

GAHC020007282022



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

Case No. : WP(C)/289/2022

DR. R. ZECHANO EZONG AND 9 ORS
TIYI VIEW COTTAGE MOLONSU COLONY, WOKHA, 797111

2: DR. RUUSIETUONUO
PEDUZHA COLONY
H.NO- 189
MEDZIPHEMA
CHUMUOKEDIMA

3: DR. ORENTSANI KIKON
H.NO. 315
SEPFUZOU COLONY
KOHIMA

4: DR. KEVINEILHOU NAKHRO
CHC MEDZIPHEMA TOWN
CHUMUKEDIMA

5: DR. VISINO NAKHRO
MEDZIPHEMA TOWN WARD NO. 8

6: DR. VISHETO SUMI
H.NO- 68
LOWER P.H. HILL COLONY
KOHIMA

7: DR. AVIKA P. JIMO
H.NO- 405
BLOCK NO.4
CHEKIYE VILLAGE
DIMAPUR

8: DR. TEMSUWAPANG
MEDICAL CENTRE CHANTONGYA

NEAR SBI
NH-61 AM ROAD CHANTONGYA TOWN

9: DR. I TOKUGHA
H.NO.- 265
INDUSTRIAL VILLAGE
RAZHUPHE DIMAPUR. 797112

10: DR. LANUYANGER JAMIR
KEVIJAU COLONY LANE 7
SIGNAL BASTI DIMAPU

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT OF NAGALAND
2:THE SECRETARY
DEPARTMENT HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIM

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : GOVT ADV NL

Linked Case : I.A.(Civil)/49/2024

DR. R. ZECHANO EZONG AND 9 ORS
TIYI VIEW COTTAGE
MOLONSU COLONY
WOKHA
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

Advocate for : I IMCHEN
Advocate for : GOVT ADV NL appearing for THE STATE OF

NAGALAND AND 2 ORS

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 27-03-2024

The petitioners, 10 [ten] in nos., have instituted the present writ petition under Article 226 of the Constitution of India to assail a Notification bearing no. NFW[A]COVID-19/APPT-13/17/2020 dated 02.11.2022 whereby the Health & Family Welfare Department, Government of Nagaland has notified 21 nos. of posts of Medical Officer [AYUSH] Class – I Gazetted] stating further that recruitment to the said posts would be made through a Special Recruitment Drive, to be conducted by the Nagaland Public Service Commission [NPSC] and the Nagaland Staff Selection Board [NSLB]. The petitioners have sought creation of 10 nos. of posts out of those 21 nos. of posts, notified by the Notification dated 02.11.2022 have also and sought for a direction to the State respondents to regularize their services in those 10 nos. of posts in terms of Cabinet decision dated 11.06.2020.

2. The events which have led the petitioners to institute the instant writ petition can be exposted, in brief, as follows :-
 - 2.1. All the petitioners have possessed qualification of Degree in AYUSH. By different Orders passed by the authorities in the Health & Family Welfare Department, Government of Nagaland and the Directorate of Health Services, Government of Nagaland during the period from 03.12.2005 to 28.07.2006, the petitioners came to be appointed in the post of Medical Officer [AYUSH] and Ayurveda [Class-I Gazetted] as under :-

Petitioner	Date	Nature	Post and Pay
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Petitioner no. 1	03.12.2005	Contract	Medical Officer [AYUSH] Rs. 2100/- to 4000/- per month
Petitioner no. 2 Petitioner no. 3 Petitioner no. 4	02.02.2006	Contract	Medical Officer [AYUSH] Rs. 12,000/- per month
Petitioner no. 5 Petitioner no. 6 Petitioner no. 7	07.04.2006	Contract	Medical Officer [AYUSH] Rs. 12,000/- per month
Petitioner no. 8	14.06.2006	Contract	Medical Officer [AYUSH] Rs. 12,000/- per month
Petitioner no. 9 Petitioner no. 10	28.07.2006	Contract	Medical Officer [AYUSH] Rs. 12,000/- per month

- 2.2. While the petitioners were serving as Medical Officers [AYUSH] pursuant to their appointments, as mentioned above, an Advertisement was published by the Health & Family Welfare Department, National Rural Health Mission [NRHM], Government of Nagaland on 14.12.2007, whereby, the Mission Director NRHM, Nagaland invited applications for a number posts including 21 nos. of posts of AYUSH doctors under the State Health Society, NRHM, Nagaland. As per the said Advertisement, the candidate to be appointed as AYUSH doctor, should have a degree in AYUSH. The Advertisement further mentioned that the appointments would be made on a contractual basis for a period of 11 months only. It was further mentioned that the remuneration would be fixed and no scale of pay would be applicable. The selection was to be made through interviews by a Board constituted by the State Health Society.
- 2.3. All the petitioners herein responded to the said Advertisement dated 14.12.2007 by submitting their individual applications and on being called, they appeared in the interview before the Board constituted for the purpose. By an Order dated 07.03.2008 issued by the Commissioner & Secretary to the Government of Nagaland, Health & Family Welfare Department and Chairman, Executive Committee, NRHM, 21 nos. of selected candidates including the petitioners herein, were appointed as AYUSH doctors under the State Health Society, NRHM and they were posted at different Community Health Centres [CHCs] shown therein. The Order dated 07.03.2008 mentioned that the appointments were as per

provisions of Clause 'C' of the Bye-Laws of the State Health Society, NRHM and the appointments would be *inter alia* subject to the conditions that the appointees would be on contractual basis for a period of 11 months only. Further, the remuneration would be fixed at Rs. 15,000/- and no scale of pay would be applicable. On being appointed as AYUSH doctors by the Order dated 07.03.2008, the petitioners joined the services and were discharging their duties as AYUSH doctors from the places where they were posted. When despite extending service for a period of more than 15 years without being provided with any opportunity of getting employed into regular State Service due to non-availability of sanctioned posts in the State Government, the petitioners through their association, the Nagaland AYUSH Doctors' Association submitted several memoranda/representations before the State respondents to create posts for AYUSH doctors in the State. Such memoranda/representations were submitted during the period from 2011 to 2018 and in those memoranda/representations, the decision of the Central Government conveyed by their Letters dated 01.01.2009 and dated 06.02.2009 were also highlighted.

- 2.4. By the Letter bearing no. D.O. no. Z-28015/47/2004-P&C dated 01.01.2009, the Ministry of Health & Family Welfare, Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy [AYUSH], Government of India, addressed to the Chief Secretary of all the States/Union Territories, had conveyed that mainstreaming of AYUSH was one of the objectives under the National Rural Health Mission [NRHM]. The Central Government had thereby, requested the State Governments to take actions for mainstreaming of AYUSH in their respective States by creating a separate Department of AYUSH with a full-fledged Secretary, with the Directorates of various systems reporting directly to the Secretary. It was urged for creation of a separate AYUSH wing in the Health Department with a Director General of AYUSH so that the Directors could report to the Director General of AYUSH. It was highlighted that co-location of AYUSH facilities in PHCs, CHCs and District Hospitals as

envisaged under the NRHM would ensure the presence of the AYUSH doctors/staff and regular supply of AYUSH medicines. It was urged that an AYUSH wing be started in major allopathic hospitals, jails, etc. wherever feasible to provide alternative choice to the public. The State Governments were thereby requested to have an action plan for mainstreaming AYUSH in States by investing funds under the State Plan and also making use of the funds provided by the Department of AYUSH, Ministry of Health & Family Welfare Department, Government of India as well as under the NRHM. By the subsequent Letter bearing no. D.O. no. Z-28015/47/04-P&C dated 06.02.2009, the issues highlighted in the previous Letter dated 01.01.2009 were reiterated for mainstreaming of AYUSH by the State Government with setting up of separate AYUSH Department.

- 2.5. Though no immediate steps were discernibly taken pursuant to the Government of India's Letters - Dated 01.01.2009 and Dated 06.02.2009 - the respondent no. 3, that is, the Principal Director, Health & Family Welfare Department, Government of Nagaland, on 12.01.2015, forwarded a proposal to the respondent no. 1 for creation of 29 nos. of posts of AYUSH doctors in 8 districts hospitals and 21 CHCs along with a write-up on financial implications likely to be involved therewith. The respondent no. 1 was requested to take up the matter with the appropriate authority and to accord sanction to the proposal at the earliest. The Personnel & Administrative Reforms Department, Government of Nagaland had responded favourably to the said proposal partially by conveying its concurrence for creation of 8 nos. of posts of AYUSH doctors in the pay band : Rs. 15,600/- - Rs. 39,100/- with Grade Pay : Rs. 5,400/- per month for 8 [eight] District Hospitals at Kiphire, Longleng, Mokokchung, Mon, Peren, Phek, Wokha and Zunheboto, subject to firstly, concurrence of the Finance Department; secondly, recommendation of the Post Creation/Upgradation Committee; and thirdly, approval of the Cabinet. Such concurrence of the Personnel & Administrative Reforms Department, Government of Nagaland was given in July, 2015. The Finance Department had thereafter, accorded its approval to the proposal in December, 2017

subject to the following conditions, firstly, recommendation of the Manpower Rationalization Committee; and secondly, approval of the Cabinet. When the matter was placed before the Manpower Rationalization Committee for their recommendation, the Manpower Rationalization Committee in its meeting, held on 29.08.2018, resolved to recommend creation of eight [8] nos. of posts of AYUSH doctors in eight [8] District Hospitals under the Health & Family Welfare Department, Government of Nagaland by considering the fact that the Government of India had attached importance to the AYUSH programme. The Cabinet accorded its approval to the said proposal on 24.07.2019. Accordingly, a Notification was issued on 09.08.2019 by the Health & Family Welfare Department, Government of Nagaland whereby it was notified that 8 nos. of posts of Medical Officer [AYUSH] in Pay Matrix Level-13 in eight [8] District Hospitals were created with immediate effect.

- 2.6. Close on the heels of creation of eight [8] nos. of posts of AYUSH doctors, a Board which was constituted vide Memorandum no. MED-6/A/26/06 by the Health & Family Welfare Department, Government of Nagaland, held its first meeting on 18.12.2019. The Board consisted of Members from the drawn from various departments of the State Government. The Board was headed by the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department as its Chairman. The Board discussed about the positions of AYUSH doctors in Nagaland and it took note of the fact that for the last 14 years, no post creation had taken place and the qualified AYUSH doctors had never got opportunities to appear for the examination and to be appointed in the regular State Service and as a result, many of them had become over-aged to sit in the examination to be conducted by the NPSC. The Board also took note of the issues urged by the Nagaland AYUSH Doctors' Association and the supports given by its members. The Board found that apart from the eight [8] nos. of posts created vide the Notification dated 09.08.2019, there were two additional vacant posts. After taking opinion from its members, the Board was of the opinion that in view of the then prevailing rules and regulations of the

Government of Nagaland, the group of over-aged senior AYUSH doctors would not eligible to appear in examination or appointment though they were appointed by the State Government after holding proper interviews. The Board had also taken note of the fact that these AYUSH doctors had been rendering services for the period for more than 10 years, many in the rural areas. It was resolved by the Board that if on humanitarian ground there would be any possibility for these AYUSH doctors to be absorbed in the regular State Service and it was resolved to collect necessary documents for onward submission to the Government. The Board had accordingly, observed that necessary and relevant documents like [i] First Government Appointment Order; [ii] The advertisement for the interview of the post where they were appointed initially; [iii] The nature of the interview/selection procedure; and [iv] Number of years they have served the department, should be collected as supporting documents and on receipt of such supporting documents, a proposal would be sent to the Government for absorption of the senior AYUSH doctors in regular State Services.

- 2.7. Immediately after the meeting of the Board, held on 18.12.2019, there was emergence of Covid-19 pandemic. In view of emergence and continuance of Covid-19 pandemic, an Advertisement came to be published under the hand of the respondent no. 3 on 16.07.2020 inviting applications for recruitment of 21 nos. of posts, purportedly newly created, on temporary basis under the Department of Health & Family Welfare Department through the Department Recruitment Board. As per the said Advertisement, the salary [fixed] would be Rs. 70,925/- for Non-Specialist Medical Officers [AYUSH] and Rs. 75,175/- for Specialist Medical Officers [AYUSH]. As per the terms and conditions of the Advertisement published for recruitment of Medical Officers [AYUSH], the recruitment would be made on the basis of marks obtained in different university examination of Diploma or Graduate Degree course and the desired qualification would be of Bachelor degree in the branches mentioned therein. The eligibility criteria had *inter alia* mentioned that contractual

employees would be granted one time relaxation up to 45 years. As the petitioners were then serving as contractual employees for about 15 years, they had responded to the said Advertisement as the proposal for their absorption in the State Health Service as over-aged senior AYUSH doctors did not proceed further since 18.12.2019. After the selection process, the respondent no. 1 had published a Notification dated 22.12.2020 whereby 21 nos. of AYUSH doctors were engaged as Medical Officers under the AYUSH Nagaland in the Pay Matrix Level-13 [Rs. 56,100/- to Rs. 1,77,500/-] with immediate effect. The names of the 10 petitioners herein figured from serial no. 1 to serial no. 10 in the said Notification. The Notification had further mentioned that the engagement as Medical Officers [AYUSH] under the AYUSH Nagaland shall be for a period of 12 months only or till regular appointment was made through the NPSC, whichever was earlier. The appointees shall have no right to claim for regularization on the engagement on contingency basis whatsoever. As the Notification directed the 21 selected candidates to report to the respondent no. 3 on or before 10.01.2021 and to obtain further instructions from the place of duty, all the petitioners herein reported to the respondent no. 3 within the stipulated time period and on being posted, the petitioners started discharging their duties as Medical Officers [AYUSH] under the AYUSH Nagaland. It has been projected that the petitioners have been serving in the said posts till date. The petitioners are aggrieved by issuance of the impugned Notification dated 02.11.2022 and have approached this Court by the instant writ petition seeking the reliefs, mentioned above.

3. I have heard Mr. C.T. Jamir, learned senior counsel assisted by Mr. I. Imchen, learned counsel for the petitioners and Mr. N. Mozhui, learned counsel for the respondent nos. 2 – 3.
4. Mr. Jamir, learned senior counsel appearing for the petitioners has submitted that the petitioners have *inter alia* been rendering uninterrupted services as AYUSH doctors since 2005-2006 till date without any blemish

whatsoever. He has referred to the documents including the correspondences of the State respondents, to submit that since a long period till creation of 8 posts in the year 2019, there was no creation of posts for AYUSH doctors in the interregnum. It was highlighted in the memoranda/representations of the Nagaland AYUSH Doctors' Association that in the year 2012 that a total nos. of required posts to be created for AYUSH doctors in the then existing 11 District Hospitals including Kiphire District Hospital, as per the Indian Public Health Standards [IPHS], were 24 but only one AYUSH doctor was appointed. It was further highlighted therein that a proposal for creation of AYUSH doctors in all 33 PHCs and District Hospitals, etc. were kept in the cold storage since a long period of time whereas as per the IPHS, there were shortages of at least 19 AYUSH doctors. It was further mentioned therein that during the period from 1987-2013, only 6 post of AYUSH doctors were created with the last creation in the year 2005. After 2005, not even a single post had been advertised till creation of 8 posts in 2019. As the petitioners who were serving sincerely as AYUSH doctors since the year : 2005-2006 till 2019, the Board headed by the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department had taken the proposal for absorption of the senior over-aged AYUSH doctors in the regular State Service. But, instead of bringing the said process for absorption of over-aged AYUSH doctors like the petitioners into the regular State Service to any logical conclusion, the Health & Family Welfare Department had arbitrarily included 10 nos. of posts with 11 nos. of newly created posts of AYUSH doctors in the Notification dated 02.11.2022.

- 4.1. Mr. Jamir has referred to a Cabinet Memorandum dated 25.06.2020 to contend that the Cabinet had only taken decision to fill up the 11 nos. of newly created posts of AYUSH doctors within a month's time with proper advertisement after creation of those posts due to unprecedented situation arising out of Covid-10 pandemic. It is his contention that by the newly created posts, the Cabinet did not mean to include the earlier existing 10 nos. of vacant posts, which were intended to be filled up by

absorption of the over-aged senior AYUSH doctors as per the proposal dated 18.12.2019. With such contention, Mr. Jamir has submitted that the Notification dated 02.11.2020 is bad and arbitrary to the extent of inclusion of those 10 nos. of vacant posts of AYUSH doctors which were in existence prior to creation of 11 nos. of posts by the Cabinet decision dated 25.06.2020. In such view of the matter, the impugned Notification dated 02.11.2020 to the extent of inclusion of those 10 nos. of posts is required to be interfered with. It is his submission that because of certain confusion, the impugned Notification had indicated that for all 21 nos. of vacant posts of Medical Officer [AYUSH], a special recruitment drive would be conducted by the NPSC and the Nagaland Staff Selection Board. He has contended that the confusion so created has been highlighted by the respondent no. 3 in his Communication bearing DHFW-18/MISC/2013-14/9904-09 dated 15.11.2022, whereby, the State respondent no. 3 had requested the Commissioner & Secretary, Health & Family Welfare Department, Government of Nagaland to initiate the process for regularization of 10 senior AYUSH doctors, which have been withheld during the Covid-19 pandemic.

5. Mr. Mozhui, learned counsel appearing for the respondent nos. 2 & 3 has submitted that any appointment made under the National Health Mission [NHM], earlier known as the National Rural Health Mission [NRHM], is on contractual basis. The petitioners had responded to the Advertisement dated 14.12.2007 knowing fully well that their appointments would be on contractual basis and having applied for the same, they got selected and appointed. As regards the Letters - Dated 01.10.2009 and Dated 06.02.2009 - of the Department of AYUSH, Ministry of Health & Family Welfare, Government of India, he has submitted that the same pertain to creation of a separate AYUSH wing in the Health & Family Welfare Department of the State and mainstreaming of the human resources. Since there was a direction of mainstreaming of AYUSH under the NHM, the AYUSH Mission has been brought under the administrative control of the NHM and the same is functioning till date. Pursuant to the Letters

dated 01.01.2009 and 06.02.2009, the Health & Family Welfare Department of the Government of Nagaland sent a proposal for creation of 29 posts of AYUSH doctors in the District Hospitals and CHCs on 12.01.2015. But the Government after consideration of the proposals at various levels, had created only 8 posts vide Notification dated 09.09.2019 after receipt of the Cabinet approval on 27.04.2019. He has submitted that as the Cabinet had already approved creation of 8 posts of Medical Officer [AYUSH] and there were two other vacancies of Medical Officers [AYUSH], a Board was constituted to look into the grievances of the petitioners since no post was created for a long period so as to give opportunities to the petitioners to compete in any recruitment process. Mr. Mozhui has referred to the Minutes of the meeting of the Board, held on 18.12.2019, and has submitted that the Board deliberated on the proposal for absorption of the petitioners' services into regular State Service upon collection of necessary documents for the purpose of consideration by the Government. He has fairly submitted that till date, no decision has been taken on the matter of absorption of the petitioners into regular State Service in terms of the Board's decision dated 18.12.2019. He has submitted that the proposal for absorption did not proceed further due to emergence and continuance of Covid-19 pandemic in the meantime. Referring to the Cabinet Memoranda – Dated 12.06.2020 & Dated 25.06.2020 – whereby 11 posts of Medical Officer [AYUSH] for the CHCs had been created, Mr. Mozhui has submitted that the Cabinet vide its Memorandum dated 25.06.2020 directed to fill up these 11 nos. of newly created posts by the Health & Family Welfare Department within a month's time with proper advertisement. Mr. Mozhui, by referring to a Notification bearing no. HFW[A]COVID-19/Appt-13/17/2020[Pt]/263 dated 02.07.2020 annexed as Annexure-2 to the affidavit-in-opposition, has submitted that by the said Notification, 11 nos. of posts of Medical Officer [AYUSH] for CHCs were inter alia notified. But the respondent no. 3 published the Advertisement on 16.07.2020 by including the already existing 10 [= 8+2] posts in Advertisement when the proposal for absorption of senior AYUSH doctors like the petitioners has not reached finality. It is his submission that in the Advertisement dated

16.07.2020, it was mentioned that the recruitment so conducted was temporary in nature and till regular recruitment was done through special recruitment process by the NPSC. He has submitted that it is in that context, the Notification dated 02.11.2022 has been issued by the Health & Family Welfare Department notifying that 21 nos. of posts of Medical Officer [AYUSH] would be filled up by special recruitment drive, conducted by the NPSC and the Nagaland Staff Selection Board. It is further submitted by him that on receipt of the memoranda/representations from the petitioners, the Department had sought for clarification with regard to the 8 nos. of posts of Medical Officer [AYUSH] already created vide the Notification dated 09.08.2019 *plus* 2 resultant vacancies in the post of Medical Officer [AYUSH] occurred prior to Covid-19 pandemic, and the 11 newly created posts of Medical Officer [AYUSH] during the pandemic by the Notification dated 02.07.2020 and has requested for exclusion of 10 posts from the purview of the special recruitment drive through the NPSC. Mr. Mozhui has clarified that the Letter dated 15.11.2022 has been addressed to bring to the notice of the Government that there was already a proposal taken by the Board on 18.12.2019 whereby it was proposed to absorb the senior most AYUSH doctors into the State cadre in 10 nos. of posts as they are over-aged.

6. I have duly considered the submissions advanced by the learned counsel for the parties. I have also perused the statements and averments of the parties made in their respective pleadings.
7. From the pleadings of the parties and the documents annexed therewith and the submissions of the learned counsel for the parties, the following facts have emerged.

[i] Initially, the petitioners came to be appointed as Medical Officers [AYUSH] – Ayurveda [Class-I Gazetted] by the Government of Nagaland on contractual basis at fixed pay. The petitioners' were so appointed during the period : 2005-2006.

- [ii] The petitioners possess the required qualification to be appointed as Medical Officer [AYUSH] – Ayurveda [Class-I Gazetted]. After such appointments during the years : 2005-2006, the petitioners were discharging their duties since then.
- [iii] When the Advertisement was published by the Mission Director, NHM under the Health & Family Welfare Department, Government of Nagaland on 14.12.2007 inviting applications for filling up a nos. of posts including 21 nos. of posts for AYUSH doctors, under the State Health Society, NHM, the petitioners participated in the selection process by submitting their candidatures. The selection was made by a Board constituted by the State Health Society after an interview process. All the petitioners herein, 10 [ten] in nos., emerged successful in the said selection process and they came to be appointed as AYUSH doctors under the State Health Society, NHM [erstwhile NRHM] by an Order dated 07.03.2008. Since such appointments, the petitioners discharged their duties at various state health facilities all throughout the State.
- [iv] The Government of India in the Ministry of Health & Family Welfare, Department of AYUSH had urged the State Government to set up a separate AYUSH Department and for mainstreaming of AYUSH. The Central Government had also urged to co-locate AYUSH facilities in PHCs, CHCs and District Hospitals so that both the services become available to the public. There was not enough creation of posts of Medical Officer [AYUSH] by the State Government in Nagaland. A proposal for creation of 29 posts of Medical Officer [AYUSH] for District Hospitals/CHCs was submitted before the Government by the Directorate of Health & Family Welfare, Nagaland in the year 2015. But, the Government after examining the proposal at various levels had decided that the proposal for creation of 29 posts of AYUSH doctors might had to be taken up in a phased manner and

after due deliberations at various levels, the State Government had created only 8 nos. of posts of Medical Officer [AYUSH] vide a Notification dated 09.08.2019 in 8 District Hospitals of Kiphire, Longleng, Mokokchung, Mon, Peren, Phek, Wokha and Zunheboto. These 8 nos. of posts have been created with due concurrence/approval of the Personnel and Administrative Reforms Department, the Finance Department, the Manpower Rationalization Committee and the Cabinet.

- [v] During all these years, the petitioners through their Association, Nagaland AYUSH Doctors' Association had been representing before the Government to set-up separate AYUSH Department, to create posts for Medical Officer [AYUSH], to set-up AYUSH facilities in the District Hospitals/CHCs/PHCs/ Jails, etc. Creation of posts of Medical Officer [AYUSH] was urged repeatedly as many of the qualified AYUSH doctors serving on contractual basis had, in the meantime, become over-aged or on the verge of being over-aged, without getting any opportunity to participate in any recruitment process for their absorption in the regular State Service.

- [vi] From the Minutes of the Meeting of the Board dated 18.12.2019, it is noticed that the Meeting was held on the matter pertaining to the then newly created 8 nos. of posts of Medical Officer [AYUSH]. The composition of the Board was as follows :- [i] the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department – Chairman; [ii] the Secretary, NPSC - Member; [iii] the Principal Director, Directorate of Health & Family Welfare, Government of Nagaland - Member; [iv] the Under Secretary to the Government of Nagaland, Personnel and Administrative Reforms Department – Member; [v] the Assistant Director, AYUSH, Directorate of Health & Family Welfare Department, Government of Nagaland – Member Secretary; and [vi] the SPO, AYUSH, Directorate of health & Family Welfare Department, Government of

Nagaland – Member.

- [vi] From the Minutes of the Meeting of the Board held, on 18.12.2019, under the Chairmanship of the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department, it is noticed that the Board members discussed at length about the state of affairs of the AYUSH doctors in Nagaland. The Board took note of the fact that during the previous 14 years, no creation of post for AYUSH doctors had taken place and as a result, the qualified AYUSH doctors never got any opportunity to appear in examinations and to be appointed in the regular State Service. The Board had also considered the fact that many of the qualified AYUSH doctors had become over-aged, in the meantime, to sit for NPSC examination. Discussion was also held about the Memorandum received from the Nagaland AYUSH Doctors' Association requesting for appointment of AYUSH doctors as per the seniority in the vacant posts. The Board also considered as to whether the manner of appointment to the 10 nos. of posts [= 8(newly created post, Class-II)+ 2 (resultant vacancies)] for AYUSH doctors should be through seniority or through the NPSC. The Board members gave their opinions that as per the present rules and regulations of the State Government, the group of over-aged seniors would not be eligible to appear for examination and the Board members were also of the opinion that since the AYUSH doctors were appointed by the Government through proper interviews and had been rendering services to the public for more than 10 years, many of them in rural areas, the possibility to absorb them in the regular State Service on humanitarian ground should be explored. The Board resolved to collect relevant and necessary documents such as [i] First Government Appointment Order; [ii] The advertisement for the interview of the post where they were appointed initially; [iii] The nature of the interview/selection procedure; and [iv] Number of years they have served the department. The Board had further

resolved that on receipt of the supporting documents, the proposal would be sent to the Government for absorption of the senior AYUSH doctors in regular State Service.

- [vii] Due to emergence of Covid-19 pandemic, the Cabinet created 11 nos. of posts of Medical Officer [AYUSH] for the CHCs in its Meeting, held on 26.03.2020, and vide Memorandum dated 25.06.2020. The Cabinet further directed to fill up those 11 newly created posts by proper advertisement.
- [viii] By the Notification bearing no. HFW[A]COVID-19/Appt-13/17/2020[Pt]/ 263 dated 02.07.2020, it was inter alia notified that 11 posts of Medical Officer [AYUSH] for CHCs were created. The Notification dated 02.07.2020 was followed by the Advertisement dated 16.07.2020 whereby applications were invited for filling up all 21 nos. of posts of Medical Officer [AYUSH].
- [ix] The petitioners had participated in the selection process undertaken pursuant to the Advertisement dated 16.07.2020 once again and emerged successful in the said selection process. The petitioners' names figured from serial no. 1 to serial no. 10 in the list of 21 selected candidates, notified by the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department vide Notification dated 22.12.2020.
- [x] The petitioners on being so recommended and appointed, continued to discharge their duties and responsibilities.
- [xi] By the Notification dated 02.11.2022 of the Health & Family Welfare Department, Government of Nagaland, it has inter alia been notified that recruitment to 21 nos. of posts of Medical Officer [AYUSH] would be made through a special recruitment drive, conducted by the NPSC and the Nagaland Staff Selection Board. It

has been notified that the maximum age for eligibility would be relaxed upto 45 years as one time dispensation for officers/staff serving on contract/engagement basis under NHM, NSACS, NHAK and State, who had served the Health Care system during the pandemic. The Notification has mentioned about the allocation of marks, reservation for persons with disability, etc.

[xii] After issuance of the Notification dated 02.11.2022, the petitioners stated to have submitted a representation before the respondent no. 3 highlighting that the petitioners had become over-aged for regular recruitment and they after extending more than 16-17 years of to the Government with sincerely, were the seniormost working Medical Officers [AYUSH] but they were not in a position to compete with fresh qualified candidates in competitive examination even if the benefits of age relaxation and grant of additional weightage were granted. The petitioners had represented that 10 posts of Medical Officer [AYUSH] be segregated from the remaining 11 posts of Medical Officer [AYUSH], created during Covid-19 pandemic, and to initiate a process to regularize their services in those 10 posts without bringing the same within the purview of any regular recruitment process.

[xiii] The situation faced by the seniormost Medical Officers [AYUSH] had been taken note of by the respondent no. 3 and the respondent no. 3 in his Communication bearing no. DHFW-18/MISC/2013-14/9904-09 dated 15.11.2022 and addressed to the Commissioner & Secretary to the Government of Nagaland, Health & Family Welfare, had highlighted as under :-

It may be mentioned here that the 10 post of Medical Officer [AYUSH] were existing prior to the pandemic [8 post created in 2018 & 2 existing vacancy]. Against these posts the case of 10 senior most AYUSH doctors who had rendered services more than 15 years

at that time was thoroughly examined by a committee set up by the Government consisting of representatives from H&FW, P&AR, NPSC and Directorate of H&FW. The committee recommended for regularization of the group against the 10 regular sanctioned posts based on certain conditions if they could be supported by documents; which the department fulfilled. However the onset of COVID-19 along with emergency measures taken for containment of the pandemic interrupted the whole process and the considered recommendation of the Committee is yet to be brought back on track.

Therefore, I want to request that the 10 regular sanctioned posts of Medical Officers [AYUSH] mentioned above be segregated from the 11 post of Medical Officers [AYUSH] created for COVID-19, without bringing it within the purview of NPSC recruitment. I also want to request you to kindly initiate the process for the regularization of the 10 senior AYUSH doctors which was withhold during the pandemic.

The respondent no. 3 with the said Communication had also forwarded the necessary supporting documents along with the representation submitted by the ten senior AYUSH doctors.

8. From the above, it is noticed that at present, there are altogether 21 nos. of posts of Medical Officer [AYUSH] in the State Service and the said posts have remained vacant. In the greater public interest, the vacancies in these 21 nos. of posts are required to be filled up in an expeditious manner. The materials on record go to indicate that the Government of Nagaland in the Health & Family Welfare Department has been deliberating with following two situations :-

Firstly, the Board constituted by the Health & Family Welfare Department after creation of 8 [eight] posts of Medical Officer [AYUSH] in its Meeting, held on 18.12.2019, considering the situation faced by the AYUSH doctors

in the State, resolved to forward a proposal for absorption of the group of over-aged senior AYUSH doctors in the then available 10 regular posts of Medical Officer [AYUSH] considering the facts that those Medical Officers [AYUSH] were appointed after a proper selection process and had till then, rendered more than 10 years of service. In the affidavit-in-opposition filed on behalf of the State respondents in this writ petition, a stand has been taken that in spite of such resolution of the Board, no concrete steps/decisions have been taken so far in the matter of absorption of the over-aged senior most AYUSH doctors in terms of the resolution taken by the Board on 18.12.2019. In the Communication dated 15.11.2022 of the respondent no. 3, it has been apprised that the proposal for regularization, as recommended by the Board, has remained without further progress due to onset of Covid-19 pandemic and the said recommendation of the Board for regularization is required to be brought back on track. The respondent no. 3 has urged to initiate the process for regularization of 10 seniormost AYUSH doctors in 10 vacancies of Medical Officer [AYUSH] which were existing prior to emergence of Covid-19 pandemic and which process was withheld during the Covid-19 pandemic.

Secondly, the Health & Family Welfare Department, Government of Nagaland by the Notification dated 02.11.2022, has informed of the decision that the vacancies in 21 nos. of posts of Medical Officer [AYUSH] are to be filled up through a Special Recruitment Drive, to be conducted by the NPSC and the Nagaland Staff Selection Board.

9. The above two situations appear to be in conflict with each other as regards the manner of filling up of 10 vacancies [= 8 (posts created on 09.08.2019) + 2 (resultant vacancies)] in the posts of Medical Officer [AYUSH] is concerned. There is, however, no such conflicting situation as regards the manner of filling up the remaining 11 vacancies in the posts of Medical Officer [AYUSH]. It has been submitted before this Court by the learned counsel representing the Health & Family Welfare Department, Government of Nagaland that no final decision has yet been arrived at in

respect of the Communication dated 15.11.2022 due to pendency of the present writ petition.

10. Having regard to the facts that [a] the petitioners herein have the requisite qualification to be appointed as Medical Officer [AYUSH]; [b] they have rendered services on contractual basis for more than 17 years since 2015-2016; and [c] the petitioners were appointed twice as Medical Officer [AYUSH] on contractual basis only after selection processes; and also the fact that the proposal initiated on 19.12.2019 by the Board has not been brought to its logical conclusion in one way or the other till date, this Court taking note of the fact that it is also necessary, at the same time, to fill up the vacancies existing in 21 nos. of posts Medical Officer [AYUSH] expeditiously, is of the considered view that the Competent Authority in the Health & Family Welfare Department, Government of Nagaland is required to bring the proposal, initiated on 19.12.2019 and highlighted by the respondent no. 3 in its Communication dated 15.11.2022, to a logical conclusion by taking a decision as to whether the 10 nos. of posts of Medical Officer [AYUSH] should be filled up by way of regularization or by undertaking a recruitment process as indicated in the Notification dated 02.11.2022.
11. Having regard to such fact situation obtaining in the case in hand, this Court is of the considered view that this writ petition can be disposed of with the following directions :-
 - [i] The Competent Authority in the Health & Family Welfare Department Government of Nagaland shall bring the proposal, initiated on 19.12.2019 and highlighted by the respondent no. 3 in its Communication dated 15.11.2022, to a logical conclusion by taking a decision as to whether the 10 nos. of posts of Medical Officer [AYUSH] should be filled up by way of regularization or by undertaking a recruitment process as indicated in the Notification dated 02.11.2022. Such decision shall be taken as expeditiously as

possible, preferably within a period of 6 [six] weeks from the date of submission of a certified copy of this order at his office by the petitioners. It is accordingly ordered.

- [ii] The Competent Authority in the Health & Family Welfare Department, Government of Nagaland is, however, at liberty to initiate a recruitment process to fill the remaining 11 nos. vacancies in the post of Medical Officer [AYUSH] out of existing 21 nos. of posts, in the meantime.
- [iii] The Court while issuing notices to the respondents on 09.12.2022, had passed an interim order to the effect that the respondents shall not advertise 10 posts of Medical Officer [AYUSH] and the said interim order is in operation till date. It is observed that such interim order will be in operation till the final decision is taken by the Competent Authority, as directed in Para [i] above.
- [iv] The final decision, as directed in Para [i] above, shall be in the form of a speaking order. After passing of the speaking order the same is to be communicated to the petitioners forthwith thereafter. The interim order shall abide by the final decision taken in the speaking order.

12. With the observations made and the directions given above, the writ petition is disposed of. There shall, however, be no order as to cost.

**Sd/-
JUDGE**

Comparing Assistant