020

N. BANGKUP,
S/O B. NYAMSHONG PHOM,
PERMANENT R/O TAMLU VILLAGE, LONGLENG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND, KOHIMA

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF NAGALAND

EDUCATION DEPT.
NAGALAND
KOHIMA

3:THE PRINCIPAL DIRECTOR

SCHOOL EDUCATION
NAGALAND
KOHIMA

4:THE DIRECTOR OF SCHOOL EDUCATION

NAGALAND
KOHIMA

5:THE DEPUTY COMMISSIONER

LONGLENG
NAGALAND

6:THE DISTRICT EDUCATION OFFICER

LONGLENG
NAGALAN

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

Date of Hearing & Judgment : 19-02-2024

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed challenging the advertisement bearing No.ED/EST/GR-IV/APPT/DEO-LLG/2017 and further seeking a direction upon the State respondents to consider the case of the petitioner for appointment to the post of Night Chowkidar at GHS, Tamlu on land ownership basis on the basis of a directions passed by this Court in the judgment and order dated 29/11/2019 in W.P.(C)6/2018 and also in accordance with the Notification dated 5/3/2018.

2. The facts involved in the instant writ petition is that the grandfather of the petitioner had admittedly donated a plot of land measuring 250 x 105 sq.ft in the year 1971 without taking any compensation. It has also been mentioned that together with the petitioner's grandfather two other persons namely, Shri Lungshem and Shri Hennyei Phom also donated land for the establishment of the said school though amongst the three lands, the bigger portion of the land

was donated by the petitioner's grand father. It has been also alleged in the writ petition that the Inspector of School had given verbal assurance that land owners would be given appointment to Grade-IV post. However, no appointment were given to the family members of the petitioner inspite of submission of various representations. On 31/5/2017, a vacant post arose in the post of Night Chowkidar at GHS Tamlu on retirement of one Shri Bongshong Phom. Accordingly, the petitioner duly submitted a representation for consideration of his appointment to the said vacant post on the basis of land ownership. On the basis of the said application, the DEO Longleng forwarded the petitioner's application to the respondent No.3 mentioning that the petitioner is the real land owner and despite donating a large area of land, no post of grade-IV was allotted to him and he was the most deserving candidate. The DEO forwarded the case of the petitioner against the existing vacancy.

3. Be that as it may, ignoring the petitioner's application and the recommendation, the Government vide letter dated 6/12/2017 conveyed approval of one Shri Phamnya Phom who belonged to a different village and was not a land owner candidate. On the basis of the said approval made by the Government the said Shri Phamnya Phom was appointed on adhoc basis as Night Chowkidar at GHSS on 11/1/2018. The petitioner being aggrieved there upon preferred a writ petition before this Court which was registered and numbered as W.P. (C) 6/2018 seeking a writ in the nature of certiorari for the purpose of quashing the appointment of Shri Phamnya Phom and to direct the State respondents to appoint the petitioner in accordance to the

Notification dated 6/3/2000. The said writ petition was disposed of by judgment and order dated 29/11/2019 whereby appointment of Shri Phamnya Phom was set aside and quashed. This Court further directed the respondents to initiate a fresh process to appoint a suitable person as per law by giving due weightage to the land owners like the petitioner, if there existed any oral agreement or assurance from the Government through its agents as claimed by the petitioner in the said proceedings. Paragraph 8 of the said judgment being relevant is reproduced herein under:

8. Careful reading of the notification dated 26.07.2005, in particular, para-3 which is reproduced herein aboveshow that the policy adopted and notified is prospective in nature, therefore, it cannot be applied in the case of the petitioner Page No.# 9/10 whose claim is that the land was donated in 1971 and verbal assurance for appointment was given at that time. Further, on careful perusal of the notification dated 05.03.2018, particularly, para-3(b) of the same, it appears also that it does not apply to agreements already made and, agreement in the oral form is also recognised. Furthermore, the judgment passed by the Division Bench in W.A. No. 18(K) of 2013 also did not nullify all agreements made in the past if they were made in proper form and in the way recognised by law. Therefore, what has to be examined in this case is whether there was an oral agreement between the representatives of the Government and the landowners in 1971 when the Government High School at Tamlu was established in their land. But in a writ Court there is no way of determining whether such oral agreement was there or not, therefore, it has to be determined in the way it is provided in para-3(b) of the notification dated 05.03.2018. Only when this is determined whether the petitioner has the rightful claim for appointment to the post in question can be determined. I may quickly add here that though in this case there are indications that there was verbal assurance from the Government through its agents. As such, the respondents should refer the claim of the petitioner to the Deputy Commissioner of the District who then shall determine as to whether there was an

oral assurance or agreement from or with the agents of the Government. Thereafter, if it is found that there was such assurance or an agreement the respondents shall consider the case of the petitioner for appointment to the post in question by giving weightage. Now coming to the appointment of the private respondent, it is admitted fact that advertisement was not made and no DPC or any selection committee sitting was there before he was recommended and appointed. It appears that the Page No.# 10/10 recommendation came straight from the Government without waiting for the district authorities to complete the formality even. Such kind of recruitment has been depreciated by the Hon'ble Supreme Court in the landmark judgment passed in the case of Secretary, State of Karnataka –versus- Uma Devi & Others, reported in (2006) 4 SCC 1. It appears that the direction given in that case has been either ignored or not in the knowledge of the concerned Officers of the Department. It may be mentioned here that such kind of appointment violates fundamental rights as provided under Article 14 and 16 of the Constitution of India. It is true that because of exigencies some time such method may have to be resorted to but in this case, such exigencies exist has not been the pleading of the respondents. As such, the appointment of the private respondent smacks arbitrariness and nepotism, as such, it cannot be sustained in law. Therefore, the same is quashed and set aside. The respondents should take a fresh process to appoint suitable person as per law and give weightage to the landowners like the petitioner if there was any oral agreement or assurance from the Government through its agents as claimed by the petitioner. The writ petition is disposed of in the light of the observations, conclusions and the directions made above.”

4. Pursuant thereto, the petitioner submitted the judgment passed by this Court to the various respondent authorities on 3/12/2019. Subsequent thereto, by another communication dated 17/2/2020, the petitioner had also submitted a representation to the Principal Director, School Education Department i.e. the respondent No.3 for consideration of his case. In spite of the directions passed by

this Court in the judgment and order dated 29/11/2019 in W.P.(C) 6/2018 as well as the representation submitted by the petitioner, the respondent authorities more particularly, the respondent No.3 had issued an advertisement dated 21/3/2020 in the Nagaland Post for filling up the post of one Night Chowkidar at GHS Tamlu under the establishment of DEO, Longleng. This advertisement has been put to challenge by way of the instant writ petition as well as seeking directions as already stated herein above.

5. This writ petition was filed on 26/5/2020 and when the matter was taken up for motion on 1/6/2020, this Court stayed the impugned Advertisement dated 21/3/2020 which was enclosed as Annexure-M to the writ petition.

6. The record reveals that post the impugned advertisement there were certain significant development inasmuch as on 23/7/2020, the Principal Director of School Education i.e. the respondent No.3 sought for instructions from the Deputy Commissioner, Longleng as to whether there was any oral assurance or agreement from or with the agent of the Government in respect of the land donated by the family of the petitioner. It was also mentioned that if it is found that there was an assurance or agreement, the case of the petitioner shall be required to be considered for appointment in question by giving weightage. The Deputy Commissioner, Longleng was requested to treat the matter urgently.

7. There upon, the Additional Deputy Commissioner, Tamlu gave a report to the Deputy Commissioner, Longleng vide communication dated 12/8/2020. In the said report, it was specifically

mentioned that the area/compound of the present GHS Tamlu building is located in the land belonging to two individuals namely, Shri Longshen Phom on the eastern side and Shri B. Nyemshong on the western side. It was also mentioned that the actual location where the building stands belong to Shri B. Nyemshong and till date neither compensation nor any other opportunity were given to the land owner in lieu of the said plot of land. It was also mentioned that as per the tradition and customs of the Nagas, the claim made by the petitioner as land owner was justified.

8. It is not known as to whether the said communication issued by the ADC Tamlu was taken note of by the respondent authorities. However, on 16/11/2021, the Deputy Commissioner, Longleng was again directed by the Principal Director, School Education to submit an administrative clarification as to whether there exist any arrangement of verbal or written agreement made between the family of the petitioner and the agents of the Government in respect of the land on which the GHS Tamlu was established under the establishment of DEO, Longleng.

9. Subsequent to the said communication dated 16/11/2021, the Deputy Commissioner, Longleng, provided information to the respondent No. 3 vide a communication dated 23/11/2021. The contents of the said communication is very relevant for determination of the dispute for which, the contents are reproduced herein below.

*"GOVERNMENT OF NAGALAND
OFFICE OF THE DEPUTY COMMISSIONER
LONGLENG NAGALAND*

NO.LLG/REV-15/GEN/2014-2015/1008Dated Longleng, the 23rd November 2021

To

*The Principal Director
Directorate of School mEducation,
Nagaland Kohima*

*SUB:- SEEKING ADMINISTRATIVE CLARIFICATION/VERIFICATION OF GENUINE
LANDOWNER OF GHS TAMLU UNDER THE ESTABLISHMENT OF DEO
LONGLENG-Reg*

*Ref:1.NO/EDN/DEO/LLG/EST-35/2017-18/621 dated Longleng, the 05th Oct
2021*

2.NO.LLG/GEN/2014-2015/829 Dated Longleng, the 6th Oct 2021

Sir,

*On the subject cited above and in inviting a reference to your letter
NO.ED/EST/GR-IV/APPT/DEO-LLG/2017/273 Kohima dated the 16th November
2021, I have the honour to state that that in interaction with the next kin of
Shri N.Bangkup, Shri B. Nyamshong Phom, it has been found that there was no
verbal or written agreement between the land owner and the agents of the
Government in respect of a plot of land on which the present GHS Tamlu was
established under the establishment of the DEO Longleng then owing to
ignorance. However despite several attempts made by the aforementioned
genuine land owner for appointment to the post of Grade-IV at GHS Tamlu, he
has been deprived of his due right by the concerned Department, wherein other
parties have been appointed to the said posts over the years. Therefore, this
has compelled him to resort to legal action.*

This is for your information and necessary action, please.

*(M. Shayung Phom)
Deputy Commissioner,
Longleng: Nagaland."*

10. From the above contents, it would reveal that there was an interaction between the petitioners father and the Deputy Commissioner wherein the petitioner's father informed the latter verbally that owing to ignorance there was no oral agreement. It was also informed that there were various attempts made, by the petitioner and his father for the purpose of getting a job to the post of Grade-IV but they have been deprived of whereas other person similarly situated have been appointed to the posts over the years.

11. This document was placed before this Court on 26/11/2021 and this Court by order dated 26/11/2021 directed the State respondents to place the said document by filing an affidavit. In the meantime, prior to the filing of the affidavit further development took place inasmuch as the Deputy Commissioner, Longleng issued another communication to the Principal Director, School Education on 14/1/2022 stating inter alia that he received a communication from the father of the petitioner on 13/1/2022 wherein it was stated inter alia that it was on account of mis communication, he said that there was no oral agreement for appointment to the post of Grade-IV between the land owners and the agent of the Government. By the said communication dated 14/1/2022, the Deputy Commissioner Longleng therefore requested the respondent No.3 to consider the case of the petitioner for appointment on humanitarian ground. All these aspects were brought to the notice of this Court by respondent Nos. 1 to 6 by filing affidavit on 11/8/2022. It is however relevant to note that in the said affidavit-in-opposition, the respondents had taken a stand that the retracting by the father of the petitioner on 13/1/2022 was an afterthought which cannot be made admissible. Therefore, a reading of the said affidavit reveals that the respondent authorities are not inclined to consider the case of the petitioner.

12. The record further reveals that an affidavit-in-reply has been filed by the petitioner to the affidavit-in-opposition filed by respondent Nos. 1 to 6 In the said affidavit-in-reply, a certificate of the Genuine land owner of GHS Tamlu DEO Longleng was submitted to the

Deputy Commissioner Longleng by the Chairman of Tamlu Village Council stating inter alia that there was an oral agreement.

13. This Court had duly heard the learned counsel for the petitioner as well as the respondents. The submissions have been duly noted.

14. From the above facts, it is apparent that admittedly that the land on which the GHSS Tamlu stands is a portion of land which has been donated by the grand father of the petitioner. This aspect of the matter have been duly admitted by the respondent authorities as would be seen from the communication dated 12/8/2020 referred to herein above. Now under such circumstances, the question arises as to what are the parameters to be followed by the respondent authorities. In this regard, this Court finds it relevant to take note of the Notification dated 5/3/2018 issued by the Chief Secretary, Government of Nagaland, Land Revenue Department. From a perusal of the said Notification, it reveals that the said Notification was issued pursuant to the approval by the Cabinet as regards the policy with regard to appointment to Grade-IV post under the Government of Nagaland on land ownership basis. From the perusal of the said Notification, it reveals that as per the Notification No.LR/4-3/KOH/2003 dated 26/7/2005, it the present policy of the Government of Nagaland not to acquire any land free of cost and all lands shall be acquired on payment of full compensation as determined by law. It is also seen from a perusal of Clause-2 of the said Notification that old cases where Administrative Headquarters and Block Headquarters were set up on various parts of the State upon lands donated freely by individuals of

that area should not be re-opened for compensation or employment in consonance with the policy dated 20/6/1977. However in respect to other cases prior to 26/7/2005, the Notification duly stipulates a procedure to be followed how such cases are to be settled. Clause 3 (a) (b) and (c) of the said Notification being relevant are reproduced herein below:-

"3(a) In other cases prior to 26.07.2005 and subsequent to setting up of Administrative Block 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."

15. In the instant case, it is admitted case that there was no written agreement. In such circumstances, Clause 3(a) of the

Notification has no application. It is the specific case of the petitioner herein that there was an oral agreement. However, there seems to be certain dispute which have arisen in view of the communications dated 23/11/2021 and 14/1/2022. In the opinion of this Court, the procedure spelt in Clause 3(b) of the Notification was required to be adhered to by the Deputy Commissioner, Longleng. A perusal of Clause 3(b) specifically stipulates as to how the concerned authority is required to take steps in order to ascertain as to whether there was an oral agreement. It is stipulated that written statements from the witnesses i.e. the Government officials of the concerned department, the District Administration and village functionaries present at the time of such oral agreement should be taken by the Deputy Commissioner. In the instant case it is not seen as to whether the Deputy Commissioner have taken into account the statement of witnesses and more particularly the stand of the Village Council which is apparent from Annexure-I to the affidavit-in-reply.

16. Under such circumstances this Court therefore disposes of the writ petition thereby directing the Deputy Commissioner Longleng to decide afresh as to whether there was any oral agreement entered into between the family of the petitioner with the agents of the Government at the time when the land was donated for the establishment of GHS Tamlu. In doing so, the Deputy Commissioner, Longleng shall take into account the written statements of the various witnesses, if any, and there upon shall make the necessary recommendation to the Principal Director, School Education i.e. the respondent No.3. This Court further grants 30 days time to the

petitioner to submit all written statements of all witnesses in support of the petitioner before the Deputy Commissioner, Longleng. The Deputy Commissioner, Longleng shall also be at liberty to take written statements of the witnesses of the Government officials of the concerned Departments as well as District Administration at the time of such oral agreement, if any available and thereupon decide the issue as to whether there was any oral agreement. Based on such decision, the Deputy Commissioner, Longleng shall submit his recommendation to the respondent No.3. This Court further directs the respondent No.3 to take appropriate steps for filling up the vacancy on the basis of the recommendation and keeping in mind the directions passed by this Court in paragraph No. 8 of the judgment and order dated 29/11/2019 as quoted above. The said exercise shall be completed within a period of 4(four) months from the date the petitioner submits the statements of all its witnesses along with certified copy of this judgment.

17. With the above observations and directions, the writ petition stands allowed.

18. Before parting with the record, this Court observes that in view of the above observations and directions, the impugned advertisement stands set aside and quashed.

Sd/-
JUDGE

Comparing Assistant