

GAHC020004942022



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

Case No. : WP(C)/176/2022

MAJ. VIKUTO ASUMI (RETD.)
R/O H.NO. -18, LHOMITHI, SIGNAL BASTI, DIMAPUR, NAGALAND

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, KENDRIYA SAINIK BOARD,
GOVT. OF INDIA, MINISTRY OF DEFENCE, WEST BLOCK-IV, R.K.
PURAM, NEW DELHI

2:THE HOME COMMISSIONER
HEAD ADMINISTRATIVE DEPARTMENT OF EX-SERVICEMEN
WELFARE AND RE-SETTLEMENT
NAGALAND KOHIMA

3:THE SPECIAL SECRETARY
HOME DEPT
POLICE B BRANCH
NAGALAND KOHIMA

4:LT. COL (TA) DAVID TOSHI JAMIR (RETD.)
DY. DIRECTOR
ZILA SAINIK WELFARE OFFICER
KOHIMA NAGALAND

5:MAJ. MERENWATI JAMIR (RETD)
DY. DIRECTOR
ZILA SAINIK WELFARE OFFICER
DIMAPUR NAGALAND

ADVOCATE

For The Petitioner : Z. ZHIMOMI, ADV.
: ASANGLA WALLING
: TOSHI O.LONGKUMER

For The Respondent Union Of India : Z.N. NGULLIE, CGSC

For The State Respondents : V. SUOKHRIE, ADDITIONAL A.G.,
NAGALAND

For The Respondent No. 5 : LIMAWAPANG, ADV.

Date of Hearing & Judgment : 27.02.2024

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Heard Ms. Z. Zhimomi, learned counsel appearing on behalf of the petitioner, Mr. Z.N. Ngullie, learned CGSC for the respondent Union of India, and Ms. V. Suokhrie, learned Additional A.G., Nagaland, appearing on behalf of the State respondents and Mr. Limawapang, learned counsel appearing for the respondent Nos. 4 & 5.

2. The instant writ petition has been filed challenging the appointment of the respondent Nos. 4 & 5 to the post of Deputy Directors and also seeking a direction that the petitioner be appointed as the Deputy Director.

3. From the facts appearing on record it reveals that an Advertisement was issued on 12.02.2020 in respect of various posts enumerated in respect to various Class-I (Gazetted) and Class-III&IV (Non-Gazetted). Int erms with the Advertisement applications were invited from ex-serviceman eligible retired Army, Navy, Air Force commissioned officers and personnel below officers rank (PBOR) so as to reach the Special Secretary to the Government of Nagaland by

21.03.2020 for re-employment against the various posts advertised. In Clause 6 of the said Advertisement, it was categorically mentioned that a simple application ought to be filed in plain paper with various details enumerated therein and the said application has to be sent by registered post to the Special Secretary to the Government of Nagaland so as to reach by 4:00 PM on 21.03.2020. Further to that it was also mentioned that the application by hand would not be accepted and any enquiry regarding the result of the application would not be entertained in any form and would disqualify the applicant.

4. Pursuant thereto various persons including the petitioner submitted their application. Admittedly the respondent No. 5 did not submit the application within 21.03.2020 but submitted the application on 25.11.2021 and further followed up with another application dated 04.12.2021 making the reference to the initial application filed on 25.11.2021 stating therein that as the respondent No. 5 was found ineligible in the list of applicants for the various posts under the RSP, Nagaland, the said application dated 04.12.2021 shall be treated a re-submission of his application along with requisite documents.

5. On the basis of a selection proceedings initiated vide an Order dated 21.07.2022, the respondent Nos. 4 & 5 were appointed to the post of Deputy Director for a period of 2 (two) years extendable to a maximum period of 10 (ten) years or till one attains 60 (sixty) years of age, whichever was earlier. The petitioner, therefore, being aggrieved has approached this Court by challenging the appointment of the respondent Nos. 4 & 5 by the impugned Order dated 21.07.2022 and have further sought for a direction that the petitioner be appointed to the post of Deputy Director.

6. The record reveals that pursuant to the filing of the writ petition on 02.09.2022, this Court, by an Order dated 05.09.2022 issued notice. Subsequent thereto vide another Order dated 13.09.2022 observed that the appointment so made to the respondents shall be subject to the outcome of the writ petition.

7. Pursuant to the filing of the writ petition various pleadings have been exchanged between the parties.

8. This Court, have heard the learned counsels for the parties and has given anxious consideration.

9. During the course of hearing, this Court had made a specific pointed query to Ms. V. Suokhrie, learned Additional A.G., Nagaland as to whether there was any other Advertisement or Corrigendum pursuant to the Advertisement dated 12.02.2020 thereby extending the submission of the application beyond 21.03.2020. The learned Additional A.G., with all fairness submitted that to her instruction there was no other Corrigendum issued extending the time for submission of application.

10. Under such circumstances this Court fails to understand as to how the respondent authorities could have taken into consideration the application filed by the respondent No. 5 which was admittedly submitted on 25.11.2021 and further when the said application was rejected, the respondent authorities again took the application of the respondent No. 5 dated 04.12.2021.

11. The learned counsel appearing on behalf of the respondent Nos. 4 & 5 though submitted that at the time of the last date for submission of the application pursuant to the Advertisement dated 12.02.2020 there was a COVID pandemic and under such circumstances the respondents thought it prudent to accept further applications and therefore, there was no illegality so committed. But the question arises as to without issuing any further Advertisement or a Corrigendum thereby enlarging the period for submission of application could the respondent authorities enlarge the period of submission of the application and take into consideration an application submitted by the respondent No. 5 on 15.09.2021 and 04.12.2021 that too not by post.

12. In the opinion of this Court, taking into account that the employment in respect to the post relates to public employment, the said action on the part of the respondent authority in taking into account the application submitted by the respondent No. 5 much after 21.03.2020, that too, without any further Advertisement/Corrigendum to the Advertisement amounts to violation of the rights under Article 14 & 16 of the Constitution. Accordingly, this Court interferes with the appointment Order dated 21.07.2022 in so far as the

appointment of the respondent No. 5 is concerned. However, this Court makes it clear that the appointment in respect of respondent No. 4 or others in the Notification dated 21.07.2022 is not interfered with. In the facts of the present case, the direction sought for, to appoint the petitioner in lieu of the respondent No. 5 does not arise as for the ground on which the appointment of the respondent No. 5 has been set aside. The respondents would be at liberty to take such steps as envisaged under law for filing of the resultant vacancy on account of setting aside of the appointment of respondent No. 5, as deemed fit.

13. Consequently, with the above observations and directions, the instant writ petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant