



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

Case No. : WP(C)/95/2023

SHRI. SHENWANG KONYAK
S/O NGAMWANG KONYAK,
R/O SHANTHAM WARD, MON SADAR,
MON, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY
TO THE GOVERNMENT OF NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY
WORKS AND HOUSING TO THE GOVERNMENT OF NAGALAND
NAGALAND
KOHIMA

3:THE ENGINEER-IN-CHIEF
NPWD
NAGALAND
KOHIMA

4:THE CHIEF ENGINEER
PWD(HOUSING)
NAGALAND
KOHIMA

5:THE EXECUTIVE ENGINEER
PWD(HOUSING)
DUDA
KOHIMA
NAGALAND

6:THE DIRECTOR
DUDA
NAGALAND
KOHIMA

7:SHRI. A. LANGPHONG KONYAK
MULTI - TASKING STAFF(MTS)
UNDER THE EXECUTIVE ENGINEER
PWD(HOUSING)
DUDA
KOHIMA
NAGALAN D

Advocate for the Petitioner : HISINLO HIMB, PHILIP LORIN,R SEMY,NENLI KEZ

Advocate for the Respondent : Mr. K. Angami, Sr. Govt. Adv.

Advocate for the Respondent No. 7 : Mr. Wati Jamir, Adv.

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (ORAL)

Date : 15-10-2024

Heard Mr. Hisinlo Himb, the learned counsel for the petitioner, Mr. K. Angami, learned Sr. Government Advocate for the State respondents and Mr. Wati Jamir, learned counsel for the respondent No. 7.

2. The petitioner being eligible, submitted the application dated Nil 2022, to the Engineer-in-Chief, PWD, Kohima, Nagaland, for appointment to the post of peon under the establishment of the Executive Engineer PWD (Housing) DUDA, Kohima. The post in question was held by the petitioner's father who was released from service w.e.f. 30/09/2022 on completion of 35 years of public service.

3. The petitioner while awaiting to participate in the selection process, the Government of Nagaland, in the Works & Housing Department (Establishment Branch) wrote the letter dated 17/01/2023 to the Engineer-in-Chief, NPWD, Nagaland, Kohima, conveying the approval of the Government for appointment of person to various Grade-IV post under PWD (Housing), which also included the name of the respondent

No.7 for appointment to the post of Multi-Tasking Staff(MTS) under the Executive Engineer PWD(H) DUDA, Kohima. Pursuant thereto, the Engineer-in-Chief, NPWD, Nagaland, Kohima, issued the office order dated 17/01/2023 appointing the respondent No.7 as Multi-Tasking Staff(MTS) under the Executive Engineer PWD(Housing) DUDA, Kohima against resultant vacancy.

4. It is the case of the petitioner that the appointment of the respondent No.7 has been made without any advertisement and without inviting application from the eligible candidates and also without conducting any selection process and therefore, the appointment of the respondent No.7 is against the constitutional scheme for appointment to public service and in violation of Article 14 and 16 of the Constitution of India. It is further the case of the petitioner that the appointment of the respondent No.7 is also in violation of the O.M dated 04/06/2016, issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch) which inter-alia provides that all the direct recruitment vacancies occurring in Grade-IV post, in the district offices shall be filled up by the indigenous inhabitants of the respective districts and such appointment shall be made through open advertisement by the District Selection Committee to be constituted by the respective Deputy Commissioner's of the district.

5. Mr. K. Angami, the learned Sr. Government Advocate in support of the case of the official respondents, has solely relied on the O.M dated 03/03/2022, issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch), Nagaland, Kohima, by which the Government has dispensed with the conditions of advertisement, for removing difficulties, for appointment to Group-D post such as Chowkidars, Malis and Peons which are mostly filled up by the land owners and on compassionate grounds, so long as a fair and transparent process is followed and the appointment is made with the approval of the Government. On a pointed query by this Court, as to what transparent method was adopted by the department for appointment of the respondent No.7 to the post in question and as to whether the respondent No.7 was appointed on land ownership basis or against compassionate appointment, the learned Government Advocate has submitted that the respondent No.7 was neither appointed on land ownership basis

nor against compassionate scheme, but the appointment of the respondent No.7 was made with the prior approval of the Government.

6. Mr. Wati Jamir, the learned counsel for the respondent No.7 submits that both the petitioner and the respondent No.7 applied for the post of peon under the establishment of the Executive Engineer, Directorate of Under Developed Areas (DUDA) and the respondent authorities finding the respondent No.7 more suitable for appointment to the post in question issued the letter dated 17/01/2023 conveying the approval of the Government for appointment of the respondent No.7 to the post.

7. Mr. Wati Jamir also submits that although no advertisement has been issued for appointment of the respondent No.7, the appointment was made in accordance with the O.M dated 03/03/2022, by which advertisement for appointment to Group-D post has been dispensed with by the Government and therefore, no infirmity has been committed by the official respondents in appointing the respondent No.7 as Multi-Tasking Staff(MTS) under the establishment of Executive Engineer PWD(H) DUDA Kohima. Mr. Wati Jamir has however admitted that the appointment of the respondent No.7 is not on the basis of land ownership nor against compassionate appointment.

8. From the submission made by the learned counsel for the parties and on perusal of the records, it is clearly demonstrated that the respondent No.7 was appointed to the post in question, against existing vacancy, but without issuing any advertisement and inviting application from all eligible candidates and without conducting any proper and transparent selection process. The appointment of the respondent No.7 is therefore clearly in violation of the constitutional scheme for appointment to public service as adumbrated in Article 14 and 16 of the Constitution of India. The appointment of the respondent No.7 therefore cannot stand the scrutiny of law and is liable to be quashed and set aside.

9. Mr. K. Angami, the learned Sr. Government Advocate supporting the actions of the Government in appointing the respondent No.7 has relied in the O.M dated 03/03/2022 by which the Government has dispensed with the conditions of advertisement for appointment to Group-D post in view of the difficulties expressed by various departments as in many cases the Group-D post are filled up from amongst the land owners and against compassionate appointment. It is however seen that the

O.M dated 03/03/2022 clearly stipulates that a fair and transparent process should be adopted whenever the conditions of the advertisement for appointment to Group-D post is dispensed with. In the instant case, with the exception of the fact that the appointment of the respondent No.7 was made with the approval of the Government, there is nothing on record to show that the respondent No.7 was appointed to the post in question after initiating a fair and transparent process of appointment. It is also not the case of the Government or the respondent No.7, that the respondent No.7 is a land owner nor the appointment was made under the compassionate scheme. The State respondents has in fact not able to demonstrate as to what was the difficulties faced by the department to do away with the advertisement for appointment of the respondent No.7. The official respondents therefore cannot take the shelter of the O.M dated 03/03/2022 and use it as a license to exclusively pick and choose the respondent No.7 for appointment to the post in question in violation of the constitutional scheme and depriving all other eligible candidates to apply and compete for the post. The appointment of the respondent No. 7 therefore clearly suffers from the vices of nepotism and favouritism.

10. In the case of **State of Orissa & Another -versus- Mamata Mohanty**, reported in **(2011) 3 SCC 436**, the Honble Supreme Court has held that;

“Appointment/employment without advertisement

“35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of [Article 16](#) should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: [Delhi Development Horticulture Employees' Union v. Delhi Admn.](#)⁷, [State of Haryana v. Piara Singh](#)⁸, [Excise Suptd. v. K.B.N. Visweshwara Rao](#)⁹, [Arun Tewari v. Zila](#)

Mansavi Shikshak Sangh¹⁰, Binod Kumar Gupta v. Ram Ashray Mahoto¹¹, National Fertilizers Ltd. v. Somvir Singh¹², Telecom District Manager v. Keshab Deb¹³, State of Bihar v. Upendra Narayan Singh¹⁴ and State of M.P v. Mohd. Abraham¹⁵)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of [Articles 14 and 16](#) of the Constitution. Such a course violates the mandates of [Articles 14 and 16](#) of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in [Article 16](#) requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

11. So also in the case of **Union Public Service Commission -versus- Girish Jayanti Lal Vaghela & Others**, reported in **(2006) 2 SCC 482**, the Hon’ble Supreme has held that;

“12. [Article 16](#) which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of [Article 16](#) is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. 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. (See [B.S. Minhas v. Indian Statistical Institute](#)⁷)”.

12. In view of the discussions made hereinabove, the appointment of the respondent No.7, as Multi-Tasking Staff(MTS), under the Executive Engineer PWD(Housing) DUDA, Kohima, Nagaland, cannot be legally sustained. Accordingly, the letter No. WH/EST/16/2012, dated 17/01/2023, issued by the Government of Nagaland, Works & Housing Department (Establishment Branch), conveying the approval of the respondent No. 7 for appointment to the post Multi-Tasking Staff(MTS) under the Executive Engineer PWD(H) DUDA, Kohima and the Office Order No. E-in-C/ESTT-7/H/APPT/2022, dated 17/01/2023, issued by the Engineer-in-Chief, NPWD, Nagaland, Kohima, appointing the respondent No.7 as Multi-Tasking Staff(MTS) under the Executive Engineer PWD(H) DUDA, Kohima, are hereby quashed and set aside.

13. The State respondents more particularly, the respondent No.2, 3, 4 & 6 shall advertise the post held by the respondent No.7 by inviting applications from all the eligible candidates within a period of 3(three) months from the date of passing of this judgment & order and till then, the respondent No.7 shall be allow to continue in the post but in no case extending the period of 3(three) months.

14. Both the petitioner and the respondent No.7, if found eligible, shall also be allowed to apply for the post and participate in the selection process. A one time age relaxation shall be given to both the petitioner and the respondent No.7 if they are found overage.

15. Writ petition allowed. No cost.

JUDGE

Comparing Assistant