



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

**Case No. : WP(C)/291/2022**

1. LANUKUMZUK AND 11 ORS  
POSTED AT DISTRICT HOSPITAL TUENSANG,  
PIN CODE - 798612
- 2: KHRIEPEKHRIENUO CHRISTINA RUTSA  
POSTED AT NAGA HOSPITAL AUTHORITY KOHIMA  
PIN CODE - 797001
- 3: LUTOVI K. KIHO  
POSTED AT DISTRICT HOSPITAL DIMAPUR  
NAGALAND, PIN CODE - 797117
- 4: KHONZANI A. NGULLIE  
POSTED AT DISTRICT HOSPITAL WOKHA  
NAGALAND, PIN CODE - 797111
- 5: TOSHILILA  
POSTED AT DISTRICT HOSPITAL MOKOKCHUNG  
PIN CODE - 798601
- 6: TIAJUNGLA LEMTUR  
POSTED AT DISTRICT HOSPITAL NOKLAK  
PIN CODE - 798626
- 7: LANUYANGER  
POSTED AT DISTRICT HOSPITAL MOKOKCHUNG  
PIN CODE - 798601
- 8: KEVETHIZO VENYO  
POSTED AT DISTRICT HOSPITAL DIMAPUR  
NAGALAND PIN CODE - 797117
- 9: KELHOUSELIE MATHEW  
POSTED AT DISTRICT HOSPITAL PEREN

PIN CODE - 797101

10: BONGPHEN V. KNOCKLANG  
POSTED AT DISTRICT HOSPITAL MON  
PIN CODE - 798621

11: JEKUTO SWU  
POSTED AT DISTRICT HOSPITAL ZUNHEBOTO  
PIN CODE - 798620

12: KHULU  
POSTED AT DISTRICT HOSPITAL LONGLENG  
PIN CODE - 79862

VERSUS

THE STATE OF NAGALAND AND 2 ORS  
REPRESENTED BY THE CHIEF SECRETARY TO THE  
GOVERNMENT OF NAGALAND, KOHIMA - 797001

2:THE SECRETARY  
DEPARTMENT OF HEALTH AND FAMILY WELFARE  
NAGALAND  
KOHIMA - 797001

3:THE PRINCIPAL DIRECTOR  
DEPARTMENT OF HEALTH AND FAMILY WELFARE  
NAGALAND  
KOHIMA - 797001

**Advocate for the Petitioner** : Mr. C. T. JAMIR, SR. ADV  
Mr. I. Imchen,  
Mr. Aliba Ozukum,  
Ms. Marlyn Rutsa, Adv.

**Advocate for the Respondent** : Mr. Moa Imchen, Sr. Govt. Adv.

**Advocate for the Respondent** No. 2 & 3 : Mr. N. Mozhui,  
Ms. N. Rupreo, Adv.

**Date of hearing** : **24.01.2024**

**Date of judgment** : **04.04.2024**

**BEFORE  
HON'BLE MR. JUSTICE KAKHETO SEMA**

**JUDGMENT & ORDER (CAV)**

**Date : 04-04-2024**

Heard Mr. C. T. Jamir, learned Sr. counsel assisted by Mr. I. Imchen, learned counsel for the petitioners, Mr. Moa Imchen, learned Sr. Government Advocate for the State respondent No.1 and Mr. N. Mozhui, learned counsel for the respondent Nos. 2 & 3.

**2.** The writ petition has been filed to set aside and quash the Corrigendum dated 17/07/2020 issued to the advertisement dated 16/07/2020 by which the 'Regular Appointment' in the post of OT Technician etc. is corrected to be read as 'Temporary Appointment', the Notification dated 02/11/2022 notifying that the post of OT Technician etc. shall be recruited through a Special Recruitment Drive to be conducted by the Nagaland Staff Selection Board (NSSB) and for a direction to modify the appointment order of the petitioners dated 03/09/2020 in terms of the advertisement dated 16/07/2020 and to issue formal regularization order in respect of the service of the petitioners.

**3.** In the backdrop of the unprecedented situation arising out of COVID-19 pandemic and the need to address the inadequacies of the State Health system including the shortage of manpower at the required level, the State Cabinet in its meeting held on 23/06/2020 approved for the creation of various posts in the department of Health & Family Welfare, including the 13(thirteen) posts of OT Technician for the District Hospital and for filling up the posts within a month's time with proper advertisement. By the meeting minutes, the Cabinet, also directed the department to clearly indicate that the appointment will be temporary and the regular recruitment will be conducted through special NPSC Recruitment Drive. The minutes of the Cabinet Meeting held on 23/06/2020 was brought out in the Memorandum dated 25/06/2020 issued by the Government of Nagaland, Cabinet Secretariat (Cabinet Cell).

**4.** Pursuant to the issuance of the Memorandum dated 25/06/2020, the Commissioner & Secretary to the Government of Nagaland, Health & Family

Welfare Department, issued the notification dated 02/07/2020, ordering the creation of various category of post under the Health & Family Welfare Department, including the 13(thirteen) posts of OT Technician for the District Hospitals. Thereafter, the notification dated 05/07/2020 was issued by the Government framing the basic guidelines for recruitment to the various categories of the newly created posts in the department. The notification dated 05/07/2020 inter-alia provided that all the newly created post shall be filled up by the department within a month's time with proper advertisement and all the appointments will be made on temporary/fixed basis and the regular recruitment shall be conducted through a special NPSC Recruitment Drive for the post coming under the purview of the NPSC.

**5.** That the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima/the respondent No. 3, issued the advertisement dated 16/07/2020 inviting applications for recruitment to the newly created post of OT Technician, on regular basis, through the Department Recruitment Board (DRB). The advertisement provided that the terms and conditions and the prescribed format of application can be downloaded from the department's website and the last date for submission of the application was made on 25/07/2020. The terms and conditions of the advertisement dated 16/07/2020 inter-alia provided that 'those who have resigned from contractual service without any valid reason(s) during the COVID-19 pandemic crisis shall not be eligible to apply for this recruitment drive'.

**6.** That pursuant to the issuance of the advertisement dated 16/07/2020, the respondent No. 3, issued the Corrigendum No. DHFW/COVID-19/2019-2020 dated 17/07/2020, to the advertisement dated 16/07/2020, inter-alia providing that the 'Regular Appointment' in the case of OT Technician, ECG Technician etc. shall be read as 'Temporary Appointment'. The corrigendum dated 17/07/2020 was uploaded in the website of the department.

**7.** That in response to the advertisement dated 16/07/2020, the petitioners applied for the post of OT Technician and qualified the selection process conducted by the Department Recruitment Board (DRB) and consequent to which the Secretary to the Government of Nagaland, Health & Family Welfare

Department/respondent No.2, wrote the letter dated 29/08/2020 to the respondent No.3, conveying the administrative approval of the DRB recommendation for temporary appointment of the petitioners, on merit, to the 12(twelve) posts of OT Technician (Grade-III). The letter dated 29/08/2020 also conveyed that the terms and conditions of recruitment/appointment will be governed by the department's notification dated 05/07/2020.

**8.** The respondent No.3 accordingly issued the order dated 03/09/2020 temporarily appointing the petitioners to the post of OT Technician on contract basis for a period of 1(one) year in the Pay Matrix Rs. 20500/- P.M level-5 plus all other allowances as are admissible under the rules from time to time in Nagaland with immediate effect.

**9.** That by the order dated 08/03/2022 issued by the respondent No. 3, the temporary engagement of the petitioners as OT Technician was extended for another period of 1(one) year with effect from 03/09/2021 upto 02/09/2022.

**10.** That the State Cabinet in its meeting held on 25/05/2022 at Agenda No.6 approved the Relaxation of Recruitment Rules for Special Recruitment of Health Care Workers. Consequent thereto, the respondent No.2 issued the notification dated 02/11/2022 notifying the posts to be recruited through the Special Recruitment Drive including the posts of OT Technicians held by the petitioners. The said notification also provided that weightage of 25% i.e. 125 marks from the total aggregate mark and age relaxation upto a maximum of 45 years shall be extended, as a onetime measure, to the medical personnels who had served the health care system during the pandemic.

**11.** That subsequent to the issuance of the notification dated 02/11/2022, the petitioners along with the ECG Technician has submitted the joint representation dated 10/11/2022, to the respondent No.3, to review the notification dated 02/11/2022 and to consider the appointment of the petitioners on regular basis in terms of the advertisement dated 16/07/2020. In the representation, the petitioner has also mentioned that the post in pay level-5 does not come within the purview of the NPSC and therefore, the petitioners were regularly appointed to the post through the Department Recruitment Board. The representation had further stated that the corrigendum dated

17/07/2020 made to the advertisement dated 16/07/2020 was never published nor brought to the notice of the petitioners.

**12.** That the petitioners' extension of service was further examined by the P&AR department and the department vide the U.O. No. 963 dated 24/11/2022 has conveyed clearance for extension of the engagement service of the petitioners for a period of 1(one) year i.e. from 03/09/2022 to 02/09/2023 or till the recruitment is made through the Nagaland Staff Selection Board.

**13.** Mr. C.T. Jamir, learned Sr. counsel for the petitioners, at the outset submits that pursuant to the advertisement dated 16/07/2020 the petitioners successfully appeared the selection process for the post of OT Technician and was issued with the appointment order dated 03/09/2020 by the respondent No.3. It is however submitted that the petitioners were not appointed on regular basis as stipulated in the advertisement dated 16/07/2020 but were appointed only on temporary/contractual basis in total disregard to the terms and conditions of the advertisement. Mr. C.T. Jamir therefore submits that the action of the State respondents inviting applications for recruitment on regular basis but thereafter appointing the petitioners on temporary/contractual basis after successfully undergoing the selection process is *ex-facie* illegal. Mr. C. T. Jamir accordingly submits that the action resorted to by the State respondents is a clear case where the State respondents has changed the rules of the game after the game has been played, which is impermissible.

**14.** In support of his submission, the learned Sr. counsel has relied in the case of **Madan Mohan Sharma & Another -versus- State of Rajasthan & Others**, reported in **(2008) 3 SCC 724**, in which the Hon'ble Supreme Court has held that once the advertisement has been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

**15.** The learned Sr. counsel has also relied in the case of **K. Manjusree -versus- State of Andhra Pradesh & Another**, reported in **(2008) 3 SCC 512** and also in the case of **Ramesh Kumar -versus- High Court of Delhi & Another**, reported in **(2010) 3 SCC 104**, in support of the contention that

once the post has been advertised for recruitment on regular basis the successful candidates cannot be appointed on contractual basis in violation of the terms of the advertisement. In both the cases referred to above, the Hon'ble Supreme Court has held that the introduction of a new requirement after the entire selection process was completed would amount to changing the rules of the game after the game was played, which is clearly impermissible.

**16.** The learned Sr. counsel further submits that as the appointment of the petitioners was contrary to the terms and conditions of the advertisement dated 16/07/2020, the petitioners agitated before the authorities who, however, pacified the petitioners conveying that their regular orders of appointment will be formally issued in due course of time. However, despite the passage of time no changes were made in the nature of the appointment of the petitioners. Mr. C.T. Jamir submits that although arbitrary conditions of service has been incorporated in the appointment order of the petitioners restricting it to be an appointment on contract basis, contrary to the terms and conditions of the advertisement, the petitioners not being in equal bargaining position with the official respondents has been forced to accept the contractual appointment which is not only arbitrary but in clear violation of the terms and conditions of the advertisement dated 16/07/2020.

**17.** The learned Sr. counsel by relying in the case of **Somesh Thapliyal & Another -versus- Vice Chancellor H.N.B. Garhwal University & Another**, reported in **(2021) 10 SCC 116**, submits that, though, the employer is always in a dominating position and it is opened to the employer to dictate the terms of the employment and the employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of the employment, the higher court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of the employment that would cost his/her job. Mr. C.T. Jamir has accordingly submitted that non-challenge to the order dated 03/09/2020 appointing the petitioners on contractual basis, in the present writ petition, is not fatal and the Hon'ble Court, in exercise of its powers under Article 226 of the Constitution of India, can direct the respondent authorities to appoint the petitioners on substantive basis in terms of the

advertisement dated 16/07/2020.

**18.** In regard to the corrigendum dated 17/07/2020 issued to the advertisement dated 16/07/2020, the learned Sr. counsel submits that the petitioners were not made aware of the Corrigendum dated 17/07/2020 as it was never published or brought to the notice of the petitioners but was discreetly issued only at a later time. Mr. C.T. Jamir accordingly submits that the corrigendum dated 17/07/2020 cannot be enforced on the petitioners to unilaterally change the terms and conditions of the advertisement dated 16/07/2020 from 'regular appointment' to 'temporary appointment' without due notice to the petitioners.

**19.** In regard to the impugned notification dated 02/11/2022, by which various posts in the department, including the post of OT Technician held by the petitioners, has been notified to be recruited through the Special Recruitment Drive to be conducted by the NPSC and the NSSB, the learned Sr. counsel by referring to the Clause-B of the Memorandum dated 25/06/2020 submits that the regular recruitment would only be in respect of those posts created by the Cabinet on 23/06/2020, which fell within the purview of the NPSC but not the post of OT Technician. Mr. C.T. Jamir submits that when the post of OT Technician for the District Hospitals were created by the Cabinet on 23/06/2020 and also when the said post was advertised on 16/07/2020, the NSSB was not in existence. The said body was constituted by the Government only by the Notification dated 20/07/2020 and published in the Nagaland Gazette on 31/07/2020. It is, therefore, submitted that the Clause-B of the Memorandum dated 25/06/2020 has no application to the petitioners and their appointment should be made only in terms of the selection process conducted by the Department Recruitment Board pursuant to the advertisement dated 16/07/2020 for regular appointment. The learned Sr. counsel submits that if the Notification dated 02/11/2022, is allowed to operate it would amount to re-advertisement of the post against which the petitioners have already been regularly appointed by the DRB. It is submitted that against the notification dated 02/11/2022, the petitioners have submitted the representation dated 10/11/2022 to the department to review the said notification and to restore

their appointment as per the conditions notified in the advertisement dated 16/07/2020, however, no action has been taken by the department to redress the grievance of the petitioners till the filing of the present writ petition.

**20.** Mr. N. Mozhui, the learned counsel for the respondent Nos.2 & 3 on the other hand submits that the Cabinet in its meeting held on 23/06/2020 created different categories of posts in the Health & Family Welfare department, during the pandemic. In the Memorandum dated 25/06/2020 incorporating the minutes of the Cabinet meeting dated 23/06/2020, Mr. N. Mozhui has particularly referred to the Clause-b of the said Memorandum, wherein the Cabinet had directed the department to clearly indicate that the appointment will be temporary and regular recruitment shall be conducted through Special NPSC Recruitment Drive. Mr. N. Mozhui accordingly submits that as all the posts created during the pandemic were initially filled up only on temporary basis, with the constitution of the NSSB, the post not falling within the purview of the NPSC has to be regularly filled up through the NSSB and there is no infirmity in the notification dated 02/11/2022 notifying that the Special Recruitment Drive for the post of OT Technician shall be conducted by the NSSB.

**21.** Mr. N. Mozhui also submits that, subsequent to the advertisement dated 16/07/2020 for regular recruitment to the 12(twelve) posts of OT Technician for District Hospitals, the corrigendum dated 17/07/2020 was issued by the department, clarifying that the 'regular appointment' as published in the advertisement dated 16/07/2020 will stand corrected as 'temporary appointment'. Mr. N. Mozhui submits that the word 'regular appointment' as appearing in the advertisement dated 16/07/2020 was inadvertently inserted due to the oversight of the department and therefore, the corrigendum dated 17/07/2020 was immediately uploaded in the website of the department and made accessible to all the candidates intending to apply for the post. It is, therefore, submitted that, the stand taken by the petitioners that the corrigendum dated 17/07/2020 was discreetly issued at the back of the petitioners is farfetched and out and out false. Such submission, it is made, only to overcome the delay in belatedly challenging the corrigendum in time and to seek undue benefits of the advertisement dated 16/07/2020.

**22.** Mr. N. Mozhui further submits that, consequent to the memorandum dated 25/06/2020, incorporating the minutes of the Cabinet dated 23/06/2020, the Government of Nagaland, in the Health & Family Welfare department, has issued the notification dated 05/07/2020, framing the basic guidelines for recruitment to the various categories of posts. In Serial No.2 of the said notification, it is provided that the appointment will be temporary/fixed and regular recruitment shall be conducted through a Special NPSC Recruitment Drive for all the posts coming under the purview of the NPSC. It is accordingly submitted that since all the categories of posts created by the Cabinet during the pandemic were only on temporary/fixed basis, a regular process of recruitment is to be undertaken to fill up all the posts and therefore, the petitioners cannot claim regular appointment to the post merely on the ground that the selection process had been conducted by the DRB and the post of OT Technician falls outside the purview of the NPSC.

**23.** Mr. N. Mozhui further submits that, keeping in view the selfless service and sacrifices rendered by the medical personnels during the COVID-19 pandemic, the department prepared the Cabinet Memorandum dated 13/05/2022 for relaxation of the Recruitment Rules and for a Special Recruitment Drive of the health workers who had worked on COVID-19 duties during the pandemic in government or private COVID-19 facilities for at least 100 days, for appointment on regular basis. In the Cabinet Memorandum, the department had proposed that, the service rules in force in the department would be relaxed, as a onetime measure, and it was inter-alia proposed that weightage/benefit of 25% from the total component of the marks would be extended to those Health Care Workers who had worked on COVID-19 duties besides relaxing the maximum age upto 45 years. This relaxation/benefit was also proposed to be extended for recruitment to the other post, including the post of OT Technicians which were created during the COVID-19 pandemic. The Cabinet memorandum submitted by the department for relaxing the recruitment rules for the Special Recruitment Drive of the Health Care Workers was approved by the Cabinet in its meeting held on 25/05/2022.

**24.** Mr. N. Mozhui, then submits that consequent to the Cabinet decision

dated 25/02/2022, the Government of Nagaland in the Health & Family Welfare Department, issued the notification dated 02/11/2022 for a Special Recruitment Drive of various categories of posts created by the Cabinet during the COVID-19 pandemic by granting 25% of the mark i.e. 125 marks from the total aggregate mark along with age relaxation upto 45 years for COVID-19 duties. In the notification dated 02/11/2020, it was mentioned that the Special Recruitment Drive for the post of OT Technician shall be conducted by the NSSB. Mr. N. Mozhui accordingly submits that substantial weightage of marks and age relaxation, has been extended to the petitioners in the Special Recruitment Drive considering the selfless service rendered by the petitioners during the unprecedented COVID-19 pandemic.

**25.** Mr. N. Mozhui, lastly submits that it is only after the issuance of the impugned notification dated 02/11/2022 that the petitioners has also challenged the corrigendum dated 17/07/2020 by taking the plea that the corrigendum dated 17/07/2020 was never published/notified by the department. The learned counsel while reiterating the earlier submission submits that the very fact that the petitioners had accepted the order dated 03/09/2020 appointing them on temporary/contract basis demonstrates that the petitioners had the knowledge of the corrigendum dated 17/07/2020. There is, therefore, a deliberate and intentional delay in challenging the corrigendum dated 17/07/2020. Insofar as the impugned notification dated 02/11/2022 is concerned, it is submitted that in the absence of a challenge to the letter dated 29/08/2020 issued by the respondent No.2 granting administrative approval of the Government for appointing the petitioners on temporary basis and the order dated 03/09/2020 issued by the respondent No.3 appointing the petitioners on temporary/contractual basis, no challenge can be laid to the impugned notification dated 02/11/2022 notifying that the post of OT Technician shall be recruited through a Special Recruitment Drive to be conducted by the NSSB. In other words, Mr. N. Mozhui has submitted that when the petitioners have not impugned the letter dated 29/08/2020 and the order dated 03/09/2020 appointing the petitioners on temporary/contractual basis, no challenge can be laid to the notification dated 02/11/2022 for conducting regular recruitment

through the NSSB.

**26.** Heard the learned counsel for the parties.

**27.** The Cabinet in its meeting held on 23/06/2020, in Agenda No.1, approved the creation of the various posts of Doctors, nurses and other para-medical staffs in the Health & Family Welfare Department to meet the challenges brought about by the COVID-19 pandemic. This included the posts of the OT Technicians, which is relevant for the present case. The minutes of the Cabinet meeting was brought out in the Memorandum dated 25/06/2020 issued by the Government of Nagaland, Cabinet Secretariat (Cabinet Cell).

**28.** The Memorandum dated 25/06/2020 inter-alia provided as follows;

*“The Cabinet further directed that:*

- (A) *All the newly created posts should be filled up by the H&FW department within a month’s time with proper advertisement. While filling up the posts, due weightage should be given to the marks obtained by the candidate in the qualifying degree of the university/Medical college and years of work experience. The interview panel should include independent experts from outside the State.*
- (B) *The department should clearly indicate that these appointments will be temporary and regular recruitment shall be conducted through special NPSC recruitment drive.*
- (C) *.....*
- (D) *.....*
- (E) *.....*
- (F) *The earlier decision of the Cabinet to regularize the services of the existing contractual employees and the new appointee stands revoked in view of the legal opinion given.”*

**29.** Pursuant thereto, the Government of Nagaland in the Health & Family Welfare Department, issued the notification dated 02/07/2020 creating various categories of posts under the Health & Family Welfare Department.

**30.** Thereafter, the Government of Nagaland in the Health & Family Welfare Department issued the notification dated 05/07/2020 framing the basic guidelines for recruitment and the service conditions of the Medical Officers,

Nurses, Technicians and other para-medical staffs. This Notification inter-alia provided that:

*“1. All the newly created posts should be filled up by the H&FW department within a month’s time with proper advertisement. While filling up the posts, due weightage should be given to the marks obtained by the candidate in the qualifying degree of the university/Medical college and years of work experience. The interview panel should include independent experts from outside the State.*

*2. These appointment will be temporary/fixed and regular recruitment shall be conducted through a special NPSC recruitment drive for all the post coming under the purview of NPSC.*

*3.....*

*4.....*

*7. The earlier decision of the Cabinet to regularize the services of the existing contractual employees and new appointee stands revoked in view of the legal opinion given.”*

The Notification dated 05/07/2020 more or less reiterated the minutes of the Cabinet meeting held on 23/06/2020.

**31.** The advertisement dated 16/07/2020 was thereafter issued by the respondent No.3 inviting applications for recruitment to the newly created post of OT Technician on regular basis under the Department of Health & Family Welfare through the Department Recruitment Board (DRB). The advertisement dated 16/07/2020 reads as follows;

**“GOVERNMENT OF NAGALAND  
DIRECTORATE OF HEALTH & FAMILY WELFARE  
NAGALAND : KOHIMA**

*Dated Kohima, the 16<sup>th</sup> July 2020*

**ADVERTISEMENT**

*No. DHFW-5/TRG/COVID-19/ECG/2019-2020/5019-22 : In pursuance to Notification No. HFW(A)COVID-19/Appt-13/17/2020(Pt)/263 dated 2<sup>nd</sup> July 2020, applications are invited for recruitment against newly created posts on Regular Basis under the Department of Health & Family Welfare through the*

*Department Recruitment Board, in the manner prescribed below:*

1. *Name of post : OT Technician*
2. *No. of post : 13(thirteen) posts for 11 District Hospitals*
3. *Pay Matrix & Level : Level 5 (Pay Matrix: 20500-65100)*
4. *The Terms and Conditions and Prescribed Format of Applications can be downloaded from the department website: [nagahealth.nagaland.gov.in](http://nagahealth.nagaland.gov.in)*
5. *Last Date of Submission of Applications shall be 25<sup>th</sup> July 2020. Duly filled application in PDF format along with requisite supporting documents should be submitted through email to:-[hfw.recruitment2020@gmail.com](mailto:hfw.recruitment2020@gmail.com)*

**N.B:**

*-No application forms will be issued from the office.*

*-Incomplete application, if submitted will be rejected summarily. List of rejected application will be published in the office Notice Board.*

*Sd/-*

*(DR. VIZOLIE Z.SUOKHRIE)  
Principal Director,  
Directorate of Health & Family Welfare  
Nagaland : Kohima."*

The terms and conditions for recruitment of OT Technician also provided that *"Those who have resigned from contractual service without any valid reason(s) during the COVID-19 pandemic crisis shall not be eligible to apply for this recruitment drive."*

**32.** Pursuant to the issuance to the advertisement dated 16/07/2020, the respondent No.3, issued the Corrigendum dated 17/07/2020 which reads as follows;

***"GOVERNMENT OF NAGALAND  
DIRECTORATE OF HEALTH & FAMILY WELFARE  
NAGALAND : KOHIMA***

*Dated Kohima, the 17<sup>th</sup> July 2020*

**CORRIGENDUM**

*No. DHFW/COVID-19 /2019-2020/ In connection with  
Advertisement dated 17<sup>th</sup> July 2020, on the following recruitment  
drive for various posts, the following corrections are hereby made*

for the under mentioned post and read as follows;

A.....

B.....

C. "Regular Appointment" in case of OT Technician, ECG Technician, Laboratory Technician, Radiographer/X-Ray Technician and Staff Nurse to be read as "Temporary Appointment."

E.....

F.....

Sd/-

(DR. VIZOLIE Z.SUOKHRIE)  
Principal Director,  
Directorate of Health & Family Welfare  
Nagaland : Kohima."

**33.** In response to the advertisement dated 16/07/2020, the petitioners applied for the post of OT Technician and qualified the selection process conducted by the Department Recruitment Board (DRB). The respondent No.2 accordingly wrote the letter dated 29/08/2020 to the respondent No.3, conveying the administrative approval of the Government for temporary appointment of the petitioners to the post of OT Technician. Consequent thereto, the respondent No.3 issued the order dated 03/09/2020 temporarily appointing the petitioners to the post of OT Technician on contract basis for a period of 1(one) year.

**34.** The main thrust of submission of Mr. C.T. Jamir is that when the department has issued the advertisement dated 16/07/2020 inviting applications for recruitment of the petitioners to the post of OT Technician on regular basis, the order dated 03/09/2020, issued by the respondent No.3 appointing the petitioners on temporary/contractual basis is in violation of the terms and conditions of the advertisement and is therefore *ex-facie* illegal.

**35.** It is, however, noticed that right from the time of issuance of the Memorandum dated 25/06/2020 incorporating the minutes of the Cabinet meeting dated 23/06/2020, all the categories of posts created in the department, during the pandemic, were to be filled up only on temporary basis with a stipulation that the regular recruitment will be conducted through the

Special NPSC Recruitment Drive. This condition of recruitment was also incorporated in the notification dated 05/07/2020 issued by the Government and in the letter dated 29/08/2020 issued by the respondent No.2 conveying the administrative approval for appointment of the petitioners to the post of OT Technician on temporary basis. All these demonstrates that the appointment to the various posts created during the pandemic were to be initially filled up only on temporary basis and thereafter by a regular process of recruitment. This finding is also supplemented by the decision of the Cabinet wherein it has been resolved that all earlier decision of the Cabinet to regularize the services of the existing contractual employees and new appointees shall stand revoked in view of the legal opinion furnished to the Government.

**36.** In regard to the Corrigendum dated 17/07/2020, though Mr. C.T. Jamir has strenuously argued that the petitioners had no knowledge of the corrigendum as the same was never published nor notified to the petitioners, the submission made by Mr. N. Mozhui that the corrigendum dated 17/07/2020 was uploaded in the website of the department immediate to the advertisement dated 16/07/2020 in the same manner the application form was uploaded and made accessible to the petitioners finds more acceptance of this Court. It is unfathomable that the corrigendum dated 17/07/2020 which was issued in the website of the department immediate to the advertisement dated 16/07/2020 in which the last date for submission of the application form was mentioned as 25/07/2020 could have escaped the notice of the petitioners. Moreover, the fact that the petitioners had accepted the order dated 03/09/2022 appointing them on temporary/contract basis itself makes it abundantly clear that the petitioners were well seized of the Corrigendum dated 17/07/2020 after the same was uploaded in the website of the department.

**37.** The selection process to the post of OT Technician was conducted by the department only consequent to the advertisement dated 16/07/2020 and the corrigendum dated 17/07/2020. The petitioners were thereafter appointed on temporary/contract basis in the light of the said advertisement and the corrigendum. Therefore, the submissions made by the learned Sr. counsel for the petitioners that the corrigendum dated 17/07/2020 was issued only at a later stage to change the terms and conditions of the advertisement dated

16/07/2020 cannot be accepted and the decision relied upon by the learned Sr. counsel in support of his case that the rules of the game cannot be changed after the game has been played and the petitioners were compelled to accept the arbitrary terms and conditions of the appointment as the bargaining power was with the Government has no relevance to the case in hand for the reason that the petitioners were appointed by the order dated 03/09/2020 in terms of the advertisement dated 16/07/2020 and the Corrigendum dated 17/07/2020.

**38.** The advertisement dated 16/07/2020 and the Corrigendum dated 17/07/2020 has to be read conjointly and not in isolation. From a conjoint reading of the advertisement and the corrigendum it can be inferred that the advertisement for recruitment to the post of OT Technician was made on temporary basis and not otherwise. This Court, therefore, cannot find any infirmity with the order dated 03/09/2020, issued by the respondent No. 3, appointing the petitioners on temporary/contract basis. In the case of **The High Court of Hyderabad and Another -versus- P. Murali Mohana Reddy and Others** reported in **(2019) 3 SCC 672**, the Hon'ble Supreme Court has held that appointments are to be made in terms of the stipulations contained in the advertisement, so also in the case of **Union of India -versus- S. Vinodh Kumar**, reported in **(2007) 8 SCC 100**, the Hon'ble Supreme Court has held that, it is well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. The petitioners are therefore, estopped from claiming regular appointment after having participated in the selection process consequent to the advertisement dated 16/07/2020 and the Corrigendum 17/07/2020 and after having accepted the order dated 03/09/2020.

**39.** On the submission made by the learned Sr. counsel for the petitioners that, the Special Recruitment Drive is only in respect of the post falling within the purview of the NPSC but not the post of OT Technicians held by the petitioners, this Court is not inclined to accept such a submission. It is noticed that the various categories of posts created by the Cabinet during the pandemic were all created on temporary basis. It is a fact that when the post of OT Technicians was created, the NSSB, had not come into existence and it was formally constituted only on 31/07/2020. However, this by itself does not give

any right to the petitioners to be regularly appointed on the basis of the selection process conducted by the District Recruitment Board considering that the recruitment to all the posts created during the pandemic were to be filled up only on temporary basis until such time, a regular process of recruitment was to be undertaken to fill up the posts.

**40.** This Court has also noted that for the selfless sacrifice rendered by the petitioners during the COVID-19 pandemic substantial concession/benefits has been extended to the petitioners and similarly circumstanced persons in the Special Recruitment Drive by granting weightage of 125 marks from the total aggregate of marks and relaxation of age up to 45 years for the COVID-19 duties and this is brought out in the notification dated 02/11/2022. The petitioners, therefore, cannot claim that the notification dated 02/11/2022 is discriminatory and in violation of the advertisement dated 16/07/2020.

**41.** Another question which raises for the consideration of this Court is whether without impugning the order dated 03/09/2020 the petitioners can claim any relief for regularization of their service. The petitioners were appointed by the order dated 30/09/2020 on temporary/contractual basis and the petitioners had accepted the appointment without any objection. Therefore, without laying a challenge to the order dated 03/09/2020 the petitioners cannot take the plea that the terms and conditions appointing them on temporary/contractual basis is arbitrary and discriminatory, when in fact, they have accepted the order of appointment dated 03/09/2020 and is serving the department. The law is well settled that a person cannot at the same time accept and reject the order/instrument. The case of the petitioners, in the considered opinion of this Court must also fail on this count. In the case of **Shyam Telelink Ltd. -versus- Union of India**, reported in **(2010) 10 SCC 165**, the Hon'ble Supreme has held as follows;

*“23. The maxim qui approbat non reprobatur (one who approves cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approve and reprobate or accept and reject the same*

*instrument.”*

**42.** The petitioners have impugned the corrigendum dated 17/07/2020 and the notification dated 02/11/2022. Since this Court has already rejected the contention of the petitioners that the corrigendum dated 17/07/2020 was issued at the back of the petitioners, this Court finds that there is a deliberate and intentional delay in impugning the corrigendum dated 17/07/2020. Furthermore, it is seen that both the corrigendum dated 17/07/2020 and the notification dated 02/11/2022 has been issued in terms of the Memorandum dated 25/06/2020 incorporating the minutes of the Cabinet held on 23/06/2020, the notification dated 05/07/2020 issued by the Government framing the basic guidelines for recruitment to the posts created during the pandemic and the letter dated 29/08/2020 issued by the Government granting administrative approval for appointing the petitioners on temporary basis. Therefore, without laying a challenge to the aforesaid policy decisions of the Government which has been brought out in the memorandum/notification etc., no right accrues to the petitioners to challenge the corrigendum dated 17/07/2020 and the notification dated 02/11/2022.

**43.** In **Amarjeet Singh & Others -versus- Devi Ratan & Others**, reported in **(2010) 1 SCC 417**, the Hon'ble Supreme Court has held that a party is under legal obligation to challenge the basic order and if and only if the same is found to be wrong the consequential order may be examined.

**44.** In the case of **Amina Marwa Sabreen, (A Minor) & Others -versus. State of Kerala & Others**, reported in **(2018) 14 SCC 193**, the Hon'ble Supreme Court while dealing with grant of relief not claimed for in the writ petition has held that when there is no prayer in the writ petition seeking quashing of the Government order and no attempt has been made by the petitioner to amend the writ petition to incorporate and challenge the said Government order despite the State having pointed out the fundamental infirmity, it is not permissible for the petitioner to seek relief only by making oral submission on the issue.

**45.** In the light of the discussions made above, this Court does not find any

merit in the writ petition and the same is therefore liable to be dismissed.

**46.** The writ petition accordingly stands dismissed. No cost.

Sd/-

**JUDGE**

**Comparing Assistant**