

GAHC020002692024



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

Case No. : WA/15/2024

DR. LIHNGAM KONYAK AND 4 ORS
DISTRICT HOSPITAL MON
HEALTH AND FAMILY WELFARE DEPT.
MON NAGALAND-798621

2: DR. VIPHREZONUO KUOTSU
COMMUNITY HEALTH CENTRE
MEDZIPHEMA DIMAPUR
NAGALAND-797106

3: DR. ACHEM SANGTAM
COMMUNITY HEALTH CENTRE
AGHUNATO NAGALAND-798620

4: DR. WOJAMO S. KITHAN
DISTRICT HOSPITAL
WOKHA
NAGALAND-797111

5: DR. KENEITHEJA DZUVICHU
DR. IMKONGLIBA MEMORIAL DISTRICT HOSTITAL
MOKOKCHUNG NAGALAND-79860

VERSUS

THE STATE OF NAGALAND AND 18 ORS
REPRESENTED BY THE CHIEF SEWCRETARY TO THE GOVT. OF
NAGALAND-797001

2: THE COMMISSIONER AND SECRETARY
DEPT. OF HEALTH AND FAMILT WELFARE
GOVT. OF NAGALAND
KOHIMA-797001

3:THE PRINCIPAL DIRECTOR
DIRECTORATE OF HEALTH AND FAMILY WELFARE DEPT.
KOHIMA NAGALAND-797001

4:THE NAGALAND PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
KOHIMA NAGALAND-797001

5:DR THUNGBENI P NGULLIE
H.NO. 109
DUNCAN BASTI
DIMAPUR NAGALAND-797113

6:DR ALONG SHIKHU
H.NO. 5 DUNCAN BASTI
DIMAPUR NAGFALAND-797113

7:DR. KETOULELHOU VIZO
VIZOL DENTAL CLINIC
RV BUILDING HIGH SCHOOL JUNCTION
KOHIMA NAGALAND-797001

8:DR. KEVIDENO KEHIE
OKING HOSPITAL FIRST FLOOR
KOHIMA NAGALAND-797001

9:DR. MYINGTHUNGO NGULLIE
SUNGRO STATION
WOKHA
NAGALAND-797111

10:DR. THEJAKUO DANIEL PIENYU
P. KHEL KOHIMA VILLAGE
KOHIMA NAGALAND-797001

11:DR. NEIKHOZO BELHO
T.KHEL KOHIMA VILLAGE
NAGALAND-797001

12:DR. KEKHRIESEVOR B MEYASE
H.NO. 001 BLOCK B
DAROGAPATHAR VILLAGE
DIMAPUR NAGALAND-797112

13:DR. AVEI PURO
DBS COLONY KOHIMA
NAGALAND-7987001

14:DR. VINEKUO SOLO
UPPER AG KOHIMA
NAGALAND-797001

15:DR. LILOKA ASSUMI
H.NO. 188
BLOCK-5
THAHEKHU VILLAGE
DIMAPUR NAGALAND-797112

16:DR. AOHELL LONGCHAR
H.NO. 182
NEAR UMKONGMEREN SPORTS COMPLEX
MOKOKCHUNG NAGALAND-798601

17:DR. ANOVILI CHISHI
OLD MINISTERS HILL
KOHIMA NAGALAND-797001

18:DR. ANISHE I KEBA
LHOMITHI VILLAGE
DIMAPUR NAGALAND-797112

19:DR. IMYANGLUBA
ADVANCED DENTAL AESTHETIC IMPLANT CLINIC
KOHIMA NAGALAND-79700

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (ORAL)

05.06.2024

(Devashis Baruah, J)

Heard Mr. C.T. Jamir, learned senior counsel for the appellants, assisted by Mr. I. Imchen, learned counsel and Mr. N. Mozhui, learned counsel appearing on behalf of the Health &

Family Welfare Department. Also heard Mr. Moa Imchen, learned Senior Government Advocate appearing on behalf of the State respondent No. 1.

2. This appeal is directed against the Order dated 14.05.2024, passed in WP(C)/36/2023, whereby the learned Single Judge, after taking into consideration the stand of the Health & Family Welfare Department of the Government of Nagaland had directed the State respondents, more particularly, the respondent Nos. 2 & 3 to make necessary corrections to the Notification dated 02.11.2022 in respect to serial No. 4 and to notify only 3 (three) posts of the Junior Dental Surgeon which was created by the Cabinet in its meeting held on 23.06.2020 through the NPSC by Special Recruitment Drive. It was also directed that the remaining 2 (two) posts shall be filled up strictly in terms with the Nagaland Health Service Rules, 2006.

3. For appreciating the dispute in the present Appeal, this Court finds it relevant to take note of certain relevant facts which led to the filing of the instant appeal.

4. The Cabinet of the Government of Nagaland, in its meeting held on 23.06.2020, took up the agenda of recruitment of Doctors, Nurses and other Para-Medical Staff in the Health & Family Welfare Department. The Cabinet, upon deliberation of the matter at length and taking into account the unprecedented situation arising out of the COVID-19 pandemic and the need to address the inadequacies of the State Health System including shortage of manpower at requisite levels approved creation of various posts in

the Department of Health & Family Welfare. It is very pertinent at this stage to mention that at Serial No. 4, the Cabinet decided creation of 3 (three) posts of Junior Dental Surgeon in the CHCs. In addition, the Cabinet also issued directions to be followed while making recruitment to those posts which are enumerated in Clause (A) to (I) of the said Cabinet Memorandum. Clause (B) categorically mentions that the Department should clearly indicate that these appointments would be temporary and regular recruitment shall be conducted through the NPSC Special Recruitment Drive.

5. Pursuant thereto, a Notification was issued on 05.07.2020, thereby framing the basic guidelines for recruitment and service conditions of Medical Officers, Nurses, Technicians and other Para-Medical Staff. The Clause (A) to (G) of the Cabinet Memorandum dated 25.06.2020 were incorporated in the Notification dated 05.07.2020.

6. Pursuant thereto, an Advertisement was issued on 16.07.2020, for recruitment on temporary basis through the Department Recruitment Board for filling up 5 (five) posts of Junior Dental Surgeon. The said Advertisement, however, refers to 2 (two) Notifications dated 26.06.2020 and 02.07.2020, which however, is not a part of the record. The said Advertisement also stipulates the terms and conditions for the post of Junior Dental Surgeon and one of such condition mentioned is that the engagement shall be for a period of one year and can be terminated any time with one month's notice either by the employer or the employee. It was also mentioned that the appointee so appointed on the basis of the

recruitment drive shall have no right to claim for regularization of the contingency service on any ground whatsoever.

7. The appellants herein duly participated pursuant to the said Advertisement in the Selection Process and they were shortlisted. The appellants were appointed *vide* an Order dated 03.02.2021 for a period of 12 (twelve) months only or till regular appointment is made through the NPSC, whichever is earlier. The services of the appellants were thereafter again extended *vide* another Notification dated 16.03.2022 for another period of one year or till the same are filled up through the NPSC, whichever is earlier.

8. The record further reveals that the Cabinet of the Government of Nagaland took another decision on 25.05.2022, whereby the relaxation of the Recruitment Rules for Special Recruitment of Health Care Workers were discussed. It is very pertinent herein to take note of that in Clause 2 of the Memorandum it was mentioned that the Department would carry out the recruitment for the newly created posts. It was specifically mentioned that only 3 (three) posts of Junior Dental Surgeons were created. Clause 4 of the said Cabinet Memorandum dated 25.05.2022 further detailed out the manner in which the Special Recruitment Drive would be conducted. A perusal of Clause 4(1) shows that the selection to be carried out in the Special Recruitment Drive would be based on written examination with weightage of 50%; there would be 25% weightage in respect to those who have carried out COVID duty; there would be 10% weightage for work

experience; and 15% weightage shall be given for interview. The manner in which the weightage were to be given in respect to COVID duty and work experience were also mentioned in Annexure-IV to the said Cabinet Memorandum. Subsequent thereto, the Cabinet Memorandum dated 25.05.2022 was approved on 26.05.2022.

9. A Notification was issued on 02.11.2022, wherein various posts were notified for recruitment through the Special Recruitment Drive. Amongst the various posts, at Serial No. 4 were the posts of Junior Dental Surgeon and the vacancy was shown as 5 (five). In Clause 4 of the said Notification, the manner in which the marks were to be awarded was stipulated which was *pari materia* to Clause 4(1) of the Cabinet Memorandum dated 25.05.2022. It is also very pertinent to mention that the Notification dated 02.11.2022 was issued on the basis of the Cabinet Memorandum dated 25.05.2022 which was approved on 26.05.2022.

10. The writ petitioners in WP(C)/36/2023 being aggrieved by the said Notification dated 02.11.2022 approached this Court by filing a writ petition, whereby the petitioners sought for a writ of certiorari for quashing the Notification dated 02.11.2022 in so far as the post of Junior Dental Surgeon were concerned; and further seeking a writ in the nature of mandamus directing the State respondents to fill up 5 (five) posts of Junior Dental Surgeon through the NPSC strictly in accordance with the Nagaland Health Service Rules, 2006. The edifice of the case of the petitioners were that the said 5 (five) posts of Junior Dental Surgeon could not have

been filled up by way of a Special Recruitment Drive, which was contrary to the Nagaland Health Service Rules, 2006.

11. The said writ petition came up before the learned Single Judge on 14.05.2024, on which date, the State after having realized that the Notification dated 02.11.2022 was not in consonance with the Cabinet Memorandum dated 25.05.2022, the approval dated 26.05.2022 as well as the initial creation of 3 (three) posts by the Cabinet Memorandum dated 23.06.2020, submitted before the learned Single Judge that the Department will carry out necessary correction to the impugned Notification dated 02.11.2022 in so far as the Serial No. 4 relating to 5 (five) posts of Junior Dental Surgeon were concerned, by notifying only 3 (three) posts which were created by the Cabinet in its meeting held on 23.06.2020, which shall be notified for recruitment through NPSC by Special Recruitment Drive and the remaining 2 (two) posts of Junior Dental Surgeon would be recruited strictly through the Nagaland Health Service Rules, 2006. In view of the said submission, the learned Single Judge disposed of the said writ petition with a direction to the State respondents to carry out the exercise in terms with the submissions so made by the respondent State.

12. In the backdrop of the above, let us take note of the submissions on behalf of the appellants which have been forwarded by Mr. C.T. Jamir, the learned senior counsel, who submits that the appellants herein were appointed on contingency basis in respect to those 5 (five) posts which was found to be essential at that point of time on account of the COVID pandemic. The State Authorities

having taken into account those 5 (five) posts wherein appointments were made, have, therefore, notified by Notification dated 02.11.2022, the 5 (five) posts of Junior Dental Surgeon. Under such circumstances, the impugned Order by which the Special Recruitment Drive was only confined to 3 (three) posts not only affected the rights of the appellants to participate pursuant to the Notification dated 02.11.2022 but also two out of the five appellants would be deprived of the 25% of the weightage, which was prescribed in terms with the Cabinet Memorandum of 25.05.2022 and Notification dated 02.11.2022. In addition to the above, he submitted that the learned Single Judge while directing that 3 (three) posts were to be filled up on the basis of the Special Recruitment Drive did not identify the 3 (three) posts and as such the appellants are aggrieved by the impugned Order passed by the learned Single Judge.

13. On the other hand, Mr. N. Mozhui, learned counsel appearing on behalf of the Health & Family Welfare Department, drawing the attention of this Court to the Cabinet Memorandum dated 23.06.2020, whereby only 3 (three) posts were created for Junior Dental Surgeon and the Cabinet Memorandum dated 25.05.2022, wherein also it was clearly stipulated in respect to 3 (three) posts of Junior Dental Surgeon submitted that there was an error in the Notification dated 02.11.2022 in mentioning the 5 (five) posts would be filled up on the basis of Special Recruitment Drive. He, therefore, submits that when the Department duly realized the mistake, the same was duly intimated to the learned Single Judge

and on the basis of the said submission, the impugned Order dated 14.05.2024 was passed.

14. We have heard the learned counsels appearing on behalf of the parties and have given our due consideration to their relevant submissions.

15. In the previous segments of the instant judgment, we have duly taken note of the Cabinet Memorandum dated 23.06.2020 as well as the subsequent Cabinet Memorandum dated 25.05.2022, wherein it was categorically mentioned that the creation of the number of posts for Junior Dental Surgeons was only 3 (three). However, it is seen that the Notification dated 02.11.2022 have mentioned about 5 (five) posts of Junior Dental Surgeon at Serial No. 4, though the said Notification is based upon the Cabinet Memorandum dated 25.05.2022 as well as the approval dated 26.05.2022. We have also taken note of the submission of Mr. N. Mozhui, learned counsel appearing on behalf of the Health & Family Welfare Department, who submits that there was a mistake so committed in incorporating the 5 (five) posts for the purpose of Special Recruitment Drive and as such, necessary correction was required to be carried out.

16. Under such circumstances, as only 3 (three) posts were created for the purpose of Special Recruitment Drive, the Notification dated 02.11.2022 which was issued in pursuance to the Cabinet Memorandum could not have mentioned more than 3 (three) posts of Junior Dental Surgeon at Serial No. 4 of the said Notification. Under such circumstances, we are of the opinion that

the learned Single Judge was justified in passing the Order dated 14.05.2024. Accordingly, we find no ground to interfere with the Order dated 14.05.2024, passed in WP(C)/36/2023.

17. Before parting, we find it relevant to deal with the submission of Mr. C.T. Jamir, learned senior counsel to the effect that the learned Single Judge erred in law in not identifying the 3 (three) posts while directing the recruitment to be carried out through Special Recruitment Drive. In our opinion, the said submission is misconceived in as much as the 3 (three) posts of Junior Dental Surgeon were created to be filled up in the CHCs and it is absolutely within the jurisdiction and authority for the State to fill up the posts and earmark those to fill up 3 (three) posts of Junior Dental Surgeon to whichever CHCs the Government finds it necessary as per its exigency.

18. The writ appeal accordingly stands disposed of.

JUDGE

JUDGE

Comparing Assistant