

GAHC020005882023



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

Case No. : WA/11/2023

SHRI. SWEYIEVIKUL TASE
S/O LATE PETEKIELIE TASE
R/O JAKHAMA VILLAGE
KOHIMA NAGALAND

VERSUS

SHRI. MHASHEKHOL RICHA AND 3 ORS
S/O THINUZHOSA RICHA
R/O JAKHAMA VILLAGE, KOHIMA NAGALAND

2:THE STATE OF NAGALAND
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF NAGALAND.
ANIMAL HUSBANDRY AND BETERINARY SERVICES
NAGALAND KOHIMA

3:THE DIRECTOR
DIRECTORATE OF ANIMAL HUSBANDRY AND VETERINARY
SERVICES
NAGALAND KOHIMA

4:THE CHIEF VETERINARY OFFICER
KOHIMA NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : A. SOPHIE

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

27.03.2024

[Manish Choudhury, J.]

Heard Mr. Joshua Sheqi, learned counsel for the writ appellant; Mr. A. Sophie, learned counsel for the respondent no. 1; and Mr. Imti Imchen, learned Additional Advocate General, Nagaland for the State respondents.

2. This intra-court appeal is directed against a Judgment and Order dated 06.10.2023 passed in a writ petition, W.P.[C] no. 77/2023. The writ appellant herein was the respondent no. 5 in the writ petition, W.P.[C] no. 77/2023 and the writ petitioner therein has been impleaded as the respondent no. 1 in this appeal.

3. By the Judgment and Order dated 06.10.2023, the appointment made in favour of the writ appellant-respondent no. 5 in a Grade-IV post vide an Order of Appointment dated 31.03.2023 at the Veterinary Dispensary, Jakhama has been set aside and quashed. The petitioner therein, that is, the respondent no. 1 herein instituted the writ petition on the premise that the appointment of the writ appellant-respondent no. 5 was made on land-ownership basis but his application for appointment to the same post on land-ownership basis was not considered. It was contended that the writ appellant-respondent no. 5 was not eligible to be appointed on land-ownership basis, in terms of the extant policy governing the matter of such appointment. In the writ petition, the writ appellant-respondent no. 5 raised a preliminary objection on the maintainability of the writ petition on the ground that at the time of preferring the application for the post in question on 09.07.2021, writ petitioner-respondent no. 1 was already over-aged as he was over 35 years, which is ordinarily, the upper age-limit for entry into Government employment in Nagaland. Negating such contention raised as preliminary issue on behalf of the writ appellant-

respondent no. 5, the learned Single Judge in view of two Office Memoranda – one dated 16.07.2021 providing for one year relaxation in upper-age limit w.e.f. 22.04.2022 and the other dated 22.02.2022 providing relaxation for two years in upper age-limit w.e.f. 28.02.2022 - had observed that the application submitted by the petitioner-respondent no. 1 ought to have been considered as in time, in view of the relaxation in upper age-limit, provided by the Office Memoranda. With such observation, the writ petition was allowed directing the State respondents to consider the application of the petitioner-respondent no. 1 dated 09.07.2021 and to take immediate necessary steps for his appointment in the Grade-IV post at the Veterinary Dispensary, Jakhama by taking into consideration the Agreement dated 08.12.1975 made by the State respondents with the land-owners of Jakhama for the lands required to establish the Veterinary Dispensary at Jakhama.

4. The vacancy in the post in Grade-IV at the Veterinary Dispensary, Jakhama had arisen earlier due to retirement of one Tepusio Taje, against which the writ appellant-respondent no. 5 was appointed on 31.03.2023. From the affidavit-in-opposition of the State respondents filed in the writ petition, it has emerged with the writ appellant-respondent no. 5 was appointed on the basis of land-ownership, but without any kind of selection process in conformity with Article 14 and Article 16 of the Constitution of India. From the case papers, it has further emerged that there was an Agreement executed on 08.12.1975 with 11 nos. of land-owners of Jakhama by the State respondents to set-up the Veterinary Dispensary at Jakhama and as per the said Agreement, one of the original land-owners was one Khujon, who donated his land for the purpose of establishing the Veterinary Dispensary at Jakhama. It has further emerged that Sri Tepusio Taje, whose retirement has created the vacancy in Grade-IV for which the writ appellant-respondent no. 5 and the petitioner-respondent no. 1 are competing, was also appointed as descendent of one of the original land-owners.

5. A copy of the Agreement dated 08.12.1975 on the basis of lands were taken over for establishment of the Veterinary Dispensary at Jakhama, is found appended with the Memo of Appeal and on its perusal, it is noticed that a total of 11 persons as

land-owners had donated lands to the Veterinary Dispensary at Jakhama. If the appointment of the writ appellant-respondent no. 5 was made on the basis of land-ownership, the respondent authorities ought to have considered the cases of all applicants, who can stake claim for appointment on that basis in terms of the Policy notified vide the Office Memorandum dated 16.08.2018 and who are found responding to any public notice made for such appointment. In the affidavit-in-opposition filed by the State respondents in the writ petition, the State respondents are found to have taken a stand that the writ appellant-respondent no. 5 was appointed on land-ownership basis. The State respondents have also taken a stand that till date, persons belonging to five land-owners' families were already appointed.

6. Admittedly, the appointment of the writ appellant-respondent no. 5 to the post in Grade-IV at the Veterinary Dispensary, Jakhama was made without any kind of selection process undertaken in conformity with the principles laid down in Article 14 and Article 16 of the Constitution of India. His appointment was shown to have been made only on the basis of land-ownership. At the same time, the petitioner-respondent no. 1 has staked claim for appointment to the same post on land-ownership basis.

7. The matter of appointment on land-ownership basis is governed and regulated by the Policy framed by the Government of Nagaland vide the Office Memorandum dated 16.08.2018. The relevant clauses of the Office Memorandum dated 16.08.2018 reads as under :-

3.[a] In other cases prior to 26.07.2005 and subsequent to setting up to Administrative and Block headquarters on freely donated land, where a specific written / oral agreement exists providing for employment or other facility to the landowner the claim of landowner for employment or other facility, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned who shall examine such claim carefully including whether any employment or any other facility including contract or supply order has been given in the past. Written statements

from the witnesses, that is, Government officials of the department concerned. District Administration and village functionaries present at the time of such written / oral agreement should be taken by the Deputy Commissioner. The recommendation of the Deputy Commissioner should be referred with relevant documents explanations to the Department of Land Revenue for examination and approval.

[b] It is also clarified that it is not the policy of the Government to provide employment or other facility to the **landowner in** perpetuity. The employment or other facility of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointed as landowner in Government service and does not entitle his descendant for further employment or other facility on his retirement from service/vacates the post. After the appointed landowner retires or vacates the post, the vacancy will be filled up through open advertisement in consonance with the existing government policy giving equal opportunity to all applicants.

8. The learned Single Judge while allowing the writ petition, W.P.[C] no. 77/2023, had observed as under :

14. In view of the above discussions and findings, this court finds it fit to allow the instant writ petition and direct the state respondents to consider the application of the petitioner, dated 09.07.2021 and take immediate necessary steps for his appointment to a Grade-IV post at Veterinary Dispensary [VD], Jakhama, being covered by the Office Memorandums dated 16.07.2021 and 22.02.2022 and by the Agreement Deed dated 08.12.1975 made by land owners of Jakhama and the Office Memorandum issued by the Government, Land Revenue Department dated 16.08.2018. This court also finds that if the appointment of respondent no.5 was made by virtue of him also being the descendants of the same land owner, i.e. Shri Khuzon, it will not be in consonance with the said Office Memorandum dated 16.08.2018, and therefore his appointment order dated 31.03.2023 is

liable to be set aside.

9. Having heard the learned counsel for the parties and after considering the matter in its entirety, we are of the considered view that the matter of filling up the post in Grade-IV at the Veterinary Dispensary, Jakhama shall be strictly in terms of the Office Memorandum dated 16.08.2018 by the Competent Authority in the State Government. We are not inclined to interfere with the order of cancellation of the appointment of the writ appellant-respondent no. 5 by the learned Single Judge in view of the admitted fact that the appointment was otherwise not in conformity with the principles laid down in Article 14 and Article 16 of the Constitution of India by undertaking any selection process in an open and transparent manner. As the direction has been made to fill up resulted vacancy in Grade-IV at the Veterinary Dispensary, Jakhama strictly in terms of the Office Memorandum dated 16.08.2018, the cancellation of the appointment of the writ appellant-respondent no. 5 by the learned Single Judge shall not operate as a bar for him to stake claim for appointment on the basis of land-ownership vis-à-vis the petitioner-respondent no. 1 and any other applicants staking claim for appointment to the said vacancy on the basis of land-ownership. Neither any finding has been reached in the writ petition observing that the writ appellant-respondent no. 5 is not eligible to apply for the post in Grade-IV in question on the ground of land-ownership nor the State Government and the petitioner-respondent no. 1 have claimed so. The direction made by the learned Single Judge stands modified to that extent. Accordingly, the direction of the learned Single Judge to take necessary steps for appointment of the petitioner-respondent no. 1 is modified by providing that the candidate emerging as the best candidate in the process of selection is to be appointed. The State respondents while proceeding to fill up the vacancy in the Grade-IV post at the Veterinary Dispensary, Jakhama, shall invite applications from eligible applicants claiming appointment on land-ownership basis by virtue of the Agreement dated 08.12.1975 with wide publicity and thereafter, to proceed to complete the entire exercise as expeditiously as possible, preferably within a period of 4 [four] months from today. It is needless to say that the cases of the applicants are to be considered on the basis of authentic supporting documents.

10. The writ appeal is disposed of in the afore-stated manner.

JUDGE

JUDGE

Comparing Assistant