

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

KOHIMA BENCH

WRIT PETITION (C) 211/2022

Smti. Vitoni Sumi
W/o Sukhato K. Yeptho,
Yangzitong 'B' Village,
P.O. & P.S. Seyochung Town, Dist. Kiphire,
Nagaland.

.....**Petitioner**

-Versus-

1. The State of Nagaland, represented by
the Chief Secretary to the Govt. of Nagaland.
2. The Commissioner and Secretary;
Department of Works and Housing;
Nagaland, Kohima.
3. The Engineer-in-Chief,
Nagaland Public Work Department,
Nagaland, Kohima.
4. Shri Hoto Sumi,
S/o Late Akaho Sumi;
Newly appointed Chowkider,
O/o the Executive Engineer
PWD (R&B), Kiphire Division
Dist.-Kiphire, Nagaland.

.....**Respondents**



BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates :

For the Petitioner	:- Smti. Z. Zhimomi.
For the Respondents No. 1 to 3	:- Mr. N. Angami; Govt. Advocate, Nagaland
For the Respondents No. 4	:- Mr. F. Pfotte

Date of Hearing : 28.11.2023.

Date of Judgment and order : 22.01.2024.

JUDGMENT & ORDER

Heard Ms. Z. Zhimomi, learned counsel for the petitioner and also heard Mr. N. Angami, the learned Govt. Advocate, Nagaland for the respondents No. 1 to 3 and Mr. Foseko Pforte, learned counsel for the respondent No.4.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, Smti. Vitoni Sumi, has put to challenge the Notice dated 28.08.2022, and the Office Order No. E-In/ESTT-7/APPT Gr-IV/2022, dated 18th August, 2022, by which the respondent No.4 was appointed as Chowkider and also for issuing direction to the respondents for issuing advertisement for filling up the post of Chowkider in the Establishment of the Executive Engineer, PWD (R&B) Kiphire Division in consonance with the Office Memorandum, dated 03.03.2022.



3. The background facts leading to filing of this writ petition is adumbrated herein below:-

"The husband of the petitioner, namely, Shri Sukhato Yeptho, is owner of a plot of land where the Office of the Executive Engineer, PWD (R&B) Kiphire Division is situated. The said plot of land, measuring about 63 square feet, was donated by the father-in-law of the petitioner for establishment of the said Office, by virtue of an oral agreement that in lieu of the said plot of land a Grade-IV post will be offered to one of his family members. But, instead of appointing any family member, the respondent authority had appointed one Heshivi Awomi in Grade-IV post. After retirement of Heshivi Awomi from the said post on 31.07.2016, the petitioner had applied for the said post on the basis of land ownership. But, the respondent authority had appointed one Hoto Sumi i.e. respondent No.4. Thereafter, the petitioner had challenged the appointment of respondent No.4 before the High Court by filing a Writ Petition, being WP(C) No. 31(K)/2017. But, the Learned Single Judge had dismissed the said petition on the ground that the petitioner had no *locus-standi* to file the petition. The petitioner then challenged the finding of the Learned Single Judge, in Writ Appeal No.01/2019, and a Division Bench of this court in the said writ appeal was pleased to quash the appointment of respondent No.4 vide order dated 26.11.2020, and issued direction to the respondents to undertake a transparent means to fill up the post of Chowkider in the Establishment of the Executive Engineer, PWD (R&B)



Kiphire Division so that the appellant also gets an opportunity to apply for the said post if she is otherwise eligible to apply. But, the respondent authorities have taken no action upon the same. In the meantime, the Government had issued another Guideline, vide Office Memorandum dated 03.03.2022, specifying the procedure for filling up the Group-D posts in the department. Thereafter, vide communication, dated 10th of March 2022, the respondent Government had communicated respondent No.3 about approval for cancellation of appointment of respondent No.4 and requested him to advertise the post for appointment as per existing guidelines as and when ban of appointment is lifted. Thereafter, the ban was lifted vide Office memorandum dated 27th March 2022. Thereafter, the brother-in-law of petitioner had received one call letter dated 8th March 2022 from respondent No.3 through whatsapp wherein the petitioner was informed to appear in interview on 11.08.2022 at 11:00 am, without publishing advertisement and inviting application, as directed by this court vide order dated 26.11.2020. Thereafter, interview was conducted on 11.08.2022, and thereafter vide impugned order dated 18th August 2022, the respondent No.3 had appointed respondent No.4, in total violation of order of this court dated 26.11.2020, and O.M. dated 03.03.2022, claiming that notice dated 28th July, 2022 was issued calling for applications from candidates and to conduct interview on 11th August 2022."



4. The respondent Nos.1, 2 and 3 have filed their affidavit in opposition denying the assertions made by the petitioner. It is stated that pursuant to the order of this court in W.A.No.01/2019, dated 26.11.2020, the appointment of respondent No.4 was cancelled and thereafter a Notification, dated 28.07.2022, calling upon all interested candidates to submit their application for recruitment to the post of Chowkider in the Establishment of Executive Engineer, PWD (R&B) Kiphire Division, along with their details to the Engineer -in-Chief, NPWD, Kohima on or before 05.08.2022 was issued, wherein it is stated that interview will be conducted on 11.08.2022, at the Conference Hall of Engineer -in-Chief, NPWD, Kohima. Against the said notice, dated 28.07.2022, the department had received application for recruitment to the post of Chowkider from the petitioner and respondent No.4 and after receiving applications they were called for interview on 08.08.2022, and after receiving call letters, they have appeared before the interview on 11.08.2022. It is also stated that as per direction of this court the petitioner was given an opportunity to apply for the post of Chowkider and call letter was issued to her and pursuant to the same she had appeared in interview but, she becomes unsuccessful and now she cannot turn around and take a stand that the respondent authorities have violated the court's order and also violated the mandate of O.M. dated 03.03.2022. It is also stated that vide O.M. dated 03.03.2022, condition of advertisement was dispensed with, whenever difficulties are faced by the Department, as in many cases Group-D posts such as Chowkider, Mali and Peons are filled up by land owners or on compassionate ground and locally at the District

and Sub-Division or Village level, pursuant to a Cabinet Decision dated 9th February 2022 and 22nd February 2022, as long as a fair and transparent eligibility criteria and process is followed and in all such cases approval of the Government is obtained. It is also stated that the petitioner, along with five other applicants appeared in interview and considering overall performance of all the applicant the Interview Board had selected respondent No.4, for the post of Chowkider. Further, it is stated that as per direction of this court the respondent authorities had undertaken a transparent means to fill up the post by issuing the calling letter to the petitioner as well as other applicants to appear before the interview and basing upon the performance of the candidates the interview board has recommended the name of the respondent No.4. It is further stated that the respondents have not violated the O.M. dated 03.03.2022, issued by the Government of Nagaland.

5. The respondent No.4 in his affidavit in opposition stated that the petitioner had no locus to file the present petition as she had participated in the process of selection and when she becomes unsuccessful in the interview held on 11.08.2022, she had filed the present petition without having any cause of action. It is also stated that pursuant to the notice, dated 28.07.2022, he has submitted application and upon receipt of call letters dated 08.08.2022, he had appeared in interview and the petitioner also appeared in interview and she became unsuccessful and having found suitable the respondent authorities have selected him and appointed to the post of



Chowkidar. It is also stated that there is no merit in this petition, and therefore, it is contended to dismiss the same.

6. Ms. Z. Zhimomi, the learned counsel for the petitioner, submits that the appointment of the respondent No.4 was made in clear violation of the order of this court dated 26.11.2020, in W.A No.01/2019 and also in contravention of the O.M. dated 03.03.2022. Ms. Zhimomi further submits that the respondent authorities have not published any advertisement of the post after quashing of the appointment of respondent No.4 in the W.A.No.1/2019, and also not invited any application from the petitioner and she had received one call letter from the respondent authority through whatsapp of her brother-in-law on 8th August 2022, wherein the petitioner was asked to appear in interview to be held on 11.08.2022, at 11.00 am. It is the further submission of Ms. Zimomi that thereafter interview was conducted on 11.08.2022, at Kohima for the post of Chowkider in the establishment of Executive Engineer of PWD, (R&B) Kiphire Division and the respondent No. 4 was selected and thereafter appointed him to the said post in total violation of direction of this Court and the order dated 03.03.2022. Therefore, Ms. Zhimomi contended to set aside the appointment of the respondent No.4 and thereafter to issue direction to the respondent authorities to advertise the posts and to fill up the same strictly in accordance with the direction issued by this court in W.A. No.01/2019 and complying the O.M. dated 03.03.2022.

7. Per contra, Mr. N. Angami, the learned Govt. Advocate submits that the respondent authorities have appointed the respondent No.4 having found him suitable and after issuing notice to fill up the post of

Chowkider in the establishment of Executive Engineer of PWD, (R&B) Kiphire Division, and inviting applications and after conducting interview. Mr. Angami further submits that the petitioner also taken a conscious decision to take part in the selection process and appeared in the interview and when she became unsuccessful she turned around and alleged violation of the order of this court in W.A.No.01/2019 and the O.M. dated 03.03.2022, and instituted this proceeding, which is not at all permissible. Mr. Angami has referred one case law in **Madan Lal & Others vs. State of J & K and Others**, reported in **(1995) 3 SCC 486**, in support of his submission. Mr. Angami further submits that neither the respondent authorities have violated the direction issued by this court in W.A. No.1 of 2019, nor the terms of O.M. dated 03.03.2022, and therefore, it is contended to dismiss the petition.

8. Whereas, Mr. Pfotte, the learned counsel for the respondent No.4 has adopted the submission of Mr. Angami and contended to dismiss this petition being not maintainable, as the petitioner has no locus standi to approach this court by filing the present petition as she had taken part in the interview and having been unsuccessful, she alleged violation of order of this court dated 26.11.2022, and O.M. dated 03.03.2022.

9. In view of the assertions made by the parties in their respective pleadings and in view of the submission advanced by learned counsel for both the parties, the issues, that has arisen for adjudication by this court are formulated as under :-



- [i] Whether petitioner has any *locus standi* to file the present petition after taking part in the interview and having been unsuccessful in the same ?
- [ii] Whether the petitioner has any right to be appointed in the said post on the basis of land ownership ?
- [iii] Whether the respondent authorities have violated the order of this court in W.A. No.01/2019, dated 26.11.2020 and also the O.M. dated 03.03.2022 by not publishing advertisement for filling up the post of Chowkider, in the establishment of Executive Engineer PWD (R&B) Kiphire Division ?

10. I have carefully gone through the petition as well the documents on record and also gone through the case law referred by Mr. Angami, the learned counsel for the respondent authorities.

11. It is not in dispute that the petitioner had taken part in the interview having received call letter on 08.08.2022. The interview was held on 11.08.2022, in which she became unsuccessful. Admittedly, also she had not challenged the Notice issued by the respondent authorities for filling up the said post.

12. Now, what left to be seen is whether the petitioner has any *locus standi* to challenge the selection and appointment of the respondent No.4, having participated in the selection process and having been unsuccessful in the same.



13. It is to be mentioned here in this context that while dealing with the issue in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla and Ors.**, reported in **AIR 1986 SC 1043**, a three judge bench of Hon'ble Supreme Court has held as under :-

"When the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

14. Thereafter, in the case of **Madan Lal** (supra), Hon'ble Supreme Court has held as under:-

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.

15. In the case in hand also the petitioner, having received the call letter on 08.08.2022, had appeared in the interview on 11.08.2022. She had taken a calculated risk to get herself selected in the said interview, without any protest. Admittedly, also she had not challenged the Notice issued by the respondent authorities for filling



up the said post. Only when she became unsuccessful in the interview, she had turned around and filed the present petition. If we apply the ratio, so laid down in the case of **Om Prakash Shukla** (supra) and **Madan Lal & Ors.** (supra) to the facts and circumstances mentioned herein above, we will find substance in the submission of Mr. Angami, the learned Govt. Advocate for the state respondent that the petitioner, having participated in the interview without any protest and having been unsuccessful she cannot turn around and maintain a writ petition before the court. She has no locus standi to file the present petition.

Issue No.[i] is answered accordingly.

16. That, as regard the contention of the petitioner that on the basis of land ownership, she has right to be appointed in the said post, this court find from the Order of a Division Bench of this Court in W.A. No.01/2019, dated 26.11.2020, that while dealing with such an argument of the petitioner, it was held that 'the right of the appellant for employment after a lapse of 47 years by filing WP(C) 31(K)/2017 has rightly been held to be vitiated by waiver, being hopelessly barred by laches and delay and that the learned Single Judge has rightly taken the view that the appellant does not have any locus standi to file the present case and she cannot be said to be a person aggrieved by non-appointment of her father-in-law by Govt. in lieu of the donated land.' Thus, it appears that such an issue as well as the argument has already been settled by a Division Bench of this court now, the petitioner cannot successfully raise the same again before this court.



Thus, Issue No. [ii] is answered in negative.

17. Now, coming to the last issue i.e. Issue No.[iii] we find that in the Order dated 26.11.2020, in W.A. No.01/2019, a Division Bench of this court has held that the respondent authority, after rescinding/setting aside the order of appointment of the respondent No.4, the State Govt. would take a transparent means to fill up the post of Chowkidar in the establishment of Executive Engineer PWD (R&B) Kiphire Division, so that the appellant also gets an opportunity to apply for the said post if she is otherwise eligible to apply.

18. As already discussed herein above, the respondent authority, after setting aside the appointment of respondent No.4, had issued a Notice of 28.07.2022, which is enclosed with the petition as **Annexure-G**, inviting application from the interested candidates for the post of Chowkidar on or before 5th of August, 2022. Further, it appears that a call letter **-Annexure- E**, was also issued to the petitioner to appear in the interview, which was scheduled to be held on 11.08.2022. Further, it appears that the petitioner, pursuant to the said call letter, had appeared in the interview, without any protest, and she became unsuccessful. She has also not challenged the Notice- **Annexure-G**. Thus, it cannot be said that the respondent authority had not adopted any transparent means in the establishment of Executive Engineer PWD (R&B) Kiphire Division. This had clearly been indicated in the affidavit of the respondent No.1 to 3 and the petitioner had not disputed the same by filing any reply affidavit.



19. That, as regard the O.M. dated 03.03.2022, it appears that in the said O.M. it has been stated that for filling up the Grade-IV posts, the Government has issued Office Memorandum No. AR-3/GEN-174/2007(Pt.) dated 26.10.2017 and 24.03.2018 and the latter Memorandum lays down that application for recruitment to the post should be called through open advertisement. But, following difficulties expressed by various departments on account of the fact that in many cases, Group -D post, such as Chowkidar, Mali and Peon, are filled by landowners or on compassionate ground, and locally at the District, Sub-Division or Village level, the matter was considered by the State Cabinet in its meeting held on 9th February, 2022 and 22nd February, 2022. And in order to remove such difficulties, it was directed that the condition of advertisement is dispensed with whenever such difficulties are faced by a Department, as long as a fair and transparent eligibility criteria and process is followed and in all such cases approval of the Government is obtained.

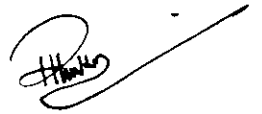
20. The learned counsel for the petitioner, Ms. Zhimomi has vehemently submitted that the direction issued by the said O.M. has not been followed by the State respondents in the case in hand. This submission of Ms. Zhimomi has been controverted by the learned Govt. Counsel by submitting that in the case in hand transparent process has been followed by issuing notice dated 28.07.2022. However, the learned Govt. Counsel as well as the affidavit in opposition of respondent No.1 to 3, is silent in respect of obtaining approval of the Government. As such it cannot be said that the state respondent No.1 to 3 have followed the O.M. dated 03.03.2022, in its



letter and spirit. But, since the petitioner, without any challenge and protest to the Notice had taken part in the interview, now she cannot turn around having been unsuccessful in the interview.

Thus, Issue No.[iii] has to be answered in negative, and accordingly, the same stands answered.

21. In the result, I find no merit in this petition and accordingly, the same stands dismissed, leaving the parties to bear their own cost.



JUDGE

Deka