GAHC020000012016

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

Case No. : WP(C) 146/2016

1:ALIKALA
TONGDENTSUYONG WARD,MOKOKCHUNG TOWN.

VERSUS

1:STATE OF NAGALAND AND 3 ORS.
KOHIMA

2:THE CHIEF ENGINEER
MECHANICAL
PWD
N/L.
KOHIMA

3:THE MECHANICAL ENGINEER
PWD
MECHANICAL DIVISION
MKG
N/L
MOKOKCHUNG

4:AKANGJUNGLA
MOKOKCHUNG

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

ORDER

Date : 09-06-2022

Heard Mr. Limawapang, learned counsel appearing for the petitioner, and also heard Ms. Livika, learned Government Advocate appearing for the State respondents, and Mr. Pfosekho Pfotte, learned counsel appearing for the private respondent.

2. The undisputed facts and circumstances which have led to the filing of this Writ Petition are as follows:

On 04.10.2011, an agreement was signed between the petitioner's husband and four Executive Engineers of the four wings of PWD, wherein it was agreed that in lieu of the land donated by the petitioner's husband for construction of the Office building of the four wings of the PWD at Mokokchung town, the petitioner's husband who is the land-owner shall be given contract works for whatever constructions that will take place within the land donated by him and he will also be given appointment to any Grade-IV post as and when there is vacancy. After the agreement was signed, a two-storied building was constructed on the land of the petitioner's husband and all the four wings of the PWD occupied the same. Thereafter, in the year 2016, a post of Sweeper became vacant on the retirement of Smti. Sentiwala Ao, who was allowed to go on voluntary retirement w.e.f. 31.05.2016 *vide* Office Order No. CE/M/PW/G/13/2016 dated 07.06.2016 issued by the Chief Engineer, Mechanical, PWD, Government of Nagaland. Coming to know that a vacancy has arisen,

the petitioner submitted an application to the Chief Engineer, Mechanical, Government of Nagaland, requesting for appointment to the same vacancy based on the agreement stated above. However, instead of appointing her to the same, the private respondent, who is the daughter of Smti. Sentiwala Ao, who was released from service on voluntary retirement was given appointment to the post vacated *vide* Order No. CE/M/PW/EST/10/2015-16 dated 27.06.2016, issued by the Chief Engineer, Mechanical, PWD, Government of Nagaland. Aggrieved by the non-consideration of her application requesting for her appointment to the said post and appointment of the private respondent instead, the petitioner is here before this Court praying for quashing and setting aside of the appointment of the private respondent and at the same time praying for her appointment to the post in terms of the agreement dated 04.10.2011.

3. Mr. Limawapang, learned counsel for the petitioner submitted that the private respondent's appointment is illegal because it was issued in violation of the Office Memorandum No. AR-3/Gen-134/2004 dated 14.02.2005, issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch), wherein the practice of appointing the children or relatives of a Government servant who took voluntary retirement has been banned and appointment to such posts vacated by an employee on voluntary retirement is allowed only as per rules after advertisement. The learned counsel further submitted that in view of the agreement between the petitioner's husband and the four Executive Engineers representing the PWD Department signed on 04.10.2011, the petitioner should have been considered for appointment to the same

post. Since that has not been done, the respondents may be directed to appoint her as per the agreement.

Furthermore, the learned counsel submitted that though it is true that as per the Notification issued by the Government of Nagaland Land Revenue Department No. LR/4-3/KOH/2003 dated 26.07.2005, acquiring of land for Government buildings or developmental purposes with free of cost was banned, and lands for such purposes should be acquired only on payment of full compensation and the same was reiterated in the Notification of the same Department No. LR/6-181/LIT/2015 dated 05.03.2018 in order to avoid giving of contract works and employment to the land-owners, it was also provided at the same time that in case the department concerned is of the view that such agreement signed after 2005 should not be declared null & void, it should refer the same with relevant details by giving justification to the Land Revenue Department 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. However, in this case, the Department has not taken any action as per the provisions of the Notification dated 05.03.2018 and at the same time have not declared it null & void. Therefore, the Department/respondents may be directed to give adequate compensation for the land of the petitioner's husband or give her appointment to the post to which the respondent No. 5 was illegally appointed.

4. Ms. Livika, learned Government Advocate submitted that as per her instruction it is true that the agreement has not been declared null &

void and no action as per the provisions of the Notification dated 05.03.2018, particularly, Para 1(a) and 1(b) has also been taken. Therefore, the respondents may be given time and chance to verify whether the petitioner's husband is the real owner of the land in question and anybody in the family has been given employment as per the agreement and whether the petitioner belongs to the family of the land-owner or not. In case the petitioner's husband is found to be the genuine land-owner and she is still one of the family members and nobody in the family members has been given employment as per the agreement, the respondents shall do the needful to give her employment. The learned Government Advocate also submitted that reading together of the provisions of the Office Memorandum No. AR-3/Gen-134/2004 dated 14.02.2005, issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch) and the Appointment Order of the private respondent makes it quite obvious that the appointment of the private respondent was not in accordance with the same provisions of the OM.

5. Mr. Pfosekho Pfotte, learned counsel appearing for the private respondent submits that he has nothing much to say regarding the appointment of the private respondent in view of the contents of the Office Memo No. AR-3/Gen-134/2004 dated 14.02.2005, issued by the Government of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch). However, in terms of the Appointment Order, the petitioner may be issued one month's notice before his appointment is terminated.

6. I have considered the submissions of the learned counsels in the light of the admitted facts and circumstances. As stated above, there is no dispute on the fact that there was an agreement signed between the petitioner's husband and four Executive Engineers of the different wings of the PWD, Government of Nagaland. And there is also no dispute regarding the terms and conditions mentioned therein. However, it is also a fact that signing of such agreements has been prohibited by the Notification No. LR/4-3/KOH/2003 dated 26.07.2005 and Notification No. LR/6/181/LIT/2015 dated 05.03.2018 issued by the Land Revenue Department, Government of Nagaland. Notwithstanding the prohibition an exception has been provided at Para 1(b) of the later Notification which states that in case the Department concerned is of the view that such agreements should not be declared null & void, the same should be referred to the department of Land Revenue for examination and advice in consultation with P&AR and Justice & Law Departments and thereafter submit the same for consideration of the Cabinet. The provision is reproduced hereinbelow:

> *"1(b) In case the Departmenet concerned is of the view the agreement should not be declared numm 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 and Law Departments and thereafter submit the matter for consideration and decision of the Cabinet."*

Careful consideration of the above provisions of the said Notification makes it quite clear that though signing of such documents are prohibited in case, the department has resorted to the same due to exigency or urgent need of the land for developmental purposes, instead of declaring the same null & void it should be taken through all

the channels mentioned therein and move it before the Cabinet for decision. In this case, it has been submitted by both the learned counsels that the agreement has not been declared null & void and it has also not been taken through the process prescribed in the Notification. More than ten years have passed since the agreement was signed. Therefore, this Court is inclined to accept the submission of the learned Government Advocate that the respondents may be given some time to verify as to the truth of the claim of the petitioner being a family member of the land-owner and also that no employment has been given to any of the family members. Therefore, respondent Nos. 1 to 3 are given three months' time to verify the same and if the claims are found to be true they should give employment to the petitioner. As for the appointment of the private respondent since it is admitted that it was issued in violation of the Office Memo, AR-3/Gen-134/2004 dated 14.02.2015, the respondents shall take necessary steps in accordance with the terms and conditions of the appointment given in the Appointment Order itself. The same should be done at the earliest but not later than a period of **one month** from the date of receipt of a copy of this Order.

With the above observations and directions, the Writ Petition is disposed off.

Sd/-
JUDGE

Comparing Assistant