

GAHC020002642023



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

Case No. : WP(C)/106/2023

SHRI. AKALI CHOPHY AND 7 ORS
MEDICAL ATTENDANT, AKULUTO PRIMARY HEALTH CENTRE,
ZUNHEBOTO, NAGALAND

2: SHRI. ATOSHE SUMI
DRESSER
SATOI PRIMARY HEALTH CENTRE
ZUNHEBOTO
NAGALAND

3: SMTI. K. GHUKALI SWU
MALI
SATAKHA PRIMARY HEALTH CENTRE
ZUNHEBOTO
NAGALAND

4: SMTI. HIKETOLI H YEPTHOMI
SWEEPER
YEMISHE PRIMARY HEALTH SUB-CENTER
ZUNHEBOTO-NAGALAND

5: SMTI. VISHALI SEMA
MEDICAL ATTENDANT
SUBORDINATE ESTABLISHMENT
CMO OFFICE
ZUNHEBOTO
NAGALAND

6: SMTI. KALIKA SUMI
AYAH
YEZAMI PRIMARY HEALTH SUB-CENTER
ZUNHEBOTO
NAGALAND

7: SMTI. KAHOSHI SUMI
MEDICAL ATTENDANT
GHOKHUVI PRIMARY HEALTH-CENTER
D.C. HILL EAST
ZUNHEBOTO

8: SMTI. ALITO SUMI
MEDICAL ATTENDANT
SATAKHA PRIMARY HEALTH CENTRE CHC
NEW COLONY
ZUNHEBOT O

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

Advocate for the Petitioner : Z. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

Date of hearing	:01.08.2024.
Date of Judgment	: 22.08.2024

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

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

Heard Ms. Z. Zhimomi, learned counsel for the petitioners.
I have also heard Mr. V. Zhimomi, learned Government Advocate
for the State respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners, 8 in numbers has made the following prayer:

- (i) To reinstate the petitioners as Medical Attendants, Dresser, Mali, Sweeper and Ayah Grade-IV posts by virtue of being the landowners of the standing PHCs and Sub-Centres established under the CMO Zunheboto.
- (ii) To appoint the petitioners as Medical Attendant, Dresser, Mali, Sweeper and Ayah or any Grade-IV posts by virtue of being the landowners of standing PHCs and Sub-Centre established under the CMO Zunheboto as per the scheme adopted by the respondent's government.

3. The facts and circumstances of the case of the petitioners leading to the filing of this writ petition are briefly stated as follows:

- (i) The **petitioner No. 1** was temporarily appointed as Medical Attendant (for short MA) by order bearing no. CS-1/Estt-2/2005-06 dated 13th June, 2006, against the existing vacancy of voluntary retirement of one Smti. Henili MA, Akuluto PHC.
- (ii) The **petitioner No. 2** was temporarily appointed as Dresser at Satoi PHC, by order bearing no. CS-1/Esst-2003-04 dated 23.10.2003.

- (iii) The **petitioner No. 3** was temporarily appointed as Mali at Sataka PHC by order bearing No. CS-1/Esst-2008-09 dated 14.07.2008.
- (iv) The **petitioner No. 4** was temporarily appointed as Sweeper at YemisheSub-Centre by order bearing No. CMO-1/Esst-2/2008-09 dated 04.09.2008.
- (v) The **petitioner No. 5** was temporarily appointed as MA at Sub-ordinate establishment under CMO, Zunheboto by order bearing No. CMO-1/Esstt-2/2009-10 dated 2.7.2009.
- (vi) The **petitioner No. 6** was temporarily appointed as Ayah at Yezhami Sub-centre by order bearing No. CS-1/Esstt-2/2006-07 dated 24.01.2006.
- (vii) The **petitioner No. 7** was temporarily appointed as MA,Ighanumi PHC by order bearing DHFW-3/117/MA/ZBTO/PT-II/01-02 dated 29.01.2007 and subsequently by order bearing no. CMO-1/Esstt-2/06-07 dated 26th March, 2007, she was transferred to Ghokhuvi Sub-centre.
- (viii) The **petitioner No. 8** was temporarily appointed as MA against Satakha PHC by order bearing No. NO. CMO-1/Esst-4/2008-09 dated 2nd August, 2008.

4. Since landowner appointment being regular appointments, all the petitioners were allowed to open their service book by the respondents and their GPF deducted as per norms.

5. When the petitioners were continuing their services in their respective posts, the Directorate of Vigilance and Anti-Corruption Police/respondent no. 3 was called upon to enquire into the appointments made under the Health and Family Welfare Department on the allegation that the same were made without sanctioned posts and the appointments were made with the forged signatures of the appointing authority.

6. Subsequently, the respondent no. 3 issued the Office Memorandum dated 05.05.2014 directing all the concerned CMOs, MS of the districts to verify and authenticate the land ownership issued and to submit report within 15 days wherein the petitioners name were shown at serial Nos. 26, 28, 30, 31, 32, 33, 34 and 35.

7. After completion of investigation, the final report in connection with the investigation of appointments made without sanctioned post and suspected forged signature of the authority in the Health and Family Welfare, Nagaland was submitted on 04.12.2014. As per the final report, the finding against the petitioners have been reflected as under;

" As per the examination of the documents of the employees, the following employees fall within the landowners category of appointees without post:

- (a) *Landowners and transferred cases under the CMO Wokha=10 Nos.*
- (b) *Landowners death case and the disability case under the CMO Mokokchung=12 nos.*
- (c) *Landowners but without existing vacancies under CMO Kiphire=3 nos.*
- (d) ***Existing vacancy, resignation and voluntary retirement cases under the CMO Zunheboto=8 nos."***

8. Thereafter, the Deputy Secretary to the Government of Nagaland, Health & Family Welfare department letter addressed to the Principal Director, Health & Family Welfare requested for issue of termination order in respect of 186 cases of regular appointments made without sanctioned posts and 33 cases appointed on land ownership basis as recommended by the Vigilance and Anti-Corruption final report. However, in the said letter, the authority categorically made it clear that in the case of appointments on landownership basis, they may be adjusted on preference as and when vacancies arise in the concerned offices.

9. On the basis of the final report of the Vigilance Commission investigation, by common order bearing No. DHFW-3/117/GD-IV/General/2010 (Pt) dated 29.04.2015, issued by the respondent no.3, the petitioner Nos. 1 to 6 were dismissed from service with retrospective effect from 30.4.2012 and in the said list, their name has been shown at Sl No. 26, 28, 30, 31, 32 and

33. The termination order of the respondent nos. 7 and 8 has been included with the general category and made by the Order no. DHFW-3/117/GD-IV/General/2010(Pt)/927-33 dated 29.04.2015. In the said list, their names are enlisted at serial No. 86 and 85. Being aggrieved by the above two orders, the petitioners have filed the present writ petition challenging the inclusion of their name in the said list.

10. The learned counsel for the petitioners submitted that against the aforesaid termination order several writ petitions were filed by similarly situated persons before this Hon'ble Court including the present petitioners along with 35 others in WP(C)/62(K)/2018 for payment of their salary and by an order dated 11.10.2018, this Court disposed of the said writ petition directing the respondents to pay the salary of the petitioners for the period from 30.04.2012 to 28.4.2015. It is further submitted that in the similarly situated case related to dismissal of the services of the land owners whose name appeared at serial No. 11 in the aforesaid dismissal order, this Court by judgment and order dated 30.05.2017, passed in WP(C)/226(K)/2015 directed the respondents to reinstate her service within 3(Three) months and accordingly, by order bearing No. DHFW-3/Grade-IV/Mokokchung-Appointment/2017-18 dated 05.04.2018, the landowner was re-instated in service. Further, 13 employees whose name figured at Sl. No. 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14 and 15 in the suspected forged signature list dated 27.04.2015 was dismissed from service filed WP(C)/157(K)/2015;

the name under Sl. No. 29 filed WP(C) No. 158(K)/2015 and the name at Sl. No. 17 filed WP(C) No. 13 (K)/2019 and by judgment and order dated 25.10.2017 and order dated 22.02.2019 respectively, similar direction was given to re-instate the petitioners in service within 3(three) months. Accordingly, by order dated 04.06.2018 and 29.04.2019, the respondents re-instated the writ petitioners in their respective services.

11. Further, in another similarly situated case, where the service of 5 employees under CMO, Zunheboto who were allegedly appointed with forged signatures of appointing authority without sanctioned posts were terminated in that case, a writ petition being WP(C)/70/2020 was filed by the aggrieved persons, which was disposed of by judgment and order dated 26.07.2021 whereby the Coordinate Bench of this Court has directed the respondents for their re-instatement in services. Accordingly, by order no DHFW-3/117/Gd-IV/General/2010(PT-1) dated 08.03.2022, the writ petitioners have been re-instated in their services.

12. It is further submitted that besides the above re-instatement, the respondent's authority by notification bearing no. LR/6-181/LIT/2015 dated 5.03.2018, have adopted a scheme to appoint landowners in Grade-IV posts. And in continuation, the respondents have further issued office memorandum bearing No. LR/LAND-PLCY/5-26/2011 dated 16.08.2018, for adhering to the rules/policy with regard to land donated by individuals, communities, villages etc with the condition for employment to

government service or contractual works or other facilities on land ownership basis. Further by Office Memorandum No. AR-3/GEN-174/2007 (Pt) dated 03.03.2022 in order to remove difficulties, the respondent government has issued instructions inter-alia, to dispense with the advertisement.

13. By filing additional affidavit, the petitioner contended that the petitioner no. 3 has already been re-instated temporarily in the same terminated Mali post vide order No. DHFW-3/MISC/2016-17 dated 28th April, 2016 on adhoc basis on yearly extension basis, though landowner appointments are regular in nature. For that matter, she is also one of the petitioners in the present writ petition in quest for regular appointment as precedent in landowner appointments. The learned counsel for the petitioner submitted that, however, the said appointment order of the respondent no. 3 could not be incorporated at the time of filing the present writ petition due to oversight and it was not because of suppression of the document.

14. The petitioners contended that they could not join the aforesaid writ petitioners who were similarly situated with the present petitioners due to communication gap and due to outbreak of Covid pandemic. The learned counsel for the petitioners submitted that the petitioners being lowly educated; the petitioners lost track of the aforesaid writ petitioners who got the relief from this Hon'ble Court. Moreover, as there was a clear observation by the respondent authorities in their recommendation for issuance of the termination order dated

28.04.2015 that in the case of appointment made on landownership basis, they may be adjusted on preference as and when vacancies arises in the concerned offices, the petitioners were hopeful that the respondent authorities would re-instate them in their respective services.

15. Mr. V. Zhimomi, learned counsel for the State respondents submitted in view of the several appointments made without sanctioned post under the CMOs of Wokha, Mokokchung, Zunheboto and Kiphire, the State government vide letter dated 14.06.2011 submitted a written complaint to the State Vigilance Commission along with the Screening Board Report and requested to investigate into the matter. The State Vigilance Commission conducted a thorough investigation and submitted its final report vide letter dated 04.12.2014 with certain recommendation. As per the said investigation report the present writ petitioners were found falls under appointment on landowners without post. And, based on its finding, it was recommended to the Department to terminate the present petitioners' services. Accordingly, by an order dated 29.04.2015 the government had terminated the service of the present writ petitioners along with others. However, the learned counsel for the state respondent has fairly submitted that as per the final report submitted by the Vigilance Commission, it is mentioned that the appointments of the present petitioners were made between the year 2003- 2009 on the basis of land ownership and has been made against the existing vacancies, resignation and

voluntary retirement cases under the CMO, Zunheboto. And since the case of the similarly situated persons have already been considered for re-instatement basing on the direction of this Hon'ble Court, he has nothing to submit against the same.

16. The learned counsel for the petitioners further submitted that the case of the present petitioners is squarely covered by the judgment and order dated 30.05.2017, passed in WP(C)/226(K)/2015 by which it was directed to the respondents to reinstate petitioners service within 3(Three) months and accordingly, by an order No. DHFW-3/Grade-IV/Mokokchung-Appointment/2017-18 dated 05.04.2018, the landowner was re-instated in service. Further, 13 employees who figured at SI No. 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14 and 15 in the suspected forged signature list dated 27.04.2015 dismissed from service filed WP(C)/157(K)/2015, SI. No. 29 filed WP(C) No. 158(K)/2015 and SI. No. 17 filed WP(C) No. 13 (K)/2019 and by judgment and order dated 25.10.2017 and order dated 22.02.2019 respectively, similar direction was given to re-instate the petitioners in service within 3(three) months. Accordingly, by an order dated 04.06.2018 and 29.04.2019, the respondents have re-instated the writ petitioners in service. Further, a writ petition being WP(C)/70/2020 filed by the aggrieved persons was also disposed of by the judgment and order dated 26.07.2021 whereby this Court has directed the respondents for their re-instatement in service. Accordingly, by order no DHFW-3/117/Gd-IV/General/2010(PT-1) dated 08.03.2022, the writ petitioners

have been re-instated. Further in a similar case being WP(C)/247/2022 dated 07.03.2024, whereby the petitioners of the aforesaid writ petitions were directed to be reinstated in service with back wages. However, the learned counsel for the petitioners submitted that the only prayer of the petitioners in the instant writ petition is for re-instatement of the service of the petitioners without back wages.

17. The learned counsel for the petitioners submitted that except for the petitioner no. 8 who has withdrawn his GPF due to unavoidable circumstances, till date, the petitioner nos. 1 to 7 have not yet withdrawn their GPF as they were hoping that the respondents will re-instate/appoint them in service as they were appointed on landownership basis against the sanctioned posts at CMOs/SCs, health units in the district and villages which according to the petitioners cannot run without employees. Further, the learned counsel for the petitioners submitted that by issuing the impugned termination order bearing No. DHFW-3/117/GD-IV/General/2010 (Pt) dated 29.04.2015, whereby the service of the petitioner Nos. 1 to 6 were terminated and by Order no. DHFW-3/117/GD-IV/General/2010 (Pt)/927-33 dated 29.04.2015 whereby the service of the petitioners nos. 7 and 8 has been terminated, the respondent authorities have violated the fundamental rights of the petitioners guaranteed under Article 14 and 16 of the Constitution of India and also the principle of natural justice.

18. It is further submitted that as the case of the petitioners

are covered by the judgments and orders passed by this Hon'ble Court in WP(C)/226(K)/2015, WP(C)/157(K)/2015, WP(C) No. 158(K)/2015, WP(C) No. 13 (K)/2019, and WP(C)/70/2020 whereby the respondents were directed for re-instatement of the services of the petitioners within 3 (three) month period and in WP(C)/247/2022 whereby the petitioners were directed to be reinstated in service with back wages; the two impugned orders mentioned above are liable to be set aside so far as the termination of the petitioners is concerned and the petitioners are entitled to be re-instated into their services as Medical Attendant, Dresser, Mali, Sweeper, Ayah in their earlier post.

19. Heard and considered the contentions and submissions made by the learned counsel for the parties, I have also carefully considered the material placed on record.

20. This Court has also considered the final report submitted by the respondent no. 3 to the respondent no. 1 by forwarding the letter dated 04.12.2014. In the said final report, the respondent no. 3 has categorized the list of employees into two groups namely; those appointments without sanctioned post and, those appointment orders made with forged signatures. A thorough scrutiny of the final report dated 04.12.2014 would clearly indicate that none of the names of the petitioners appeared in the list in the appointments made without sanctioned post nor their names appeared in the list of those appointees with forged signatures. The remark in the report against the name of the petitioners clearly indicates that they have been appointed

against the existing vacancy, resignation and voluntary retirement under the CMO, Zunheboto.

21. Further in the recommendation letter dated 28.04.2015 issued by the respondent no. 2 to the respondent no. 3 with the request to issue termination order in respect of 86 cases of regular appointments made without sanctioned post and 33 cases appointed on landownership basis as recommended by the Vigilance Commission final report, it is made clear that **however, in the case of the appointments made on landownership basis they may be adjusted on preference as and when vacancies arises in the concerned offices.**

22. According to the learned counsel for the petitioners, the said posts are still lying vacant in the department and they have not yet withdrawn their GPF etc except for the one as mentioned above. I have also perused the various order passed in the above similarly situated cases wherein this Hon'ble Court in the above writ petitions has directed to reinstate the service of the petitioners and various orders passed by the respondent authorities reinstating the services of the petitioners in the above writ petitions basing on the direction of the Court.

23. Upon consideration of the facts and circumstances as discussed herein above, this Court is of the considered opinion that the petitioners have made out a case calling for interference of this Court. Accordingly, the impugned termination order bearing No. DHFW-3/117/GD-IV/General/2010 (Pt) dated 29.04.2015, wherein the petitioner Nos. 1 to 6 (under Sl. No.

26, 28, 30, 31, 32 and 33) were dismissed from service with retrospective effect from 30.04.2012, and the impugned Order no. DHFW-3/117/GD-IV/General/2010(Pt)/927-33 dated 29.04.2015 whereby the respondent nos. 7 and 8 (under Sl.No.86 & 85) has been terminated are hereby set aside and quashed in respect of the petitioners.

24. The respondents are directed to reinstate the petitioners back in their respective services within 3(three) months from the date of receipt of a certified copy of this order. However, it is made clear that the petitioners shall not be entitled to any back wages.

25. With the above, the present writ petition is allowed and disposed of.

JUDGE

Comparing Assistant