

GAHC020004092023



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

Case No. : WP(C)/166/2023

SMTI. LIVINO V
D/O LATE VIHOTO AYE
R/O OLD TOWN ZUNHEBOTO, NAGALAND

VERSUS

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

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
HIGHER AND TECHNICAL EDUCATION
NAGALAND KOHIMA

3:THE DIRECTOR
HIGHER EDUCATION
NAGALAND KOHIMA

4:THE PRINCIPAL
ZUNHEBOTO GOVT. COLLEGE
NAGALAND

5:SMTI. KHETONI ACHUMI
SWEEPER (MTS)
ZUNHEBOTO GOVT. VOLLEGE
NAGALAN

Advocate for the Petitioner : WATI JAMIR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri Wati Jamir, Advocate and
Ms. Alito Swu, Advocate.

For the Respondents : Shri Mosemsa Longkumar, Govt.
Advocate, Nagaland &
Ms. Z Zhimomi, Advocate, R/5.

Dates of Hearing : 28.05.2024.

Date of Judgment : 28.05.2024.

JUDGMENT & ORDER

The appointment of the respondent no. 5 as Multi Tasking Staff (MTS) in the Junheboto Government College is the subject matter of challenge in this writ petition.

2. Before going to the grounds of challenge, it would be convenient if the facts, bereft of details, are narrated hereinbelow.

3. The Junheboto Government College (hereafter called as College) was established in the year 1985 and at that time, agreements were executed between the land owners for donation of the land. It is projected case of the petitioner that his father was one of the land donors. The lands were, however, purchased by the State Government in the year 2008. It has

been contended on behalf of the petitioner that the mother of the respondent no. 5 was an employee of the College who had taken voluntary retirement on 11.01.2023 whereafter the respondent no. 5 was appointed. According to the petitioner, such appointment was not preceded by any recognized process of recruitment whereby the petitioner along with other eligible candidates was deprived from a fair opportunity. It is this appointment of the respondent no. 5 which is the subject matter of challenge in this petition, as indicated above.

4. I have heard Shri Wati Jamir, learned counsel for the petitioner. I have also heard Shri Mosemsa Longkumar, learned State Counsel, Nagaland as well as Ms. Z Zhimomi, learned counsel for the respondent no. 5.

5. The contesting parties have filed their respective pleadings.

6. Shri Jamir, learned counsel for the petitioner by relying the Office Memorandum dated 04.06.2016 has submitted that all Grade-III and Grade-IV posts are to be filled up by a validly held recruitment process. He submits that the said office memorandum is in consonance with the settled principles of public appointments. Reliance has also been placed upon the Office Memorandum dated 14.02.2005 by which a restriction has been imposed for appointment of the kith and kins of government employees who availed voluntary retirement. It is submitted by Shri Jamir, learned counsel that though one of the legs of challenge as well as the claim was on the aspect of land donation, in view of the facts emerging

that the land was subsequently purchased by the State, the learned counsel has submitted that the other grounds of challenge would still be available to him. He has relied upon the cases of ***State of Orissa & Anr. Vs. Mamata Mohanty***, reported in **(2011) 3 SCC 436** and ***Limaakum Vs. State of Nagaland & Ors.***, reported in **2019 (2) GLT 277** wherein the aspect of maintaining transparency and fairness in public appointments has been laid down which necessarily require publication of advertisements.

7. *Per contra*, the learned State Counsel, by referring to the affidavit-in-opposition filed on 21.03.2024 has submitted that there were justifications for appointment of the respondent no. 5 as she was the lone candidate who had applied and there was an urgent need for filling up the post. Shri Longkumar has also submitted that the respondent no. 5 fulfills all the eligibility criteria.

8. Supporting the stand of the State, Ms. Zhimomi, learned counsel for the respondent no. 5 has, however, questioned the *locus* of the petitioner to maintain the present challenge. It is submitted that 6 nos. of appointments of land donors were already done which includes the father of the petitioner and therefore, the petitioner cannot make a further claim for appointment on the basis of land donor. The learned counsel has specifically referred to the prayer no. 2 in the writ petition in this regard. As regards the restrictions imposed by the Office Memorandum dated 14.02.2005, it has been contended that the mother of the petitioner who was an employee had to take voluntary retirement due to ill-health and

taking a sympathetic view, the respondent no. 5 was appointed. It is reiterated that the respondent no. 5 fulfills all the necessary qualifications and eligibility for such appointment.

9. In his rejoinder, learned counsel for the petitioner, Shri Jamir has submitted that though the prayer no. 2 has been pressed into service on behalf of the respondent no. 5 while questioning the *locus* of the petitioner, specific averments have been made in the writ petition and in this regard, paragraph 15 has been pressed into service.

10. For ready reference, the averments made in paragraph 15 of the writ petition are extracted hereinbelow:

15. That the Petitioner beg to state that in the event, the post in question is not meant for land owners, it is the Constitutional mandate to invite Application/Advertisement for filling up the post and it is the requirement of law that such post should be filled up by process of conducting interview. However, in the instant case, neither the case of the land owners was considered nor interview was held to fill up the post in question. Respondent No. 5 was illegally appointed in violation of the mandate of Article 14 and 16 of the Constitution of India. Therefore, the approval and the appointment of Respondent No. 5 is liable to be set aside and quashed.

11. The rival submissions of the learned counsel for the parties have been duly considered and the materials placed on records have also been

carefully examined.

12. From a reading of the writ petition and the prayer, it appears that while the petitioner is claiming the appointment in the post held by the respondent no. 5 on the basis of land ownership, the other aspect of the challenge upon the appointment of the respondent no. 5 is, however, on different footing and grounds. As observed above, a specific pleading has been made on the manner of appointment of the respondent no. 5 which appears to be done without calling for any advertisement or holding any validly recognized recruitment process.

13. The reliance upon the Office Memorandum dated 14.02.2005 also appears to have sufficient force as it is not disputed that the mother of the respondent no. 5 was an employee of the College who had gone on voluntary retirement.

14. The aspect would have been entirely different if the petition was structured only on the ground of claiming the appointment in a vacant post in the College. This Court has also been informed that the father of the petitioner had already got the benefit of appointment as a land donor and by virtue of Clause 4 of the Sale Deed executed in the year 2008, such appointment was not disturbed. However, the present post which has been filled up is not on the basis of any land donation but a normal appointment which is mandatorily required to be preceded by a fair process which includes an advertisement and holding a proper selection in accordance with law. The materials on record do not suggest or show that

any such process was adopted before filling up the post of the respondent no. 5.

15. Under the aforesaid facts and circumstances and discussions made and also taking into account the settled law on the aspect of public appointments, this Court is of the opinion that the appointment of the respondent no. 5 as MTS in the College is not sustainable in law and accordingly, the impugned order of approval dated 20.12.2022 and the appointment order dated 11.01.2023 are set aside and quashed. Consequently, the post in question is directed to be filled up by following the due process of law in which, the petitioner as well as the respondent no. 5 can participate, if eligible, along with other eligible candidates in which event, their candidatures would be considered fairly and strictly in accordance with law.

16. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant