

GAHC020005512024

2025:GAU-NL:561



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

Case No. : WP(C)/206/2024

SHRI M LONGNYU KONYAK
S/O MEANGLAO KONYAK
R/O TAMKOANG VILLAGE, TOBU
MON NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
KOHIMA NAGALAND

2:THE COMMISSIONER AND SECRETARY
DEPT. OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

4:THE CHIEF MEDICAL OFFICER
MON NAGALAND

5:SHRI BAONGBA K
MEDICAL ATTENDANT
TAMKONG SUB-CENTRE
UNDER CHIEF MEDICAL OFFICER
MON NAGALAND

Advocate for the Petitioner : N. LONGKUMER, LUCY WEO, REBECCA, KIM
PIENYU, NISUKA CHISHI

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 21-11-2025

Heard Ms. Kim Pienyu, learned counsel for the petitioner. Also heard Ms. S. Chang, learned Government Advocate for the respondent nos. 1 to 4 and Mr. Pfosekho Pfotte, learned counsel for the respondent no. 5.

2. The petitioner has put to challenge the appointment of the respondent no. 5 to the post of Medical Attendant at Tamkong Sub-Centre, under the Chief Medical Officer's Establishment, Mon, in the Pay Level 1 of Pay Matrix plus all other allowances, vide order dated 18.01.2023, on the ground that the respondent no. 5 is not a land owner.

3. The petitioner's counsel submits that as the respondent no. 5 is not a land owner, the appointment of the respondent no. 5 as a landowner should be set aside and the petitioner, who is a land owner, should be appointed in his place. The learned counsel for the petitioner submits that this Court, vide order dated 08.08.2025, had directed a verification to be made by the concerned Deputy Commissioner, relating to whether the land on which the Tamkong Sub-Centre had been established had been donated, either by the petitioner's clan or the clan of the respondent no. 5 in terms of the extant Government Policies under the Land-Owner Policy being

followed by the Government.

4. Ms. S. Chang, learned Government Advocate for the respondent nos. 1 to 4 has submitted a forwarding letter dated 11.11.2025, issued by the Principle Director, Health & Family Welfare, Nagaland along with the spot verification report, in respect of the land where the Sub-Centre Tamkong Village, Mon is situated, amongst other documents.

5. The physical spot verification report dated 25.09.2025 signed by the (i) Additional Deputy Commissioner, Tobu, (ii) SMO CHC, Tobu and (iii) Head Dobashi, DB Court, Tobu, is to the effect that the said land does not belong, either to the petitioner or the respondent no. 5. She thus submits that either of them cannot have any claim to the post of Medical Attendant on the ground of land ownership basis.

6. The learned counsel for the respondent nos. 1 to 4 submits that as there was a vacancy in the post of Medical Attendant in the said Sub-Centre, the respondent no. 5 had been appointed after considering the candidature of 3 applicants, who had prayed for appointment to the said post. She submits that there was no open advertisement issued, prior to the appointment of the respondent no. 5 to the said post.

7. Mr. Pfosekho Pfotte, learned counsel for the respondent no. 5 has submitted a letter dated 23.09.2024, issued by the Tamkoang Village Council, which is to the effect that the documents submitted

by the petitioner, for proving that he belonged to the clan which had donated the land was fabricated, as there were no such documents in the records of the Village Council. He further admits that no open advertisement had been issued prior to the respondent no. 5 being appointed as Medical Attendant. As the vacancy had occurred, the respondent no. 5 had applied for the same, and he was selected for the said post over 2 other applicants.

8 I have heard the learned counsels for the parties.

9. As can be seen from the physical spot verification report, signed by the signed by the Additional Deputy Commissioner, Tobu, SMO CHC, Tobu and Head Dobashi, DB Court, Tobu, the petitioner and the respondent no. 5 cannot claim to be land owners, on the land over which the Sub-Centre has been built. As such, no right of appointment exists in favour of the petitioner and the respondent no. 5 to the post of Medical Attendant on the donated land on land ownership basis.

10. The forwarding letter dated 11.11.2025 issued by the Principle Director, Health and Family Welfare, Nagaland, Kohima and the other documents annexed to the forwarding letter, which also includes the physical spot verification report are made a part of the record and marked as Annexure-X collectively.

11. In view of there being no merit in the writ petition, the petitioner's prayer for appointment on land ownership basis is rejected.

12. The above being said, the submissions made by the learned counsels for the parties shows that the appointment of the respondent no. 5 to the post of Medical Attendant in the said Sub-Centre, had been done in violation of Article 14 and 16 of the Constitution of India, in as much as, no advertisement had been issued, to allow persons interested and eligible for the said post, to participate in the selection process.

13. In the case of ***State of Orissa & Another vs. Mamata Mahanty***, reported ***in (2011) 3 SCC 436*** , the Hon'ble Supreme Court has held at Paragraphs 35 and 36 as follows:

"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, it 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.

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 noticeboard, 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."

14. The OM No. LR/LAND-PLCY/5-26/2011 dated 16.08.2018 issued by the Government of Nagaland, Land Revenue Department provides that when the appointed land owner retires or vacates the post, the vacant post is to be filled up through open advertisement giving equal opportunity to all applicants. In the present case, the petitioner and the respondent no. 5 are not land owners.

15. As the appointment of the respondent no. 5 is clearly in violation of Article 14 and 16 of the Constitution as per the law laid down by the Hon'ble Supreme Court in ***Mamata Mahanty (supra)***, and Clause 3 (b) of the OM No. LR/LAND-PLCY/5-26/2011 dated 16.08.2018 issued by the Government of Nagaland, Land Revenue Department, the appointment of the respondent no. 5 to the post of Medical Attendant, vide appointment order dated 18.01.2023, is hereby set aside.

16. The State respondents shall advertise the said post and make appointment to the said post, giving opportunity to all eligible persons to participate in the selection process.

17. The writ petition is accordingly disposed of.

JUDGE