GAHC020001392023 2025:GAU-NL:121

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

Case No. : WP(C)/57/2023

SHRI. PUNALEMBA
S/O SHRI. TALIYANGER,
RESIDENT OF MOKOKCHUNG VILLAGE,
MOKOKCHUNG, NAGALAND

VERSUS

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

2:THE COMMISSIONER

NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER

MOKOKCHUNG
NAGALAND

4:THE ADDITIONAL DEPUTY COMMISSIONER AND
ADMINISTRATOR

MOKOKCHUNG MUNICIPAL COUNCIL

MOKOKCHUNG
NAGALAND

5:SHRI. MOAWABANG LONGKUMER

CHOWKIDAR PARK

OFFICE OF THE MOKOKCHUNG MUNICIPAL COUNCIL
MOKOKCHUNG
NAGALAND

Advocate for the Petitioner : TONGPOK PONGENER, AKUM JAMIR,S REOPI,M. ATHAI,TONGPANG JAMIR,LAKNYEI PHOM,JENDEMO TSANGLAO,ASEN S LONGKUMER,T ATALU CHIZO,VIKEHIENUO VIMERHA,AKUM AIER

Advocate for the Respondent : GOVT ADV NL,

Date of hearing : 07.03.2025
Date of Judgment : 04.04.2025

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

:: Judgment and Order ::
[CAV]

Heard Mr. Tongpok Pongener, learned counsel for the petitioner. I have also heard Ms. Bichano Kithan, learned Government Advocate for the respondent Nos. 1 to 4, and Mr. Alezo Kire, learned counsel for the respondent No. 5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner prays for quashing and setting aside the appointment order No. MMC-1/EST/2005/65 dated 16.07.2019, by which the private respondent No. 5 has been appointed as Chowkidar of the Park. The petitioner also seeks directions to the respondents to consider his appointment to the said post on the basis of land ownership.

3. The petitioner claims to be one of the eligible

landowners of the land on which the Town Park, Mokokchung, under the Mokokchung Town Committee (MTC), has been established. This land was donated by the petitioner's clan to the District Administration, free of cost, in the early 1960s at the request of the then Deputy Commissioner of Mokokchung. The Park was subsequently handed over to the Mokokchung Town Committee (MTC) and renamed from 'Kathing's Park' to 'Town Park'.

4. The petitioner contends that at the time of the land donation, an agreement was made with the District Administration stipulating that the landowners would be entitled to Grade-IV posts and that all contract works related to the park would be awarded to them. However, all documents related to the land, which were kept under the custody of the District Administration, are no longer available. This fact has been acknowledged by the Mokokchung Town and is reflected in the minutes of the MTC meeting held on 25.06.2001.

5. The learned counsel for the petitioner submits that the Government of Nagaland has adopted a policy of giving preference to landowner candidates in matters of appointment to all Grade-IV posts. However, in 2018, the Government issued a notification regarding appointments to Grade-IV posts under the Government of Nagaland on a land ownership basis. This notification includes provisions for addressing claims based on oral agreements, requiring the Department concerned to refer such matters to the Deputy Commissioner for careful

examination. The relevant portion of the notification is reproduced as under:

> *"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 the 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."*

6. The petitioner further contends that a vacancy for the post of Chowkidar arose upon the demise of the incumbent, late Mr. Shamshir Gurung, on 06.07.2018. In response to this vacancy, the petitioner's uncle, Shri Nungshimayang Kichu, submitted an application dated 07.07.2018, requesting the Additional Deputy Commissioner & Mokokchung Municipal Council, Mokokchung (respondent No.4) for appointment of his candidate respondent No. 5 on the basis of land ownership. This representation was submitted without the knowledge and consent of the petitioner's clan, and the respondent No. 5, who is the brother-in-law of Shri Nungshimayang Kichu, is not a landowner.

7. Based on this application, the respondent No. 4 issued the impugned appointment order No. MMC-1/EST/2006/65 dated 16.07.2019, appointing respondent No. 5 as Chowkidar of the Town Park in the post vacated by late Mr. Shamshir Gurung. At the time of this appointment, the petitioner was

residing in his mother's village, Changki Village, earning his daily wages, and was unaware of the appointment of respondent No. 5 on the basis of land ownership. The petitioner only learned of this appointment in August 2022. Upon discovering the appointment, the petitioner submitted a representation dated 10.08.2022, requesting respondent No. 4 to appoint him in place of respondent No. 5, whom he claims is an illegal appointee.

8. The petitioner further contends that he obtained information regarding the appointment of respondent No. 5 through an RTI application on 25.10.2022. After receiving a copy of the appointment order, the petitioner submitted another representation stating that the appointment of respondent No. 5, a non-landowner, on the basis of land ownership is illegal and requested that the illegal appointee be replaced with the petitioner. He also submitted a reminder application on 09.01.2023, requesting the respondents to resolve the issue. However, this representation has not been addressed by the respondent authorities to date.

9. At this stage, the learned counsel for the petitioner submits that although the petitioner's uncle, Shri Nungshimayang Kichu, had written an application to the Additional Deputy Commissioner for the appointment of his brother-in-law to the post of Chowkidar of the Town Park under the Mokokchung Town Committee (MTC) on the basis of land ownership, it appears from the impugned appointment

order dated 16.07.2019 that the appointment was not made on that basis. The learned counsel referring to the statement made in paragraph 14 of the writ petition in this regard, argues that since the appointment was not made based on land ownership, the post vacated due to the death of late Shamshir Gurung should be advertised, allowing all eligible candidates, including the petitioner, to compete for the post through a selection process as mandated by constitutional provisions.

10. The learned counsel for the petitioner further asserts that the vacancy cannot be filled through backdoor appointments, as has occurred in this case. Therefore, the impugned appointment order dated 16.07.2019, which appointed respondent No. 5 without conducting any selection process, is unconstitutional and violates the fundamental rights guaranteed under Articles 14 and 16 of the Constitution. Thus, it should be set aside, and the post should be advertised to invite applications from all eligible persons, including the petitioner.

11. In contrast, the learned counsel for respondent No. 5 refers to the affidavit-in-opposition filed by respondent No. 5, asserting that the petitioner has suppressed material facts regarding a Grade-IV appointment already availed by a family member on the basis of land ownership through a decision made in a coordination meeting. Therefore, the present writ petition is not maintainable and should be dismissed without

delving into the merits of the case. The learned counsel for respondent No. 5 further argues that the petitioner cannot be appointed to the post as he did not apply for it nor submit any application for the vacancy created by the demise of the incumbent, Shri. Shamshir Gurung. Consequently, the denial of the petitioner's legal or constitutional right does not arise, and he lacks the standing to file this writ petition or challenge the appointment of respondent No. 5.

12. Moreover, the learned counsel for respondent No. 5 contends that the petitioner's family has already availed employment opportunities. It is clear that the Government does not have a policy of providing appointments to landowners in perpetuity. The learned counsel asserts that the appointment of respondent No. 5 was made in the public interest, as he was qualified for the post, and it was not against the land ownership quota as alleged by the petitioner.

13. The learned counsel for respondent No. 5 further argues that the petitioner has delayed his claim, as the vacancy arose in 2018, and respondent No. 5 was appointed in 2019. The petitioner approached the court three years after the appointment of respondent No. 5. Additionally, there was no objection when late Shamshir Gurung, a non-landowner, was appointed as Chowkidar of the Town Park. Thus, the petitioner is barred by the principle of estoppel from claiming appointment on the basis of land ownership, as his entitlement has been exhausted.

14. The learned counsel for respondent No. 5 cites several legal principles regarding delay and laches, emphasizing that the Court does not ordinarily assist those who are tardy or indolent. If there is an inordinate delay on the part of the petitioner that is not satisfactorily explained, the Court may decline to intervene and grant relief.

15. The learned Government Advocate for respondents Nos. 1 to 4 submits that there was no illegal appointment, as there was no objection when late Mr. Shamshir Gurung, a non-local, was appointed as Chowkidar. Following his demise, respondent No. 5 was appointed against the vacant post. The learned Government Advocate further submitted that earlier in the year 2014, one Miss Imnalemla, daughter of Nungshilmayang Kichu was appointed against a post of peon at MMC office on land ownership basis by the MMC/Town Park. Therefore, she submitted that the petitioner cannot be appointed on land ownership basis as it would amount to appointment in perpetuity. In this regard she refers to the Government notification, clarifying that appointments on the basis of land ownership cannot be made in perpetuity. The relevant portion is reproduced as under:

> *"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 a landowner in Government Service and does not entitled his descendants for further employment on his retirement from service."*

16. After hearing both parties and considering the available documents, it is evident that the Town Park, Mokokchung, was established on land donated by the petitioner's clan. It is also noted that a member of the landowners' clan was appointed on the basis of land ownership in 2014. According to the Government notification, such appointments cannot be made in perpetuity, and since one person has already been appointed based on land ownership, the petitioner is not entitled to further appointment on that basis.

17. The perusal of the appointment order reveals that the appointment of the respondent No.5, has been made basing on the Mokokchung Municipal Council Official meeting minutes dated 11.7.2019. However, the said meeting minutes was neither produced by the petitioner nor by the respondents. This is the one important document of the case based on which the impugned appointment of the private respondent No.5 was made. Therefore, in order to ascertain the fact, this Court directed the learned Government Advocate for the State respondent Nos. 1 to 4 to produce the record of the said meeting minutes. According, she produced the meeting minutes dated 11.7.2019 which is taken on record and marked as document 'X'.

18. The record indicates that the application submitted by one Shri Nungshimayang Kichu for the appointment of his

candidate (respondent No.5) was discussed in a meeting of the Mokokchung Municipal Council held on 11.7.2019. The meeting concluded that the appointment of the respondent No.5 could not be made based on land ownership rights, as one (daughter of Nungshimayang Kichu) had already been appointed. Therefore, the meeting resolved to appoint Shri. Moawabang (Respondent No.5) in the interest of public service, not as a landowners' appointee. This was done in order to avoid inconvenience.

19. Under the circumstances, the question arises, whether a public post can be filled without following the due procedure for appointment and whether the appointment order dated 16.7.2019, made in favour of the respondent No.5 calls for interference. It is undisputed that no advertisement or interview was conducted for the Town Park Chowkidar post created by the death of late Shamshir Gurung.

20. The learned counsel for the petitioner emphasizes that no person can be appointed to a public office without inviting applications from all eligible candidates. Appointments made without proper advertisement violates constitutional mandates and deprive eligible candidates of consideration.

21. To support his argument the learned counsel for the petitioner placed a reliance upon the decision of the Hon'ble Supreme Court in the ***State of Bihar and Ors Vs. Chandreshwar Pathak*** reported in ***(2014) 13 SCC 232.*** The relevant paragraphs are reproduced below:

*"**11.** In State of Orissa &Anr. vs. Mamata Mohanty (2011) 3 SCC 436, it was observed as under:*

> *"APPOINTMENT / EMPLOYMENT WITHOUT ADVERTISEMENT:*
>
> *35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution.(Vide: Delhi Development Horticulture Employees' Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supdt. v. K.B.N. Visweshwara Rao, Arun Tewari. v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Telecom District Manager v. Keshab Deb, State of Bihar v. Upendra Narayan Singh and State of M.P. v. Mohd. Ibrahim).*
>
> *36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an*

open advertisement as to enable all eligible persons to compete on merit."

12. *No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which S.L.P. has been dismissed by this Court as mentioned earlier."*

22. In this case, the appointment of respondent No. 5 was made based solely on the recommendation of an individual, which violates constitutional provisions and denies eligible candidates, including the petitioner, the opportunity to compete for the post.

23. The learned counsel for the respondent No.5 raises question regarding the delay and laches on the part of the petitioner. From the material on record, it shows that the claim of the petitioner suffers from delay and laches. Under such circumstances, this Court is of the opinion that the petitioner has failed to make out a case for issuance of directions to consider his case for appointment to the post of Chowkidar of Town Park, Mokokchung on land ownership basis.

24. Returning to the question of whether the appointment order dated 16.7.2019, made in favour of the respondent No.5 warrants interference, it is clear from the impugned order itself that this appointment pertains to a public position. It is a well-established principle that appointments to public posts must comply with Article 14 and 16 of the Constitution of India. Article 16 of the Constitution in particular, stipulates that equal opportunity must be extended to all eligible candidates, which can only be achieved through a public advertisement

that invites all qualified individuals to participate in the interview process. Notably, in this case there was no any advertisement or notice to inform eligible candidates. The respondent No. 5 was appointed solely based on the recommendation of his uncle, Nungshimayang Kichu. Such a selection process for a public office, driven by personal recommendations, violates the principles outlined in Article 14 and 16, thereby denying eligible candidates, including the petitioner, the opportunity to be considered. Consequently, the appointment of respondent No. 5 appears to be an instance of arbitrary selection, which is impermissible under law. Individual appointed in violation of these constitutional mandates are not entitled to retain their public positions. For an appointment to be valid and lawful, strict adherence to these constitutional requirements is to be fulfilled. Article 16 of the Constitution necessitates that all appointments be made through public advertisement to ensure that all eligible individuals have the chance to compete fairly based on merit. Given these circumstances, this Court, under Article 226 of the Constitution of India, cannot remain passive and allow such illegalities to continue.

25. Therefore, this Court is of the opinion that the appointment of respondent No. 5 violates Article 14 and 16 of the Constitution of India. Consequently, the appointment order dated 16.07.2019, in favour of the respondent No. 5 is required to be interfered with.

26. Given the above findings, this Court is not inclined to issue any directions for the petitioner's consideration for appointment based on land ownership. However, the appointment order No.MMC-1/EST/2005/65 dated 16.07.2019, in favour of respondent No. 5, Shri Moawabang Longkumer, is hereby interfered with and accordingly set aside and quashed.

27. The respondent Authorities are directed to fill the post of Chowkidar of Town Park, Mokokchung, by following proper procedure of law, which includes issuing an advertisement and selecting the most qualified candidate in accordance with law. This Court also directs that the respondent may relax the age requirement for both the petitioner and respondent No.5, if necessary, to enable their participation in the selection process.

28. With the above observations and directives, the present writ petition stands disposed of.

JUDGE

Comparing Assistant