

GAHC020005822022

2025:GAU-NL:527



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

Case No. : WP(C)/221/2022

ALL NAGALAND DIRECTORATE AND DISTRICT GOVERNMENT
DRIVERS UNION AND ANR
REPRESENTED BY THE PRESIDENT SHRI. KIKRULHOULIE PAPHINO

HEADQUARTER - KOHIMA
NAGALAND

REGISTRATION NO.2637
DATED 21/06/1994

2: ALL NAGALAND DIRECTORATE AND DISTRICT GOVERNMENT
DRIVERS UNION

REPRESENTED BY THE GENERAL SECRETARY

SHRI OTIYANGER
HEADQUARTER - KOHIMA

NAGALAND
REGISTRATION NO.2637
DATED 21/06/1994
VERSUS

THE STATE OF NAGALAND AND 33 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND
KOHIMA

2:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
DEPARTMENT

NAGALAND
KOHIMA

3:THE FINANCE COMMISSIONER

NAGALAND
KOHIMA

4:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF TRANSPORT

NAGALAND
KOHIMA

5:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF LEGAL METROLOGY AND CONSUMER
PROTECTION
NAGALAND
KOHIMA

6:THE SECRETARY TO THE GOVERNMENT OF NAGALAND

DEPARTMENT OF SOCIAL WELFARE

NAGALAND
KOHIMA

7:THE SECRETARY

URBAN DEVELOPMENT

NAGALAND
KOHIMA

8:THE SECRETARY TO THE GOVERNMENT OF NAGALAND

HOME DEPARTMENT

PRINTING AND STATIONERY

NAGALAND
KOHIMA

9:THE COMMISSIONER AND SECRETARY AND APC TO THE
GOVERNMENT OF NAGALAND

DEPARTMENT OF AGRICULTURE

NAGALAND
KOHIMA

10:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF GEOLOGY AND MINING

NAGALAND
KOHIMA

11:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF NAGALAND

SOIL AND WATER CONSERVATION DEPARTMENT

NAGALAND
KOHIMA

12:THE SECRETARY TO THE GOVERNMENT OF NAGALAND

YOUTH RESOURCES AND SPORTS DEPARTMENT

NAGALAND
KOHIMA

13:THE COMMISSIONER AND SECRETARY

DIRECTORATE OF INDUSTRIES AND COMMERCE

NAGALAND
KOHIMA

14:THE SECRETARY

RURAL DEVELOPMENT

NAGALAND
KOHIMA

15:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF NAGALAND

LABOUR AND EMPLOYMENT
SKILL DEVELOPMENT AND ENTREPRENEURSHIP

NAGALAND
KOHIMA

16:THE SECRETARY TO THE GOVERNMENT OF NAGALAND

COOPERATION DEPARTMENT

NAGALAND
KOHIMA

17:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
NAGALAND
KOHIMA

18:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF NAGALAND

HORTICULTURE DEPARTMENT

NAGALAND
KOHIMA

19:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF ANIMAL HUSBANDRY AND
VETERINARY SERVICES
NAGALAND
KOHIMA

20:THE JOINT CONTROLLER AND HOD

OFFICE OF THE CONTROLLER OF LEGAL METROLOGY AND
CONSUMER PROTECTION

NAGALAND
KOHIMA

21:THE JOINT DIRECTOR

DIRECTORATE OF SOCIAL WELFARE

NAGALAND
KOHIMA

22:THE DIRECTOR

DIRECTORATE OF URBAN DEVELOPMENT DEPARTMENT
NAGALAND
KOHIMA

23:THE DIRECTOR

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

24:THE DIRECTOR

DIRECTORATE OF AGRICULTURE

NAGALAND
KOHIMA

25:THE DIRECTOR

DIRECTORATE OF GEOLOGY AND MINING

DIMAPUR
NAGALAND

26:THE DIRECTOR

DIRECTORATE OF SOIL AND WATER CONSERVATION
NAGALAND
KOHIMA

27:THE DIRECTOR

DIRECTORATE OF YOUTH RESOURCES AND SPORT
NAGALAND
KOHIMA

28:THE DIRECTOR

DIRECTORATE OF INDUSTRIES AND COMMERCE

NAGALAND
KOHIMA

29:THE DIRECTOR

DIRECTORATE OF RURAL DEVELOPMENT

NAGALAND
KOHIMA

30:THE LABOUR COMMISSIONER

DIRECTORATE OF LABOUR

NAGALAND
KOHIMA

31:THE REGISTRAR

OFFICE OF THE REGISTRAR OF COOPERATIVE
SOCIETIES
NAGALAND
KOHIMA

32:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE

NAGALAND
KOHIMA

33:THE DIRECTOR

DIRECTORATE OF HORTICULTURE

NAGALAND
KOHIMA

34:THE DIRECTOR

DEPARTMENT OF ANIMAL HUSBANDRY AND VETERINARY
SERVICES
NAGALAND
KOHIMA

Advocate for : SUPONGWATI WALLING
Advocate for : appearing for THE STATE OF NAGALAND AND 33 ORS

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 03-11-2025

The All Nagaland Directorate and District Government Drivers' Union has filed this petition under Article 226 of the Constitution of India with the following prayers:

"i) to approve the proposals made by various departments as per Meeting Minutes dated 30-01-2105 for upgrading the post of Head Driver to that of Vehicle Inspector.

ii) to fulfil the demand made by the petitioners.

iii) to direct the respondents to upgrade the post of Head Driver to Vehicle Inspector in the 16 (sixteen) departments."

2. As per the facts projected, there has been a long standing demand for creating of post of Vehicle Inspectors in various offices. In this regard on 13.10.2014, a Committee was constituted to look into the said demands and the aforesaid Committee took a resolution in its meeting dated 30.01.2015. The relevant part of which is extracted herein below:

"4. After examination and deliberation, the Committee concluded that the demand of the All Nagaland Directorate & District Government Drivers' Union for creation of 62 (sixty two) posts of Vehicle Inspector in all Directorates and Deputy Commissioner's Offices in the Districts was not functionally justified. The Committee recommended that it should be left to the wisdom and discretion of the Departments as to whether the post of Inspector is required in their respective Departments and if so required, move proposals to the State Government justifying the same."

3. As per the aforesaid resolution, the Committee had recommended that the aspect of creation of 62 numbers of posts of Vehicle Inspectors which left to the discretion of the offices as to whether such post is required and if so, the State government may be moved. It is the case of the petitioners that 8 numbers of offices have in fact considered the aforesaid resolution positively and Vehicle Inspectors have been appointed. However, till date, 16 numbers of offices have not considered the same and accordingly, the present petition has been filed.

4. I have heard Shri Supongwati Walling, learned counsel for the petitioners, Ms. V. Suokhrie, learned Additional AG for the State respondents and Ms. Apila Sangtam, learned Standing counsel for the respondent nos. 6 and 21- Department of Social Welfare. The State respondents as well as the concerned Department of Social Welfare have filed their affidavit-in-oppositions.

5. Shri Walling, learned counsel for the petitioners has submitted that the action of the government in constituting the Committee vide notification dated 13.10.2014 was for redressing the demands and grievances of the petitioners which the Committee had accordingly done in its meeting dated 30.01.2015. He submits that the observations made in paragraph 4 cannot be read in isolation and have to be read with the observations made in the earlier part of the meeting, as well as the contents of the representations of the petitioners. He has submitted that while the discretion was left to the concerned offices, the same has should have been taken up

positively by all offices and only 8 numbers of offices have appointed Vehicle Inspectors and 16 numbers of offices are yet to make such consideration. He submits that promotion/up-gradation in service is a cherished right of every employee and no employee can be deprived of such right.

6. *Per contra*, Ms. V. Suokhrie, learned Additional AG has submitted that the aspect of creating 62 numbers of post of Vehicle Inspectors in the Directorates and Deputy Commissioner's Office in the districts was not feasible and the post of Vehicle Inspector is otherwise a post which can be filled up only by promotion. She has highlighted that the petitioners have prayed for up-gradation of the post of Head Drivers to Vehicle Inspectors which is not provided in the Rules. She has categorically submitted that the aspect of creating 62 numbers of additional posts of Vehicle Inspectors could not be done as it was not feasible on the part of the State. She further submits that no right of any nature has been vested on the petitioners by the observations made in the minutes of the meeting dated 30.01.2015, as there is no corresponding order flowing from the said discussion. In any case, she submits that the resolution was not even in the form of a direction but leaving the matter to the respective directorates/Office of the Deputy Commissioners to exercise its discretion. She has also submitted that some offices have forwarded the proposals, as it was considered feasible.

7. Ms. Sangtam, learned Standing counsel-Social Welfare Department has however submitted that the said department had

forwarded certain proposals which after certain consideration was reverted back to the Department for submitting a fresh proposal.

8. Shri Walling, learned counsel for the petitioner in his rejoinder affidavit has submitted that when 8 numbers of offices have made appointments to the post of Vehicle Inspector it would not lie on the government to deny a similar action for the remaining 16 numbers of offices. By relying upon the decision of the Hon'ble Supreme Court in the case of ***E.P. Royappa Vs. State of Tamil Nadu and Anr*** reported in ***(1974) 4 SCC 3***, the learned counsel has submitted that the action of the offices would be in violation of Article 14 of the Constitution of India. He has made specific reference to the observations made in paragraph 85, which is extracted herein below:

" 85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J.,

"a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

9. He has also relied upon the decision of **M/s Motilal Padampat Sugar Mills Co. Ltd Vs. State of Uttar Pradesh and Ors** reported in **(1979) 2 SCC 409** on the aspect of promissory estoppel. He has submitted that the resolution dated 30.01.2015 would amount to a promise which the government cannot resile.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. The demand of the petitioners which would reflect from the

minutes of the meeting dated 30.01.2015 and considered by the Committee constituted vide notification dated 13.10.2014 would show that it was for creating of 62 numbers of posts of Vehicle Inspectors in all Directorates and the Office of the Deputy Commissioners in all districts. The said Committee however did not issue any direction for such creation and had rather left the matter at the discretion of the respective offices. The observations of the Committee which have been extracted above would clearly show that the matter was left to the discretion and wisdom of the respective offices.

12. This Court had taken into consideration of the fact that the post in question of Vehicle Inspector is a promotional post, therefore, there cannot be any demands for up-gradation. The learned Additional AG has made a categorical statement that the aspect of creating 62 numbers of Vehicle Inspectors was not even feasible and, therefore, it could not be created. In so far as filling up of any vacant post of Vehicle Inspector is concerned, the same can be done only by following the norms holding the field which lays down that it is to be done by promotion. This Court has also considered that 8 numbers of offices have considered and proposed for up-gradation of posts from Head Driver to Vehicle Inspector, while 16 numbers of offices are yet to consider.

13. This Court is of the opinion that firstly the resolution of the meeting held on 30.01.2015 is not in the form of any direction. In any case there was no order following the said resolution and it is a

settled principle of law that in absence any order, no right of any nature would rest on any incumbent. In this regard one may gainfully refer to the decision of a Constitution Bench of the Hon'ble Supreme Court in the case of ***Bachhittar Singh Vs. State of Punjab & Anr*** reported in ***AIR 1963 SC 395***, wherein the following observations have been made;

"9. The questions, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl. (1) of Art. 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot in our opinion be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh once."

14. Be that as it may, even if the aforesaid aspect is overlooked, the observation made in paragraph 4 is not in the form of any direction. So far as the action of 8 numbers of offices are concerned recommending up-gradation, this Court is of the opinion that such recommendation can be deemed to be taken in exercise of discretion, which however do not conform strictly to the requirements of law whereby the post of Vehicle Inspector is to be filled up only by promotion.

15. In view of the above, this Court is of the opinion that no Mandamus can be issued directing up-gradation of such post. The vacant post of Vehicle Inspector can be filled up only through

promotion. However, it would be the discretion of the respective offices and the Government to allow up-gradation, which however is to be done in a transparent and fair manner giving equal opportunity to all the deserving persons.

16. With the following observations, the present writ petition stands disposed of.

JUDGE

Comparing Assistant