

GAHC020001492019



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

Case No. : WP(C)/54/2019

IMKONGCHUBA
S/O BENDANGSUNGIT,
R/O YIMPANG MEPU YAONGYIMSEN VILLAGE, MOKOKCHUNG,
N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF N/L,
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L
DEPT. OF HEALTH AND FAMILY WELFARE
N/L
DEPT. OF HEALTH AND FAMILY WELFARE
N/L
KOHIMA

3:THE PRINCIPAL DIRECTOR
DIRECTORATE OF HEALTH AND FAMILY WELFARE
N/L
DIRECTORATE OF HEALTH AND FAMILY WELFARE
N/L
KOHIMA

4:THE CHIEF MEDICAL OFFICER
MOKOKCHUNG
MOKOKCHUNG
N/L

5:M. LANUTOSHI
S/O MARKANGBA

PRESENTLY SERVING AS MEDICAL ATTENDANT AT
YAONGYIMSEN SUB-CENTRE
YAONGYIMSEN VILLAGE
MOKOKCHUNG

Advocate for the Petitioner : IMNASENLA

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

Date of hearing : 31.05.2024.
Date of Judgment : 23.07.2024

**:: JUDGMENT AND ORDER ::
[CAV]**

Heard Ms. Imnasenla, learned counsel for the petitioner. Also heard Mr. E. Thiba Phom, learned Government Advocate for respondent nos. 1 to 4 and Mr. C. T. Jamir, learned Senior counsel assisted by Mr. I. Imchen, learned counsel for the respondent no. 5.

2. Being aggrieved by the impugned appointment order dated 07.08.2014, issued by the Principal Directorate, Health & Family Welfare, Nagaland, Kohima appointing Shri. M. Lanutoshi (respondent no. 5) to the post of Medical Attendant at Yaongyimsen Sub-Centre under the establishment of Chief Medical Officer, Mokokchung, the petitioner filed this application under Article 226 of the Constitution of India praying for issuance of appropriate writ, order or direction of the like nature and prays for quashing and setting aside of the same.

3. The case of the petitioner is that the petitioner's clan are land owners of the land where the present Primary Health Centre (PHC), Yaongyimsen is established by the Government. The land was donated free of cost to the Yaongyimsen village council by late Lanuchiba, the great grandfather of the petitioner for developmental work without claiming any compensation whatsoever. Thereafter, the Yaongyimsen Village Council handed over the said plot of land to the medical department for establishment of the present Primary Health Centre (PHC), Yaongyimsen without taking any compensation.

4. Therefore, being the original land owner, the petitioner had submitted his application praying for his appointment on the basis of land ownership. The further case of the petitioner is that 2 (two) posts of Medical Attendant fell vacant at Yaongyimsen Sub-Centre under the Chief Medical Officer, Mokokchung due to superannuation and retirement of Shri. Imlitemsu on 30.11.2013, and Smti. Rendipokla on 30.06.2014 respectively.

5. And as practiced, the petitioner being a member of the land owners had submitted an application before the Principal Directorate, Health & Family Welfare, Nagaland, Kohima with a prayer for his appointment against the post of Medical Attendant which fell vacant due to the retirement of Shri. Imlitemsu.

6. However, vide order dated 07.08.2014 issued by the Principal Directorate, Health & Family Welfare, Nagaland, Kohima (respondent no. 3), one Shri. M. Lanutoshi (respondent no. 5) was appointed against the said vacant post created due to the

retirement of Shri. Imlitemsu. The respondent no. 5 is not a land owner of the donated land where the present Medical Sub-Centre is established.

7. Being aggrieved by the said appointment of the respondent no. 5, who is not a land owner, the petitioner had earlier filed a writ petition before this Court being registered and numbered as WP(C)/117(K)/2015. The petitioner inter alia alleged that the respondent no. 5 had secured the said appointment by committing forgery and fraud. Hence, his appointment be cancelled, and the writ petitioner being the member of the land owner be appointed against the said post on land ownership basis.

8. However, during the pendency of the said writ petition, the State government vide notification dated 05.03.2018, has framed a policy with regards to the appointment to Grade-IV post on land ownership basis. Clause 3 of the said notification clearly lays down that employment of land owner 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. It further contained that the said notification dated 05.03.2018 supersedes the earlier notification dated 26.07.2005.

9. It is the further case of the petitioner that one Smti. Toshimenla has already been appointed on the basis of land ownership. Hence, it was clear that in view of the notification dated 05.03.2018, the petitioner was not entitled for appointment to the said post on the basis of land ownership in as much as the appointment on the basis of land ownership is limited to the first appointment and not in perpetuity. Thus, in view of the above notification dated 05.03.2018, the petitioner had on 28.02.2019 withdrawn the writ petition filed by the petitioner being WP(C)/117(K)/2015 with liberty to file afresh.

10. Accordingly, the petitioner filed the present writ petition with a prayer to quash and set aside the impugned appointment order dated 07.08.2014, appointing the respondent no. 5 to the post of Medical Attendant at Yaongyimsen sub-centre, under CMO, Mokokchung; and to direct the respondent authority to advertise the said post of Medical Attendant as per the procedure of public employment on the following grounds:

(i) That the respondent no. 5 obtained appointment order by forging the signature of the village council members and by producing false land ownership certificate and recommendation, while submitting his application for appointment;

(ii) That one Smti. Toshimenla has already been appointed on the basis of land ownership against the said land, as such, the respondent no. 5 cannot be appointed to the said post on the basis of land ownership in perpetuity in as much as the case is covered by the latest notification dated 05.03.2018;

(iii) That the post held by the respondent no. 5 is a public post and it is to be filled up as per the constitutional scheme of public employment;

(iv) That the respondent no. 5 obtained his appointment to the present post of Medical Attendant by forging the writing pad, seal and signature of the members of the village council and has falsely certified in the writing pad that he is the rightful land owner. And the said allegation having not specifically denied by the respondent no. 5 is treated to have been admitted to have committed forgery for the purpose of obtaining appointment;

(v) That it is a well settled principal of law that appointment obtained by forgery is not sustainable in the eyes of law as such, the same is void ab initio;

(vi) That the appointment of the respondent no. 5 being void ab initio, the post held by the respondent no. 5 should be filled up as per the constitutional scheme of public employment by way of advertisement and the petitioner should also be allowed to participate in the same.

11. In support of her submission, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court in the case of ***Uma Devi Vs. State of Karnataka*** reported in ***(2006) 4 SCC 1*** wherein it was held that "...any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all

eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution..."

12. And for the reasons stated above, the learned counsel for the petitioner submits that since the appointment of the respondent no. 5 to the post of Medical Attendant was made arbitrarily without conducting any selection process and the same is violative of the scheme of public employment, as such, the same is required to be interfered with by setting aside the impugned appointment order of the respondent no. 5, and direct the respondent authority to advertise the said post of Medical Attendant as per the procedure of public employment.

13. The State respondent nos. 1 to 4 has filed affidavit-in-opposition whereby it is contended that the appointment of the respondent no. 5 to the post of Medical Attendant was against the vacancy caused due to the retirement of one Shri. Imlitemsu, Medical Attendant. It is further submitted that the said appointment of respondent no. 5 was made in pursuance of the government's approval letter dated 05.08.2014. However, the petitioner has never challenged the said approval letter of the government in the present writ petition. It is further submitted that challenging the consequential order without challenging the basic order is not permissible under the law. As such, the instant writ petition is not maintainable and is liable to be dismissed.

14. The learned Government Advocate further submitted that the appointment of respondent no. 5 was done basing on the land ownership documents produced by him. Whereas, the case

of the petitioner could not be considered due to the reason that the family of the petitioner had already availed the opportunity for employment on land ownership basis and as such, the petitioner has no locus standi to file the present writ petition and further the petitioner has failed to make out any case warranting interference of this Hon'ble Court in the instant case and thus, the same is liable to be dismissed.

15. The learned counsel for the respondent no. 5 while referring to the affidavit in opposition filed by the respondent no. 5, made the following submissions:

(i) That unlike the other states in the country, the land-holding system in the State of Nagaland is different. The private individuals, clans, community and the village are the owners of the land in the state of Nagaland. For developmental activities, the Government acquires the land by way of purchase as per the Requisition and Acquisition Act, 1961 as well as through donation by the land owners and offer Grade IV post to the land owners in lieu of donation of land.

(ii) That the land where the present Medical Sub-Centre is established originally belonged to late Nokchuba. The present petitioner and the private respondent no. 5 are the great grandchildren of late Nokchuba. However, in the course of time, the land in question has become the village community land at Yaongyimsen village in view of the donation/allotment of land by late Nokchuba for development of the village. Subsequently in the year 2009, the land in question was donated by the village

counsel of Yaongyimsen to the medical department for establishment of the present medical sub-centre at Yaongyimsen.

(iii) That after establishment of the present Medical Sub-centre at Yaongyimsen Village, there has been claims and counter-claims of ownership of land over the establishment in question claiming appointment to Grade-IV post on land ownership basis. Since the dispute pertains to ownership of land within the village, which involves customary and traditional issues between Late Nokchuba's descendants and the village Council, the dispute over the land was placed before the Dobashi's Customary Court, Changtongya. The said Customary Court after adducing evidence from the parties, by judgment dated 29.10.2014 declared that the land in question has been allotted to the Yaongyimsen village by late Nokchuba's grandchildren and as such, the land belongs to the village. The DB's Court further order that since the land has been donated/allotted by late Nokchuba's grandchildren to the village, they should be given the right to seek and apply to Grade IV posts under the establishment.

(iv) That having learnt that a post of Medical Attendant is going to be vacant due to the retirement of one Medical Attendant, the respondent no. 5 submitted an application for appointment to the said post on the basis of land ownership. The candidature of the respondent no. 5 was also certified by the concerned village council and recommended for the said post. The application of the respondent no. 5 was duly forwarded by the concerned CMO by letter dated 09.09.2013 for necessary action. The respondent

authorities vide order dated 05.08.2014 concurred approval in favour of respondent no. 5 and by an order dated 07.08.2014, the respondent no. 5 was appointed to the post of Medical Attendant at Yaongyimsen, Medical Sub-centre under CMO, Mokokchung.

(v) That the present writ petitioner challenged the said appointment order dated 07.08.2014 by filing WP(C)/117(K)/2015 on the ground that he is the land owner and claimed appointment to the said post on land ownership basis. It was also alleged that the appointment of respondent no. 5 was made based on a forged land ownership certificate issued by the village council and it was also the stand of the writ petitioner that the respondent no. 5 was not the land owner. The said allegation of the petitioner in the earlier writ petition was proved to be a false allegation in view of the judgment rendered by the DB's Court on 29.10.2014. The writ petitioner in the earlier writ petition has suppressed such material facts so as to obtain a favourable order. The respondents by filing affidavit-in-opposition substantiated by materials on records about the appointment of respondent no. 5 on land ownership basis. The respondent no. 5 in the said writ petition also filed objection to the maintainability of the said writ petition inter-alia on the ground that the writ petitioner has no locus standi and has suppressed the material facts.

(vi) That after filing the affidavit-in-opposition regarding objection and maintainability, the petitioner on realising that the allegation

made in the said writ petition about the respondent no. 5 regarding the land ownership is baseless and against the records, the said writ petition was withdrawn by the said writ petitioner on 28.02.2019.

(vii) That having failed to succeed in the claim for appointment on land ownership basis in WP(C)/117(K)/2015, the petitioner filed the present writ petition challenging the same appointment order dated 07.08.2014 with a different plea that the appointment of respondent no. 5 is against the constitutional mandate of public employment. The present writ petition is nothing but an after-thought and frivolous litigation.

16. In view of the facts and circumstances stated above, the learned counsel for the respondent no. 5 submits that since the respondent no. 5 was appointed on land ownership basis, as such, the writ petitioner has no right to claim for filling up the said post by way of open advertisement as the same was filled by the authorities as per the policy for appointment on land ownership basis.

17. It is further submitted that the sole contention of the writ petitioner in filing the present writ petition is that, during the pendency of WP(C)/117(K)/2015, the State government vide notification dated 05.03.2018 framed a policy with regard to appointments to Grade-IV under the government of Nagaland and land ownership basis. Clause 3(c) of the said notification clearly lays down that 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. And 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. In this regard the learned counsel for the respondent no. 5 submits that the respondent no. 5 was appointed on 07.08.2014 on land ownership basis when there was no such limitation for appointment of land owners. The appointment of land owners limited to one person is provided vide notification dated 05.03.2018 which has prospective effect only. Therefore, the contention of the writ petitioner that the said post should be advertised as the post of Medical Attendant has already been filled up by a landowner is totally misconceived. Even assuming that the post is to be filled up by way of advertisement as stated by the writ petitioner, such a situation may arise only after the retirement of the respondent no. 5 in as much as the respondent is the first person to be appointed to the said post on land ownership basis.

18. The learned counsel for the respondent no. 5 submits that the respondent no. 5 was appointed by order dated 07.08.2014 on land ownership basis after following the process for appointment. The present writ petition was filed in the month of May 2019 challenging the appointment of the respondent no. 5 after a lapse of 5(five) years; as such, there is a delay and laches on the part of the writ petitioner in approaching this Hon'ble

Court challenging the appointment order issued in the year 2014. Therefore, no interference with the appointment made in the year 2014 be made which may prejudice the right already accrued to the respondent no. 5, hence, the writ petition is liable to be dismissed on that ground alone.

19. It is submitted that the appointment of the respondent no. 5 was made on the strength of the government's approval order dated 05.08.2014. The said approval order is not under challenged in the present writ petition and therefore, challenging the consequential order without challenging the basic order is not permissible under the law and the writ petition is therefore not maintainable and is liable to be dismissed.

20. The learned counsel for the respondent no. 5 further submits that the Government of Nagaland issued the OM No. AR-3/GEN-174/2007 (Pt) dated 03.03.2022 regarding filling up of Group D posts in the departments-corrigendum issued-Reg whereby it is directed that the condition of advertisement is dispensed with wherever such difficulties are faced by a Department, as long as a fair and transparent eligibility criteria and process is followed and in all such cases approval of the government is obtained. And, in the instant case, the case of the respondent no. 5 was approved by the government on 05.08.2014 which is not under challenge. The learned counsel further submits that the allegation made by the petitioner against the respondent no. 5 by filling a complaint against the respondent no. 5, before the Principal Directorate Health &

Family Welfare, Nagaland, whereby it was prayed for cancellation of the order of the appointment of the respondent no. 5 has duly been considered by the Government of Nagaland. After due consideration of the above complaint made by the petitioner against the respondent no. 5, the government has issued a letter dated 13.05.2015 addressed to the Principal Directorate Health & Family Welfare, whereby it reiterated that the approval conveyed in respect of Shri. M. Lanutoshi (respondent no. 5) vide letter no. MED-8/AE/60/2002 (Pt) dated 05.09.2014 for appointment of Medical Attendant at Yaongyimsen S/C under CMO Mokokchung will stand as it is. In view of the above clarification made by the Government, no further clarification is required to be given to the submission made by the learned counsel for the petitioner regarding obtaining forged land ownership certificate.

21. Heard learned counsels for the parties. I have also considered the contention made by the parties in their respective pleadings and the available documents.

22. The contention of the writ petitioner is that the private respondent is not a land owner where the present Sub-centre under the Chief Medical Officer, Mokokchung has been established and as such, the respondent no. 5 not being the land owner ought not to have been appointed in the present post; and that in view of the government's notification dated 05.03.2018 particularly the provision under Clause 3(c), the appointment of the respondent no. 5 having been made in perpetuity is against the said notification dated 05.03.2018, and therefore, the said

post of Medical Attendant held by the respondent no. 5 should be appointed as per the procedure of public employment through advertisement.

23. The contention of the respondent no. 5 on the other hand is that both the petitioner and the respondent no. 5 are descendants of late Nokchuba who had donated the land in question and as such the contention of the petitioner that the respondent no. 5 is not a land owner is misconceived. The above contention made by the respondent no. 5 that both the petitioner and the respondent no. 5 are the great grandchildren of late Nokchuba who was the original land owner has not been disputed by the petitioner. The learned counsel for the petitioner fairly submitted at bar that the petitioner and the respondent no. 5 are the descendants of the late Nokchuba. That the entire case of petitioner in the instant writ petition is on the strength of the notification dated 05.03.2018 which was passed much after the respondent no. 5 was appointed in the year 2014, and as such, the notification dated 05.03.2018 cannot have retrospective effect as it is a settled law that any law passed is prospective in nature. The petitioner had filed WP(C)/117(K)/2015 seeking appointment on the basis of land ownership challenging the appointment of the respondent no. 5 on the ground that the petitioner is the land owner and his case should be considered for appointment. However, the petitioner had withdrawn the aforesaid writ petition on 28.02.2019 as during the pendency of the said writ petition, the notification dated 05.03.2018 came into

force and as according to the petitioner, the relief sought in the writ petitioner was barred by operation of law.

24. Thereafter, the petitioner filed the present writ petition and made the same allegation against the respondent no. 5 stating that the respondent no.5 has been appointed on the basis of a forged land ownership certificate. The petitioner has also created a fresh controversy by alleging that the appointment of the respondent no. 5 in the year 2014 is in violation of the notification issued in the year 2018. However, it is not understood as to how the appointment of the respondent No.5 made in the year 2014 has been made in violation of the notification issued in the year 2018 unless such rules are made applicable with retrospective effect.

25. The contention of the respondent no. 5 on the other hand is that the appointment on the basis of land ownership prior to the notification dated 05.03.2018 has no limit and as such, the appointment of the private respondent was not in violation of any law which was operating at the time of his appointment to the post of Medical Attendant. It is submitted that the petitioner by raising a question that the appointment of the respondent no. 5 is in violation of the notification dated 05.03.2018 is misconceived and whimsical as it only amounts to say that the appointment of the respondent no. 5 was in violation of a non-existing post.

26. The further contention of the respondent no. 5 is that the petitioner has not challenged the approval order dated

05.09.2014 which is the basic order pursuant to which the consequential order was passed for appointment of the respondent no.5. By not challenging the basic order, the petitioner has also not complied with the basic fundamental of filing a writ petition required for fulfilling the technical necessities, resulting in filing a defective writ petition.

27. The learned counsel for the respondent no.5 further contended that as per the OM dated 03.03.2022, the right of the private respondent to be appointed on the basis of land ownership without advertising the post has been protected; as such, the relief sought by the petitioner to advertise the said post is not maintainable in view of the aforesaid memorandum.

28. It is seen that the writ petitioner earlier had filed WP(C)/117(K)/2015, however, the same was withdrawn on 28.02.2019 on the ground that during the pendency of the said writ petition, the Government had issued a notification dated 05.03.2018 and with the enforcement of the said notification, the relief sought for in the writ petition was barred by the operation of law. By filing this writ petition, the petitioner has raised the same allegation against the respondent no. 5 that the respondent no. 5 has been appointed on the basis of land ownership basis. And since one person Smti. Toshimenla has already been appointed on the basis of land ownership; therefore, in view of the notification dated 05.03.2018, the appointment of respondent no. 5 becomes void abinitio. Therefore, the said post of Medical Attendant should be advertised as per the procedure of public

employment. However, since the appointment of the respondent no. 5 was done in the year 2014 on the basis of land ownership when the basis of appointment on the land ownership was not confined to one person, and not made in perpetuation as provided under clause 3(c) of the said OM. And as it was issued only on 05.03.2018 which has a prospective effect and not a retrospective effect; therefore, the above notification dated 05.03.2018 cannot affect the appointment of respondent no. 5. And, in view of the government latest OM dated 03.03.2022 the advertisement of the post held by the respondent no. 5 as Medical Attendant being appointed on the basis of land ownership is dispensed with, in as much as, the said OM dated 03.03.2022 provided that whenever such difficulties are faced by the department as long as fair and transparent eligibility criteria and process is followed and in all such cases approval of the Government is obtained. In the instant case, the Government has duly approved for appointment of the respondent no. 5, on 05.09.2014.

29. It is also seen that the writ petitioner has made an allegation against the respondent no. 5, that the respondent no. 5 has obtained his appointment by forging the land ownership certificate without the knowledge of the village council and that in this regard, the petitioner has lodged complaint before the Principal Directorate, Kohima, Nagaland which was forwarded to the respondent authority. However, the said complaint was dully considered and by a communication dated 13.05.2015 addressed

to the Principal Directorate Health & Family Welfare regarding the complaint against the two-appointment made at Yaongyimsen Sub-centre under CMO, Mokokchung, the Deputy Secretary to the Government of Nagaland has clarified that the approval conveyed in respect of Shri. M.Lanutoshi (Respondent no.5) vide letter No. MED-8/AE/60/2002 dated 05.09.2014 for appointment to the post of Medical Attendant at Yaongyimsen Sub-centre under CMO, Mokokchung will stand as it is. It appears that the said letter was issued after due consideration of the complaint lodged by the writ petitioner against the respondent no. 5.

30. In view of the above discussion and observation made herein above, the writ petitioner failed to make out its case for interference with the appointment of the respondent no. 5 dated 07.08.2014 to the post of Medical Attendant issued by the Principal Directorate Health & Family Welfare, Nagaland, Kohima. The writ petitioner has also failed to make out its case for advertisement to the said post of Medical Attendant by issuing advertisement as per the procedure of public employment.

31. Accordingly, the writ petition being devoid of merit stands dismissed.

JUDGE

Comparing Assistant