

GAHC020005312023



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

**Case No. : WP(C)/219/2023**

SHRI THEJAPIETUO SOTE  
S/O SHRI SHURHOLHOUTUO SOTE,  
R/O P. KHEL, KOHIMA VILLAGE, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS  
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF  
NAGALAND, KOHIMA

2: THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF  
NAGALAND

P AND AR DEPARTMENT  
NAGALAND  
KOHIMA

3: THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF  
NAGALAND  
DEPARTMENT OF ENVIRONMENT  
FOREST AND CLIMATE CHANGE  
NAGALAND  
KOHIMA

4: THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST  
FORCE

NAGALAND  
KOHIMA

5: THE CHIEF CONSERVATOR OF FOREST (M AND E)

OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD  
FOREST FORCE

NAGALAND  
KOHIMA

6:SHRI WALONG N. KONYAK

MULTI TASKING STFF (MTS)

OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF  
FOREST FORCE

NAGALAND  
KOHIM

**Advocate for the Petitioner** : T. B. JAMIR

**Advocate for the Respondent** : GOVT ADV NL

**BEFORE  
HON'BLE MR. JUSTICE NELSON SAILO**

**ORDER**

**29.08.2024**

Heard Mr. I. Jamir, learned counsel for the petitioner who submits that the petitioner is aggrieved with the appointment of respondent No. 6 as Multi Tasking Staff (MTS) without following any procedure, particularly the Office Memorandum (OM) dated 04.06.2016, issued by the Personnel & Administrative Reforms Department (Administrative Reforms Branch), Government of Nagaland. The learned counsel submits that the father of the petitioner was serving as Peon (MTS) in the Office of the Principal Chief Conservator of Forest (PCCF) and Head of Forest Force under the Department of Environment and Forest and Climate Change, Kohima, Nagaland. He retired from service on 21.08.2023. The petitioner submitted an application for appointment to the said post, but without considering his case,

the respondent No. 6 was appointed on 08.09.2023. He submits that so far as the knowledge of the petitioner is concerned, no Advertisement was issued for filling up the said post and that the respondent No. 6 was approved for appointment barely 8 (eight) days after the retirement of his father in violation of the OM dated 04.06.2016. He, therefore, submits that the impugned Order dated 08.09.2023 appointing the respondent No. 6 as MTS should be set aside. In support of his submission, learned counsel relies upon the following authorities:-

- (i) Judgment and Order dated 28.05.2024 in ***WP(C)/166/2023 (Smti. Livino V. vs. the State of Nagaland and 4 Ors.)***;
- (ii) ***Union Public Service Commission vs. Girish Jayanti Lal Vaghela and Ors., (2006) 2 SCC 482***;
- (iii) ***State of Bihar and Ors. vs. Chandreshwar Pathak, (2014) 13 SCC 232***.

**[2.]** Mr. E. Thiba Phom, learned State counsel appearing for respondent Nos. 1 to 5 by referring to the affidavit-in-opposition filed by the said respondents on 11.03.2024 submits that the petitioner cannot claim that the vacancy should be filled up from indigenous inhabitants of the district in view of the fact that the post concerned is in the establishment of the PCCF located in Kohima, and therefore, any indigenous tribes of Nagaland can be appointed to the said post. He submits that the name of the respondent No. 6 was duly approved by the State respondents and accordingly, he was given the appointment on 08.09.2023. As such, there is nothing wrong with the action of the official

respondents.

**[3.]** Mr. Sentianger, learned counsel for respondent No. 6 adopts the argument of Mr. E. Thiba Phom, learned State counsel and submits that the respondent No. 6 was appointed with the prior approval of the State Government, and therefore, it cannot be said that he has been arbitrarily appointed to the post of MTS.

**[4.]** I have considered the submissions made by the learned counsels for the rival parties and perused the materials available on record.

**[5.]** From the projection made by the petitioner, the issue to be considered is as to whether the appointment of the respondent No. 6 can be sustained. The OM dated 04.06.2016 provides at Clause 4 that all vacancies excepting the Grade-III post should be filled up through open advertisement and District Selection Committee should be constituted by the respective Deputy Commissioners of the District for the said purpose. The Selection Committee will be headed by the Deputy Commissioner and include 2 (two) District Level Heads of Office, an Administrative Officer and the Principal or Senior Lecturer of Local College to be nominated by the Deputy Commissioner. The said provision as can be seen is in respect of the manner in which the posts are to be filled up at the District Level. In the present case we are concerned with the establishment of the PCCF where the post of MTS was vacated by the father of the petitioner on superannuation pension. Similar principles of open advertisement in the considered view this Court should apply to the instant case as well. From the materials available on record including the Appointment Order of the respondent No. 6, there is no indication

that any sort of advertisement and selection was undertaken by the respondent authorities prior to his appointment. Consequent to the approval given by the Government he has been appointed as MTS under the establishment.

**[6.]** A Co-ordinate Bench of this Court in ***Smti. Livino V.*** (supra), which was also concerning the filling up of an MTS post in the College concerned, was of the view that when the method of filling up the said post by land donation was not applicable, the same should be filled up by open advertisement, which otherwise was not followed and accordingly the appointment of the respondent was interfered with a direction that the post should be filled up by open advertisement by inviting all eligible candidates to participate in the selection process.

**[7.]** The Apex Court, in the case of ***State of Bihar and Ors. vs. Chandreshwar Pathak*** (supra), by referring to the earlier decision of the same Court had observed that it was a settled position of law that no person can be appointed even on a temporary and *ad hoc* basis without inviting applications from all eligible candidates. Appointment made by inviting names from the Employment Exchange was also found to be deficit of the mandates of Articles 14 and 16 of the Constitution of India.

**[8.]** Applying the same principles to the present case, it may be seen that as there was no selection for filling up the said post by inviting application from all eligible persons, the appointment of the respondent No. 6, in the considered view of this Court cannot be sustained, and accordingly, has been interfered with. In other words, the Appointment Order dated 08.09.2023 is hereby set aside. The respondent authorities are now directed to put up the

said post by inviting all eligible candidates as expeditiously as possible. It is also made clear that in the said recruitment process, the petitioner as well as the respondent No. 6 shall be allowed to participate. The aforesaid direction for filling up the said post be done as expeditiously as possible within a period of 3 (three) months from the date of receipt of certified copy of this Order by the respondent No. 4.

**[9.]** With the above observations and directions, the writ petition stands disposed of.

Sd/-  
**JUDGE**

**Comparing Assistant**