

GAHC020000212024

2025:GAU-NL:245



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

Case No. : WP(C)/6/2024

SHRI V. GHOTOI SUMI
S/O SHRI VITOI CHOPHY,
VEKUHO OLD VILLAGE,
DISTIRCT ZUNHEBOTO, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY

DEPARTMENT WORK AND HOUSING

NAGALAND
KOHIMA

3:THE ENGINEER-IN-CHIEF

NAGALAND PUBLIC WORKS DEPARTMENT

NAGALAND
KOHIMA

4:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT (R AND B)

NAGALAND
KOHIMA

5:SHRI OTOKA AYE

PEON

OFFICE OF EXECUTIVE ENGINEER

PWD (R AND B)

OFFICE OF EXECUTIVE ENGINEER
PWD (R AND B)

ATOIZU DIVISION
ZUNHEBOTO
NAGALAN

Advocate for the Petitioner : Z. ZHIMOMI, ABEL AYEMI, S K ACHUMI, T. SHANGCHIU

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

J U D G M E N T & O R D E R

09.06.2025

The brief facts of the present case are narrated here below:

1. The petitioner is the son of Shri Vitoi Chophy, one of the land owners of the existing Sub-Divisional Office of the PWD (R&B) compound at Atoizu. In the year 1984, by an oral agreement the Chophy clan donated their plot of land without compensation to establish the Office of the Sub-Divisional Office, PWD (R&B) at Atoizu. The petitioner's family had not availed of any government employment on the basis of land ownership. In the year 2019 one Shri Hokivi Chishi, who was serving as Peon in the Office of the Executive Engineer, PWD (R&B) got promoted to the post of

Duftry by Order dated 21.12.2019, but prior to his promotion the petitioner submitted an application dated Nil, 2022 on landowner basis which was recommended by the Executive Engineer, PWD (R&B) vide Letter dated 10.03.2022 and forwarded to the Engineer-in-Chief, Nagaland PWD, Kohima for appointment on landowner basis along with the landowner certificate dated 28.02.2022 issued by Vekuho Old Village Council.

2. However, instead of appointing the petitioner, the respondent no. 5 (R-5) was appointed by the impugned Appointment Order dated 13.01.2023. On coming to know about the appointment of the R-5, the petitioner submitted a Representation dated 13.01.2023 to the Engineer-in-Chief, PWD (R&B) Nagaland, Kohima praying for revocation of the Appointment Order of the R-5, but no action was taken by the State respondents. Being aggrieved, the petitioner has come before this Court.

3. I have heard the learned counsel for the petitioner, Ms. Z. Zhimomi, learned Government Advocate, Ms. Bichano Kithan for the State respondent nos. 1, 2, 3 and 4, and Mr. Joshua Sheqi for the R-5.

4. Learned counsel for the petitioner submits that the State Government has adopted a scheme for appointment of landowners vide Notification No. LR/6-181/LIT/2015 dated 05.03.2018 and the petitioner is covered by Clause 3(b) of the said Notification and in consonance with the Notification of 05.03.2018, the Additional Deputy Commissioner, Atoizu by Certificate dated 07.08.2023 has certified that the petitioner is one of the landowners of the PWD (R&B) Office, Atoizu. The petitioner states that

the petitioner's father and two other brothers had donated their plots of land without compensation in 1984 to establish the Office of the Sub-Divisional Officer, PWD (R&B) at Atoizu. However, when the petitioner applied for appointment in the vacant post of Peon, the R-5, who is not a landowner has been appointed, through back-door by the impugned Order dated 13.01.2023.

5. During the pendency of the present writ petition, this Court by Order dated 29.08.2024 directed the Deputy Commissioner, Zunheboto to cause an inquiry and thereafter, submit report to this Court indicating as to who had donated the land where the Sub-Divisional Office, PWD (R&B), Atoizu is situated and also in view of such donation which person/persons have been appointed. It was also directed that the report should indicate the extent or area of the land donated by each of the individuals concerned where the Sub-Divisional Office, PWD (R&B), Atoizu is located.

6. In compliance of the Order dated 29.08.2024, the report was submitted by the Office of the Additional Deputy Commissioner, Atoizu, Nagaland. In the report, a sketch-map of the Sub-Divisional Office, PWD (R&B), Atoizu was annexed showing that there were three landowners who had donated the land, namely Shri Hovishe Chophy, Shri Nitovi Chophy S/o Late Hokhevi Chophy and Xuhevi Chophy. It was also stated in the report that one Hinoto X and Bokatoli Sumi had already been given appointment from amongst the landowners in view of such donations. Regarding the petitioner's eligibility, it was stated that he cannot be recommended for the post in question as the landowners recommendation have already been honored with the appointments of Shri Hinoto X and

Smt Bokatoli Sumi.

7. Learned counsel for the petitioner submits that Shri Hinoto X is from the landowners' family; however, Smt. Bokatoli Sumi is not a landowner. The petitioner also submits that from amongst the three land donors in the present Sub-Divisional Office, PWD (R&B), Atoizu none from his family have been appointed till date. Learned counsel for the petitioner also submits that the vacant post which the present petitioner is claiming has arisen at the Sub-Divisional Office, PWD (R&B), Atoizu. It is stated that the claim of the R-5 being recommended by the landowners does not hold water as the Ayemi clan are the landowners of the Executive Engineer's Office and not of the Sub-Divisional Office. Therefore, the landowners of the Executive Engineer's Office could not have recommended the case of the R-5 as they are not the land owners of the Sub-Divisional Office.

8. Learned counsel for the petitioner has relied on the following authorities in support of her contentions.

i) ***Amrit Yadav Versus State of Jharkhand and Others*** reported in **2025 SCC Online SC 280**,

ii) ***Padma Rani Mudai Hazarika Versus Union of India and Others*** reported in **(2013) 6 GLR 6**, and

iii) Order dated 29.07.2022 of this Court in WP(C)/49/2020.

9. In view of the above submissions and the authorities relied upon the learned counsel for the petitioner prays that the impugned Appointment

Order dated 13.01.2023 appointing the R-5 as Peon in the Office of the Executive Engineer, PWD (R&B), Atoizu may be quashed and set aside and the respondents may be directed to consider the appointment of the petitioner against the said post on landowner basis.

10. Learned Government Advocate, Ms. Bichano Kithan, has advanced her submissions on the basis of the affidavit-in-opposition of respondent nos. 1, 2, 3 and 4. Learned Government counsel submits that one Mr. Hinoto X has already been appointed as MTS under the Office of the Executive Engineer, PWD (R&B), Atoizu on the basis of landownership. It is stated that another person, Smt. Bokatoli Sumi was also appointed on the recommendation of the landowners of the Sub-Divisional Office, PWD (R&B), Atoizu. Therefore, the petitioner cannot claim appointment on the basis of landownership in violation of Clause 3(c) of the Notification dated 05.03.2018 which provides that the appointment is limited to the person first appointed as landowner in Government service and does not entitle his descendants for further employment on his retirement from service. The learned Government Advocate further submits that the vacant post of Peon which the petitioner is claiming arose in the Office of the Executive Engineer, PWD (R&B), Atoizu and not in the Sub-Divisional Office and therefore, the petitioner has no *locus* to challenge the appointment of the R-5. It is submitted that the rights of the petitioner as a landowner, if any, has been extinguished by the appointment of Shri Hinoto and Smt. Bokatoli who are already appointed on the basis of landownership.

11. Learned counsel, Mr. Joshua Sheqi appearing for the R-5 has also adopted the submissions made by the Government Advocate. He has

further submitted that the vacancy which arose was in the Office of the Executive Engineer Atoizu and not in the Sub-Divisional Office. He has stated that the R-5 was appointed on the recommendation of the landowners of the Executive Engineer's Office, and therefore, the petitioner has no *locus* to challenge the appointment of the R-5 as he is not a landowner of the Executive Engineer's Office. The learned counsel submits that two persons have already been appointed on the basis of landownership from amongst the land donors of the Sub Divisional office and therefore, the petitioner cannot claim appointment now as per Clause 3(c) of the Notification dated 05.03.2018. Learned counsel has also relied on a Judgment dated 29.02.2024 in WP(C)/138/2022 passed by a Coordinate Bench of this Court wherein the facts of the case are similar to the case at hand. In WP(C)/138/2022, the Court observed that after giving an anxious consideration to the Notification dated 05.03.2018, and further taking into account the fact that the brother of the petitioner as well as his cousin brother had been duly appointed in the Office of the Additional Deputy Commissioner wherein the building stands on landownership basis, the petitioner had no right to claim appointment on landownership basis, more particularly in view of Clause 3(c) of the Notification dated 05.03.2018. The aforementioned writ petition was therefore dismissed. Learned counsel, therefore, submits that the present case is squarely covered by the Order passed in WP(C)/138/2022 and accordingly, this writ petition may be dismissed.

12. In the backdrop of the above submissions and pleadings, I have considered the materials available before this Court. From the materials on record it is seen that the land where the building of the Sub-Divisional

Office, PWD (R&B), Atoizu stands is the land belonging to the family of the petitioner. It is also not disputed that the building of the Office of the Executive Engineer, PWD (R&B), Atoizu is situated on a different plot of land where there are different landowners. The petitioner has laid claim to appointment on the basis of landownership of the Sub-Divisional Office, PWD (R&B), Atoizu. However, the pleadings have clearly revealed that two other persons have already been appointed from amongst the land donors of the Sub-Divisional Office, PWD (R&B), Atoizu. The R-5 has enclosed a copy of the Letter written to the Executive Engineer, PWD (R&B), Atoizu signed by all the landowners of the Sub-Divisional Office, PWD (R&B), Atoizu. In the said Letter the land donors have recommended the appointment of Shri Hinoto X and Smt. Bokatoli Sumi for appointment to Grade-IV posts on the basis of landownership. And the two persons have subsequently been appointed. The petitioner has disputed the appointment of Smt. Bokatoli Sumi on the basis of landownership on the ground that she is not a landowner. However, this submission is rebutted by the Letter written by the land donors to the Executive Engineer, PWD (R&B), Atoizu, which is annexed as Annexure-G to the affidavit-in-opposition of the R-5.

13. This Court has also perused the Notification dated 05.03.2018 and the same is reproduced here below for ready reference.

” In pursuance of approval of the Cabinet vide O.M No. CAB-2/2013 Dt. 13.12.17, the Governor of Nagaland is pleased to notify the following policy with regard to appointments Grade-IV posts under the Government of Nagaland on landownership basis.

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.

1 (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 in consonance with the policy brought out vide Memorandum No. LR/2-135/76 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 agreement exists providing for employment to the landowner, the claim of landowner for employment should be settled in terms of such agreement,

3 (b) if there is any claim for providing employment as a result of oral agreement, 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 concerned department and the District Administration and village functionaries present at the time of such oral agreement should be taken by the Deputy Commissioner. The recommendation of the Deputy Commissioner should be referred with relevant documents to the Department of Land Revenue for advice in such cases by the Department concerned.

3 (c) It is also clarified that it is not the policy of the Government to provide employment to the landowner in perpetuity. The employment 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 descendents for further employment on his retirement from service. After the appointed landowner retires or vacates the post, the vacancy will be filled up through open advertisement in consonance with the existing policy giving equal

opportunity to all applicants”

14. Taking into account the fact that the two persons have already been appointed on the basis of the landownership, this Court is of the opinion that the petitioner has no right to claim appointment on landowner basis, more particularly in view of Clause 3(c) of the Notification dated 05.03.2018. The authorities relied upon by the petitioner are evidently not relevant to the instant writ petition.

15. Under these facts and circumstances, there is no merit in the instant writ petition and the same stands dismissed. No cost.

JUDGE

Comparing Assistant