

GAHC020004532022



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

Case No. : WA/28/2022

SMTI. JENNY NDANG
ADDITIONAL SECRETARY, NAGALAND LEGISLATIVE ASSEMBLY
SECRETARIAT, NAGALAND KOHIMA-797001

VERSUS

SMTI. KHRUOHITUONUO RIO AND ANR
ADDITIONAL SECRETARY (TRANSPORT), NLA SECRETARIAT,
NAGALAND KOHIMA

2:THE SPEAKER
NAGALAND LEGISLATIVE ASSEMBLY
NLA SECRETARIAT
NAGALAND KOHIMA

Advocate for the Appellant/Petitioner : C. T. Jamir, Sr. Adv
: I. Imchen

Advocate(s) For The Respondents : Taka Masa, Sr. Adv for R-1
Arenlong
T.B. Jamir for R-2

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

THE HON'BLE MR. JUSTICE BUDI HABUNG

Date of Hearing : 28th and 30th August, 2024

Date of Judgment : 03.09.2024

JUDGMENT & ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. C.T. Jamir, learned Senior Counsel assisted by Mr. I. Imchen, learned counsel for the writ appellant, Mr. Taka Masa, learned Senior Counsel assisted by Mr. Arenlong, learned counsel for the respondent No. 1 and Mr. T.B. Jamir, learned counsel for the respondent No. 2.

[2.] This writ appeal is directed against the Order dated 12.08.2022 passed by the learned Single Judge in I.A(C) No. 116/2022 arising out of WP(C) No. 114/2022. The instant appellant is the writ petitioner in the said writ petition and therefore, shall be referred to as the petitioner hereafter for the sake of convenience. Similarly, the respondent No. 1 in the instant writ appeal may be referred to as the private respondent.

[3.] Challenge made by the petitioner in her writ petition is to the Order dated 05.04.2022 issued by the Joint Secretary, Nagaland Legislative Assembly (NLA for short) delegating the private respondent the temporary

officiating charge of the Secretary NLA to administer the functioning of the Secretariat with effect from 05.07.2022 afternoon and subject to the outcome of WP(C) No. 92/2022. The said order was issued as per the provisions of Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1999 (Rules of 1999) as amended and read with Rule 18 of the same Rules.

[4.] Be it stated herein that WP(C) No. 92/2022 is a writ petition filed by the Nagaland Assembly Secretariat Staff Association and three (3) others wherein, the present petitioner was also one of the petitioners. Challenge made in the said writ petition was to the Nagaland Legislative Assembly Secretariat (Recruitment & Conditions of Service 3rd Amendment) Rules, 2022 (Rules of 2022 for short) notified vide Notification dated 18.05.2022. Since the Rules of 2022 was challenged, the matter was taken up by a Division Bench of this Court and vide Order dated 26.05.2022, it was directed that the prayer for interim stay of the Notification dated 18.05.2022 will be heard on the returnable date and that any promotion or appointment pursuant to the Rules of 2022 notified by Notification dated 18.05.2022 will be subject to the outcome of the writ petition.

[5.] Subsequent thereto, on 05.07.2022, the private respondent as already stated herein above, was delegated the temporary officiating charge of the

Secretary, NLA with a condition that the same was subject to the outcome of WP(C) No. 92/2022. According to the petitioner, while the challenge to the Rules of 2022 was pending adjudication, since the private respondent vide order dated 05.07.2022 was delegated the temporary officiating charge of Secretary, NLA and being aggrieved with the same, she filed WP(C) No. 144/2022 on grounds inter alia that she is senior to the private respondent in service and that she belongs to the general cadre of the service whose next line of promotion is the post of Secretary, NLA while the private respondent was bought into the general cadre of the service in terms of the Rules of 2022 which otherwise was under challenge by the petitioner and others in WP(C) No. 92/2022.

[6.] The learned Single Judge in WP(C) No. 144/2022 vide order dated 22.07.2022 while issuing notice of motion granted stay of the impugned Order dated 05.07.2022 by which the private respondent was delegated the temporary officiating charge of the Secretary, NLA. Aggrieved with the same, the private respondent filed I.A(C) no. 116/2022 seeking the vacation of the said interim order dated 22.07.2022. The application for vacation of the stay was disposed of vide Order dated 22.07.2022 and the same is the subject matter of challenge in the instant writ appeal.

[7.] Mr. C.T. Jamir, learned Senior Counsel submits that the petitioner is

senior to the private respondent in service and that her appointment is in the general cadre of the service where one can be promoted to the post of Secretary, NLA. As for the private respondent, she was appointed as Assistant Transport Officer in a particular cadre and was subsequently, by way of up-gradation, upgraded to the level of and as Addl. Secretary, Transport. He submits that before the Rules of 2022 came into force, the private respondent was not eligible to be considered for promotion to the post of Secretary, NLA and as the Rules of 2022 was challenged by the petitioner and others in WP(C) No. 92/2022, the private respondent could not have even been delegated the temporary officiating charge of the post of Secretary, NLA by ignoring the petitioner. He submits that the impugned Order dated 05.07.2022 is said to have been passed in accordance with Rule 18 of the Rules of 1999 as amended and that a bare perusal of Rule 18 only goes to show that the senior-most officer is to be given preference over the others for being assigned to such post by the Speaker of the NLA. Therefore, the petitioner being the senior-most ought to have been given the officiating charge of the post in question.

[8.] The learned Senior Counsel referring to the impugned Order dated 12.08.2022 passed in I.A(C) No. 116/2022 submits that the interpretation of Rule 18 given by the learned Single Judge cannot be said to be the correct

interpretation. He submits that the learned Single Judge has stressed upon the word '*any*' in coming to the conclusion to vacate the interim order dated 22.07.2022 in the writ petition. However, what has not been considered is the word '*senior-most*'. Going by the entry into service, the petitioner admittedly is the senior-most and therefore, the officiating charge to the post of Secretary, NLA ought to have been given to the petitioner.

[9.] The learned Senior Counsel further submits that although WP(C) No. 92/2022 was heard and reserved for judgment on 03.02.2023 but as judgment was not delivered and pronounced until 24.04.2024, the petitioner could not press for the disposal of the main writ petition i.e., WP(C) No. 144/2022. He submits that WP(C) No. 92/2022 was consequently dismissed vide Judgment & Order dated 24.04.2024 and as the cause of action subsists, the instant writ appeal should be decided in terms of the ground taken by the petitioner.

[10.] Mr. Taka Masa, learned Senior Counsel on the other hand submits that in view of the dismissal of WP(C) No. 92/2022 vide Judgment & Order dated 24.04.2024, the instant writ appeal has only become infructuous. The learned Senior Counsel submits that both the appellant and the private respondent were appointed through the same selection process and that it was on the request of the appellant that her initial joining date came to be

one day ahead of the private respondent. He further submits that in the selection, the private respondent in fact secured better marks and therefore, if seniority is to be drawn as per merit, the private respondent will be senior to the petitioner. He further submits that the petitioner cannot claim to be the senior-most in the rank of Additional Secretary in view of the fact that one Smt. Sungjemkala, Senior Special Grade Steno was promoted as Officer on Special Duty (OSD) with effect from 04.12.2017 vide Notification dated 30.11.2017. The post of OSD is equivalent to that of Additional Secretary and therefore, the petitioner cannot claim to be senior-most Additional Secretary in the NLA Secretariat.

[11.] The learned Senior Counsel further submits that the petitioner has only made her claims beyond her pleadings in view of the fact that nowhere in the writ petition has she stated that the private respondent has served only two (2) months when she was delegated the temporary officiating charge to the post of Secretary, NLA. He submits that at any rate, the petitioner cannot be termed as person aggrieved since WP(C) No. 92/2022 has been dismissed by this Court and that no seniority list has been drawn till date for the petitioner to claim her seniority over others. He therefore submits that the writ appeal has no merit and the same should be dismissed. In support of his submission, the learned Senior Counsel relies upon the

following authorities:-

- (i) *Jagannath Pegu Vs. State of Assam & Ors. 2007 (3) GLT 389*
- (ii) *Chingleput Bottlers Vs. Majestic Bottling Company (1984) 3 SCC 258*
- (iii) *State of Punjab & Ors. Vs. Arun Kumar Aggarwal & Ors. (2007) 10 SCC 402*
- (iv) *K.D Sharma Vs. Steel Authority of India Limited & Ors. (2008) 12 SCC 481*
- (v) *Ranbir Singh Vs. Executive Engineer (2011) 15 SCC 453*
- (vi) *P. Srinivas Vs. M. Radhakrishna Murthy & Ors. (2004) 2 SCC 459 and*
- (vii) *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors. (2013) 4 SCC 465.*

[12.] Mr. T.B. Jamir, learned counsel for the respondent No. 2 submits that his submission are two (2) folds namely, the interpretation of Rule 18 of the Rules of 1999 as amended and the scope of interference by a Writ Appellate Court on a decision of a Writ Court. Referring to the impugned order dated 12.08.2022 passed by the learned Single Judge in I.A(C) no. 116/2022, the learned counsel submits that learned Single Judge has correctly interpreted the said Rule by taking cognizance of the fact that the word 'any' is prefixed before the word 'senior-most'. Therefore, on a complete reading of the said provision, it is clear that any of the senior officer of the Assembly can be delegated to hold the post of Secretary in the absence of a regular Secretary.

He further submits that the decision of a Writ Court can be interfered with by the Writ Appellate Court only when there is a patent error in the decision or the decision is against the settled principles of law or when the decision is perverse. He submits that a bare perusal of the impugned order does not show that there is any patent error committed or that the same is perverse. Under the circumstance, the impugned order should not be interfered with by this Court. In support of this submission, the learned counsel has relied upon the following authorities:-

- (i) Hardeep Singh Vs. State of Punjab & Ors. (2014) 3 SCC 92*
- (ii) Tractor and Farm Equipment Ltd. Vs. Secretary to the Government of Assam, Department of Agriculture & Ors. 2004 (1) GLT 117*
- (iii) N. Ramachandra Reddy Vs. State of Telangana & Ors. (2020) 16 SCC 478 and*
- (iv) Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10.*

[13.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. As may be noticed, the subject matter of challenge in the writ petition is to the order dated 05.07.2022 by which the private respondent has been delegated the temporary officiating charge of the post of Secretary, NLA. The learned Single Judge by its Order dated 22.07.2022 in the writ petition had granted

stay of the impugned Order dated 05.07.2022 by coming to the opinion that service seniority could not have been ignored before passing the impugned Order and that going by Rule 18 of the Rules of 1999 as amended, it did not appear to be a case of availability of more than one senior-most officer in the grade of Secretary or equivalent. Further, as nothing has been placed on record disclosing a valid reason for deviation from the fundamental rule to not overlook the senior-most person in the hierarchy while making the arrangement of temporary officiating charge of Secretary, the impugned Order dated 05.07.2022 was therefore stayed. Later, in the application for vacation of the interim Order dated 22.07.2022 filed by the private respondent, the learned Single Judge vide Order dated 12.08.2022 found it fit and appropriate to vacate the interim order in terms of the reasoning given in the said Order.

[14.] We have noticed that when the interim Order dated 22.07.2022 was passed and subsequently, the Order of vacation of the Interim Order was passed on 12.08.2022, the other writ petition filed by the petitioner i.e. WP(C) No. 92/2022 challenging the Rules of 2022 had not been decided. The said writ petition was consequently heard and dismissed by a co-ordinate Bench of this Court vide Judgment & Order dated 24.04.2024. No material has been placed before us about any further appeal or review being

preferred by the party aggrieved and therefore, the admitted position is that the Rules of 2022 subsists.

[15.] Having regard to the relevant provisions of the Rules of 2022 for filling up the post of Secretary, NLA, it can be seen that as on today, the petitioner as well as the private respondent who are the contesting party are eligible to be considered for the said post. The said post admittedly could not have been filled up on regular basis during the pendency of WP(C) No. 92/2022 in view of the challenge made to the Rules of 2022. Therefore, to dwell upon the interpretation of Rule 18 of the Rules of 1999 as amended and to examine as to whether the interim order dated 22.07.2022 was rightly vacated by the learned Single Judge in I.A(C) No. 116/2022 or otherwise in our considered view would only be academic particularly having regard to the fact that the delegation of the private respondent is only temporary as spelt out in the impugned Order dated 05.07.2022 itself viz; *"This order shall stand cancelled automatically on the day, the appointment of a full-fledged Secretary taken over the charge."*

[16.] We are therefore of the considered view that having regard to the temporary arrangement being made and at the same time the importance and necessity of having the post of Secretary, NLA to be manned substantively by an eligible and qualified person as per the provisions of the

service rules, we are not inclined to interfere with the impugned Order dated 12.08.2022. However, we are of the considered view that there should be no further delay in filling up the post of Secretary, NLA on regular basis in accordance with law.

[17.] In view of the observation and conclusion arrived at, we find it not necessary to dwell upon the authorities relied upon by the parties concerned.

[18.] The writ appeal accordingly stands disposed of.

JUDGE

JUDGE

Comparing Assistant