

GAHC020007362022



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

Case No. : WP(C)/295/2022

MR. FOMPA KONYAK
S/O SHANYEM KONYAK, R/O CHENMOHO VILLAGE, MON, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY/SECRETARY,
DEPARTMENT OF WORKS AND HOUSING, GOVT. OF NAGALAND 2:THE
ENGINEER-IN-CHIEF
NPWD
GOVT. OF NAGALAND
KOHIMA NAGALAND

3:THE CHIEF ENGINEER
PWD(HOUSING) DIVISION
GOVT. OF NAGALAND

4:DEPUTY COMMISSIONER
MON
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI,
ESTHER,LHOUSINO,VIKETSONO

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

07.11.2024

Heard Ms. Esther, learned counsel for the petitioner. Also heard Mr. K. Angami, learned Sr. Government Advocate for the State.

2. The petitioner before this Court is seeking a direction to consider the petitioner's case for appointment to a Grade-IV post in terms of the Office Memorandum No. LR/LAND-PLCY/5-26/2011 dated 16.04.2018, OM No. AR-3/GEN/174/2007(Pt) dated 03.03.2022 and Addendum No. CNE-1/GEN/2015/792 dated 18.10.2022 as per the land policy.

3. It is submitted that on the request made by the department and the District Administration, the petitioner's father Shri Shanyem Konyak donated a land measuring 2 bighas for the said purpose. The plot of land was donated to the PWD (Housing) Department in the year 1984 and thereafter, the PWD(Store) Department constructed a store on the said plot of land. It is submitted on behalf of the petitioner that inspite of several representations preferred and requests made before the concerned authority, the prayer of the petitioner was not considered for appointment under the land policy notified under the Office Memorandum No. LR/LAND-PLCY/5-26/20114 dated Kohima, the 16th April, 2018. The learned counsel for the petitioner submits that the claim of the petitioner is bonafide and the department is required to actively consider the same in terms of the policy notified. The learned counsel for the petitioner has also pointed out to the affidavit filed by the respondents No. 1, 2, 3 and 4. The learned counsel has referred to

a communication No. GA/JUD-15/2024/2425 dated Mon, the 7th March 2024 issued by the Deputy Commissioner of Mon, Nagaland to the Engineer-in-Chief, Nagaland Public Works Department, Kohima, Nagaland. The learned counsel for the petitioner submits that as per this communication, it is mentioned that upon due verification, the land in question had found to have belonged to the petitioner's father Shri Shanyem Konyak who was the resident of Chenmoho Village in the District of Mon and also no appointment or other benefits were awarded/given to the land donor or his family members till date. The learned counsel for the petitioner therefore submits that when it is the admitted stand of the respondent department that the petitioner's father donated land to the PWD for its use, a direction be issued to the department to consider the claim of the petitioner for appointment in the post of a Chawkidar which is vacant and available.

4. The learned Senior Government Advocate on the other hand disputes the claim of the petitioner. He submits that the communication dated 07.03.2024 issued by the Deputy Commissioner is based on a report given by the Sub Divisional Officer (Civil), Office of the Deputy Commissioner, Mon and a copy of the said communication is enclosed to the said affidavit. Referring to the said communication also dated 07.03.2024, he submits that it is clearly stated in the said communication that there was no verbal or oral agreement made with the petitioner's father or department and whether the land was actually donated by the father of the petitioner could not be ascertain due to lack of any documentary evidence. He further submits that in terms of the Office Memorandum dated 16.04.2018, it is categorically provided that

Clause-2 of the said office memorandum that old cases where Administrative headquarters and Block headquarters were set up in various parts of the State on lands donated freely by individuals villages or people of that area should not be reopened for compensation or for employment or other facilities in consonance with the policy brought out vide Memorandum No. LR/-135/76 dated 20.06.1977. He therefore submits that in the absence of any materials available with the department, it could not be ascertained whether the land belongs to the petitioner's father and that apart even if the land was actually donated, it was way back in 1984 and therefore it is covered by Clause-2 of the said Office Memorandum and accordingly the same should not be reopened. The petitioner therefore does not have any merit in the petition filed and the same should therefore be dismissed.

5. The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused. The respondents have filed their affidavits contesting the claims for the petitioner.

6. The petitioner has a specific claim that his father donated a plot of land for construction of PWD (Housing) Store in the village of Chen Town District Mon, Nagaland. That land was donated upon an assurance received from the authorities that member of his family will be given a Grade-IV appointment in the office. Such contentions of the petitioner are supported by averments made in Paragraph-4 and Paragraph-12 of the writ petition. The claim of the petitioner is that in terms of the land policy since the father of the petitioner had donated a plot of land, the petitioner is entitled to an appointment in terms of the said policy.

7. The Government of Nagaland has notified the Office Memorandum dated 16.04.2018. Since for the purposes of this case, the Office Memorandum is relevant, the same is reproduced below:

“Government of Nagaland

Land Revenue Department

Dated Kohima, the 16th April, 2018

OFFICE MEMORANDUM

No. LR/LAND-PLCY/5-26/2011 : : Inspite or repeated directions from the State Government many departments are not adhering to the Government Rules/Policy with regard to land donated by individual, communities villages etc. with the conditions for employment to government service or contractual works or other facilities on landownership basis.

All concerned / departments are once again reminded to take note of the following and to strictly comply with the laid down Rules/Policy.

1. (a) It has been laid down vide Notification No. LR/4-3/KOH/2003 dated 26.07.2005 that no land shall be acquired free of cost and all land shall be acquired on payment of full compensation as determined by law No further condition for employment in service or contractual works should be entertained. Therefore, in case any Department has entered into any agreement with the landowners in deviation of the laid down policy on or after 26.07.2005 such agreement shall be treated as null and void. The Department concerned shall take necessary action accordingly to nullify such agreement.

(b) In case the Department concerned is of the view the agreement should not be declared null and void, it shall refer it with relevant details giving justification to the Department of Land Revenue for examination and advice in consultation with P&Ar and Justice & Law Departments and thereafter submit the matter for consideration and decision of the Cabinet.

2. Old cases where Administrative headquarters and Block headquarters were set up in various parts of the State on lands donated freely by individuals villages or people of that area should not be reopened for compensation or for employment or

other facilities in consonance with the policy brought out vide Memorandum No. LR// -135/76 dated 20.06.1977.

3(a) In other cases prior to 26.07.2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land, where a specific written / oral agreement exist 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 persons 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 perpetually. 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 descendants 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.

4. Any government official acting in contravention to the government Rules/ policy shall be liable for disciplinary action as per the provision laid down in "The Nagaland Government Servants Conduct Rules, 1968.

Sd/- Temjen Toy

Chief Secretary to the Government of Nagaland"

8. While Clause-2 of the Office Memorandum reflects that old cases where Administrative headquarters and Block headquarters were set up in various parts of the State on lands donated freely by

individuals villages or people of that area should not be reopened for compensation or for employment or other facilities in consonance with the policy brought out vide Memorandum No. LR/-135/76 dated 20.06.1977. However Clause-3(a) specifies that in other cases prior to 26.07.2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land, where a specific written/oral agreement exist providing for employment or other facilities, claims of the land owners for employment or other facilities are to be referred to the Deputy Commissioner of the concerned district who shall examine such claims carefully.

9. In terms of the said provisions of the Office Memorandum, the matter was examined by the Deputy Commissioner, Mon. In his communication to the Engineer-in-Chief and PWD, Kohima dated 07.03.2024, it is stated that as per the report submitted by the concerned area Administrative Officer, it has been verified that the land in question belongs to the petitioner's father Shri Shanyem Konyak who was the resident of Chennioho Village and also that no administrative or other benefits were allotted or given to the land donor or his family members till date.

10. Having noticed the provisions of the Office memorandum dated 16.04.2018 as well as communication issued, it is evident that pursuant to an enquiry made by the Office of the Deputy Commissioner, it was ascertained that the land was indeed donated by the petitioner's father and on which land the PWD department has constructed a housing store and the same still exists on the said plot of land. It is also evident from the communication dated 07.03.2024 that no benefit or employment whatsoever in terms of

the land policy notified by Office Memorandum dated 16.04.2018 was issued or conferred on the land donor's family namely the father of the petitioner, who was the land donor.

Under such circumstances where there is categorical finding by the Deputy Commissioner, Mon that land was donated by the petitioner's father and that the PWD had constructed the PWD Housing Store on the said land and such donation was made in 1984, it is evident that the case of the petitioner falls under Clause 3(a) of the Office Memorandum dated 16.04.2018.

11. It is trite to mention here that in Nagaland land holdings belong to private individuals belonging to various Tribes. There is very little or hardly any land holding by the Government. Under such circumstance, where it is evident from the communications exchanged between the Deputy Commissioner, Mon and PWD that the land belonged to the father of the petitioner and the PWD Housing Store was constructed thereon and further that no benefit for appointment was granted to the land donor's family, namely the petitioner's father, under the provisions of the Office Memorandum dated 16.04.2018, the land donor/land donor's family is entitled for compensation or employment as the case may be in terms of the said Office Memorandum. In view of the discussions above, this Court hold that the petitioner being the son of the land donor has clearly established his claim under the Office Memorandum dated 16.04.2018 for being compensated/offered an appointment by the PWD.

12. As it is submitted that there is a vacant post of Chawkidar available under the concerned department under the Office of the

SDO, PWD (Housing), Cheng Town in the District of Mon and also by earlier order dated 15.12.2022 since an interim order was already passed by this Court directing the respondents not to fill up the said post, the respondent authority more particularly respondents No. 2 & 3 namely Engineer-in-Chief, Nagaland Public Works Department and The Chief Engineer, PWD (Housing) Division, Government of Nagaland respectively will take steps to pass necessary orders for appointment of the petitioner in the vacant post of Chawkidar stated to be available under the SDO, PWD (Housing) Store at Chen Town, District Mon, Nagaland. The interim order passed on 15.12.2022 will continue till such necessary orders as directed above are passed by the department as directed above.

13. Accordingly, the writ petition is allowed in terms of the above directions.

14. The respondents will carry out the orders as directed within a period of 60 days from the date of receipt of a certified copy of this order that may be served by the petitioner or through the department counsel.

15. The interim order stands modified to the extent as indicated above.

JUDGE

Comparing Assistant