

GAHC020001942018

2025:GAU-NL:247



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

Case No. : WP(C)/92/2018

AHOLI SEMA
DIMAPUR

VERSUS

THE STATE OF NAGALAND AND 2 ORS
KOHIMA

2:PRINCIPAL DIRECTOR SCHOOL EDUCATION NAGALAND
KOHIMA NAGALAND

3:PRINCIPAL
GOVT. HIGHER SECONDARY SCHOOL
NUILAND
DIMAPUR
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI, ESTHER,IMTI LONGJEM,JOSHUA
SHEQI,LHOUSINO,VINITOLI

Advocate for the Respondent : GOVT ADV NL,

Linked Case : WP(C)/93/2018

TOKATO ZHIMO
DIMAPUR

VERSUS

THE STATE OF NAGALAND AND 2 ORS
KOHIMA

Advocate for : A. ZHIMOMI
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 2 ORS

Linked Case : WP(C)/94/2018

V. AINLA SEMA
DIMAPUR

VERSUS

THE STATE OF NAGALAND AND 2 ORS
KOHIMA

Advocate for : A. ZHIMOMI
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 2 ORS

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

09/06/2025

WP(C) 92/2018, WP(C)93/2018 and WP(C)94/2018 are disposed of by this common Judgment as the issues involved in all the three writ petitions are the same.

2. In writ petition No. 92/2018, the petitioner's case is that the petitioner's family had donated about 300 acres of land sometime in

1987, when the Niuland Sub-division was created. On a portion of the donated land the State respondents established the Government Higher Secondary School, Niuland. On the basis of land ownership the petitioner was appointed as the chowkidar cum sweeper on contingency basis by an order dated 19.11.2007. The petitioner's appointment was extended from time to time. The petitioner submitted a representation praying for regular appointment and grant of scale pay. However, there was no response from the State respondents. As such, the petitioner approached this Court by filing WP(C) 192 (K) 2017 and by an Order dated 19.09.2017, this Court disposed of the writ petition by directing the State respondents to dispose of the representation filed by the petitioner in the light of a policy dated 05.08.1991 issued by the Department of School Education, Government of Nagaland, regarding appointment of land owners in Grade IV post. Thereafter, the State respondents disposed of the representation of the petitioner vide impugned letter dated 07.02.2018, thereby rejecting his representation on the ground that the petitioner could not claim to be treated equally with other employees appointed on the basis of land ownership, as they were appointed against a sanctioned post whereas in his case the appointment was on contingency basis without a sanctioned post.

3. In WP(C) 93 (K) 2018, the facts are similar as the petitioner in this petition has also stated that the petitioner's family donated about 300 acres of land towards the Niuland Sub Division Establishment. On the basis of land ownership, by an order dated 24.08.2011, the petitioner was appointed as night chowkidar in the Government Higher

Secondary School, Niuland. His appointment was also on contingency basis and on fixed pay. The petitioner submitted a representation dated 03.05.2017 praying for regular appointment and grant of scale pay. However, there was no response from the State respondent. As such the petitioner approached this Court by filing WP(C) 193 K/2017. Thereafter, by an order dated 19.07.2017 this Court disposed of the petition with a direction to the respondents to dispose of the representation filed by the petition in terms of the policy dated 05.08.1991. Thereafter, the representation of the petitioner was rejected by impugned letter dated 07.02.2018 stating the same grounds as in the case of the petitioner in WP(C) 93 K/2018.

4. WP(C) 94 K/2018 has also been filed by the petitioner claiming to be a land owner of the Niuland Sub Division. It is stated that on the basis of land ownership, by order dated 28.08.2007, the petitioner was appointed as sweeper in the Government Higher Secondary School Niuland on contingency basis. The petitioner's appointment was extended from time to time. The petitioner also submitted a representation dated 03.05.2017 praying for regular appointment and grant of scale pay. However, there was no response from the State respondents and as such the petitioner approached this Court by filing WP(C) 194 K/2017. By an Order dated 19.09.2017, this Court disposed of writ petition with a direction to the State respondents to dispose of the representation filed by the petitioner in terms of the policy dated 05.08.1991. Thereafter, the petitioner's representation was also disposed of by letter dated 07.02.2018 along with the petitioners in WP(C) 92 K/2018 and 93 K/2018.

5. I have heard learned counsel, Ms. Esther for the petitioner and learned Government Advocate, Ms. Livika for the State respondents.

6. The case of the petitioners in the three writ petitions is that there was a policy of the State Government in the Department of School education being Memorandum No. EDS(E)-16/91 dated 05.08.1991 whereby it was provided that direct appointment should be made to Grade IV post from amongst land owners, duly certified by the village education committee and Legal Administrative Officer. It is stated that the petitioner's family is one of the land owners who donated land for setting up Niuland Sub Division. Their family donated about 300 acres of land for the said headquarters. On the portion of the land donated by the petitioners family the Government Higher Secondary School Niuland was established. Pursuant to the establishment of the Government Higher Secondary School, Niuland, the petitioner in WP(C) 92/2018 was appointed as chowkidar cum sweeper in the said school on contingency basis on fixed pay for a period of one year. The petitioner in WP(C) 93 (K) 2018 was also appointed as a night chowkidar in the same school on contingency basis on fixed pay for a period of one year. The petitioner in WP(C) 94/K/2018 was also appointed as a sweeper, in the said school on contingency basis with fixed pay for a period of one year. The petitioner's appointments were extended from time to time. It is stated that the head G.B. of Viyito village has certified that the petitioner's family is a land owner of the land on which the Government Higher Secondary School Niuland has been established. The Additional Deputy Commissioner Niuland also certified the land ownership of the petitioners family and

recommended the grant of scale pay to the petitioners. The petitioners submitted representations dated 03.05.2017 to the authorities praying for regular appointment and grant of scale pay particularly mentioning the memorandum dated 05.08.1991 regarding direct appointment of land owners for grade IV post under the Department of School Education. The representations were forwarded by the Principal Government Higher Secondary School Niuland by letter dated 10.05.2017. However, the said representations were not considered by the State respondents.

7. Thereafter, the petitioners approached this Court by filing WP(C) 192 K/2017, WP(C) 193 K/2017 and WP(C) 194 K/2017. All the three writ petitions were disposed of by this Court by various orders dated 19.09.2017, with a direction to the State respondent to dispose of the representations of the petitioners in consonance with the scheme dated 05.08.1991 within a period of 2(two) months. Thereafter by impugned letter dated 04.10.2017, the State respondents disposed of the representations of the petitioners stating that their representations could not be considered favorably or positively as they had no right to be treated equally with other employees appointed on land ownership basis, as they were appointed against sanctioned post whereas in the case of the petitioners their appointments were made on contingency basis without sanctioned post.

8. Being aggrieved the petitioners have come before this Court praying for a direction to quash and set aside the impugned letter dated 07.02.2018 and also for a direction to regularize the service of the petitioners with regular scale pay with effect from the date of their

initial appointment. The petitioners have also prayed for a direction to pay to the petitioners the arrears of pay for at least three years from the date of filing writ petitions 192 (K) 2017, 193 (K) 2017 and 194 (K) 2017.

9. It is submitted by the learned counsel for the petitioners that by impugned letter dated 07.02.2018, the respondents have ignored the legitimate right of the petitioners. The mode of appointment of grade IV staff from amongst land owners has been clearly laid down in the memorandum dated 05.08.1991 and therefore, it has erroneous for the State respondent to deny the rights of the petitioner. Such action is also arbitrary and discriminatory vis-vis other persons appointed on land ownership basis. It is stated that the petitioners being land owners have to be appointed on regular basis with regular scale pay as the petitioners as chowkidar/ sweeper/night chowkidar entails the same duties and responsibilities as chowkidar/sweeper/ night chowkidar engaged on regular basis. It is also submitted that similarly situated persons/land owners have been regularized in service or they are appointed on regular basis. And it would be in keeping with the principles of justice and administrative fair play for the petitioners to be regularized in service and granted regular scale of pay. It is therefore prayed that the present petitions may be allowed and the respondents maybe directed to regularize the service of the petitioner with regular scale pay.

10. Learned Government Advocate, Ms. Livika opposing the contentions made by the petitioner has submitted that in lieu of the land donated sometime in the year 1997, the Government has already

appointed four persons on the basis of land ownership. In fact the petitioners were not appointed on the basis of land ownership. They were appointed on contingency basis due to the up gradation of the Government High School, Niuland to Government Higher Secondary School. It has submitted that there were no grade IV sanctioned post when the petitioners were appointed, however, due to exigency of service, and due to an urgent requirement for grade IV employees in the newly up graded Higher Secondary School, the petitioners were appointed purely on contingency basis on fixed pay. There is no written agreement existing between the Government and the petitioners family till date. The learned Government Advocate has also referred to the appointment orders of four persons appointed at the Government Higher Secondary School, Niuland on the basis of land ownership. It is also stated that while disposing writ petition 192, 193, 194 (K) of 2017, the court do not go into the merit of the case as the petitions were disposed at the motion stage. Since, no opportunity was given to the State respondent to file affidavit-in-opposition; no material could be placed before the court, as to how the petitioners were appointed nor any materials could be brought on record with regard to other appointments made on the basis of land ownership. It is submitted that due to non availability of vacant sanctioned post the Government on urgent requirement appointed the petitioners on contingency basis. As such the petitioners being appointed on contingency basis without sanctioned post cannot claim regularization as a matter of right.

11. It is further submitted that the petitioners cannot claim

regularization of service with regular scale pay after a decade when their appointment on contingency basis was fully understood and accepted in the year 2007 without any objection by the petitioners. Moreover, the policy laid down by the Department of School Education dated 05.08.1991 does not entitle the contingency appointees to claim regularization. The learned Government Counsel submits that in the past there were random and rampant appointments on the basis of land ownership as the State Government did not have a policy to regulate the appointments to grade IV post on land ownership basis. Therefore a Division Bench of this Court in Writ Appeal No. 18 (K) 2013 and 19 (K) 2013 had directed the State respondents to formulate a policy with regard to appointment of grade IV post on land ownership basis under the Government of Nagaland. The court noticed that the procedure followed in the State with regard to appointment on land ownership basis was not in tune with the requirements of Article 14 and 16 of the Constitution of India and that the State Government is under an obligation to follow the constitutional tenets of fairness and equality of opportunity as embodied in Article 14 and 16 of the constitution in matters of public employment.

12. The Government of Nagaland thereafter, framed a policy and the same has been notified vide notification No. LR/6-181/LIT/2015 dated 05.03.2018. For a proper understanding of the issues in hand, the notification dated 05.03.2018 is reproduced here below.

“NO.LR/6-181/LIT/2015: In pursuance of approval of the Cabinet vide O.M. No. CAB-2/2013 Dt.13.12.17, the Government of Nagaland is pleased to notify the following policy with regard to appointments to 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 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 and 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 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 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 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 in 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.

*Sd/-
(PANKAJ KUMAR) IAS*

Chief Secretary""

13. In pursuance of the said notification dated 05.03.2018, the Division Bench of this Court in Writ Appeal 18 (K) 2013 and 19 (K) 2013 held that no right flows to the land owners who have donated the land as per an agreement dated 04.02.1972 to claim for any appointment on land ownership basis for the land donated by them free of cost. The division bench upheld the legality of the notification dated 05.03.2018 and was of the view that the case of the petitioners would fall under clause 2 of the Notification dated 05.03.2018.

14. Learned Government Advocate, submits that all writ petitions where the petitioners claimed appointment on the basis of land ownership were kept in abeyance awaiting the policy to be framed by the Government. Thereafter, all the writ petitions were disposed of in the light of the notification dated 05.03.2018. It is therefore, submitted that the present case would also be covered by the notification of 05.03.2018 as this is comprehensive policy brought out by the Government of Nagaland to cover all cases of appointment on the basis of land ownership, past, present and future. Learned Government Advocate therefore submits that as per clause 3(c) of the notification dated 05.03.2018, it is not the policy of the Government to provide employment to the land owners in perpetuity. The employment of the land owners, if permitted by a verifiable and valid agreement is limited to the person first appointed as land owners in Government service. And does not entitle his descendents for further employment on his retirement from service. After the appointed land owners retires or vacates the post, the vacancy will be filled up through open

advertisement in consensus with the existing policy giving equal opportunity to all applicants.

15. Learned Government Counsel has also relied on a judgment by a coordinate bench of this Court in WP(C) 250/2021, wherein under similar facts and circumstances, the Hon'ble Court has held that the notification dated 05.03.2018 clearly provides that the appointment of land owner shall be limited to only one person and not more. In the cited case also there was no written or oral agreement executed between the Government and the land owners and two land owners had already been appointed. Basing on the notification dated 05.03.2018, the writ petition was dismissed. Learned Government Counsel therefore submits that in the present writ petitions the facts of the cases are similar to that of WP(C) 250/2021 and therefore the writ petitions may be dismissed.

16. I have considered the submission of the learned counsel for the parties and perused the pleadings and authorities laid before the court. The issue of appointment on the basis of land ownership has been an issue of contention in the State of Nagaland for a long time. However, the Notification dated 05.03.2018 has now laid to rest all the various claims and counter claims made by the land owners and the comprehensive policy has been laid down to cover all cases of claims on the basis of land ownership. As submitted by the learned Government Advocate, the Division Bench of this Court in WA 18 (K) 2013 and 19 (K) 2013, followed by several other judgments has already accepted the legality of the Notification dated 05.03.2018. In the case of Shri. Kahoshe Chishi and others in WP(C)250/2021 (supra),

a coordinate bench of this Court had the occasion to deal with a claim for appointment on the basis of land ownership, in a case where some other persons had already been appointed on the basis of land ownership. The Court came to a conclusion that the petitioners are not eligible to be appointed to grade IV post in view of the notification dated 05.03.2018 which clearly provides that the appointment of land owner shall be limited to only one person and not more. Similarly, in the present cases four other persons have already been appointed on the basis of land ownership in the Government Higher Secondary School, Niuland. A perusal of the particulars of the petitioners in the three writ petitions also shows that all the three writ petitioners belong to the same family. The petitioners have also not disputed the fact that the four other persons were appointed on the basis of land ownership. These three writ petitioner are therefore, clearly covered by clause 3(c) of the notification dated 05.03.2018. This Court is of the view that the petitioner's rights, if any to be appointed on the basis of land ownership is extinguished by clause 3(c) of the notification dated 05.03.2018.

17. In view of the findings made in the foregoing paragraphs, this Court does not find any merit in the writ petitions and they are accordingly dismissed.

18. Before parting with the records, the learned counsel for the petitioner has submitted a copy of the Office Memorandum No. AR-3/GEN-67/2001 dated 05.03.2025 and has made a prayer that the petitioners may be considered under this office memorandum. Learned Government Advocate has not raised any objections for such a

direction. The State respondents may consider the petitioners for grant of scale of pay under the office memorandum dated 05.03.2025 if they are eligible under the same.

19. With the above direction, this petition stands disposed.

JUDGE

Comparing Assistant