

GAHC020006532019

2025:GAU-NL:163



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

Case No. : WP(C)/253/2019

ILU CHAWANG
KEJANGLWA VILLAGE

VERSUS

STATE OF NAGALAND
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER AND SECRETARY
ART AND CULTURE DEPARTMENT

3:THE ADDITIONAL DIRECTOR AND HOD
DEPARTMENT OF ART AND CULTUR

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, WATI JAMIR,IMKONG
JAMIR,NUKSHINARO,I IMCHEN

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

Date : 14-04-2025

JUDGMENT & ORDER (CAV)

Heard Mr. I. Imchen, learned counsel appearing for the petitioner. Also heard Ms. Livika, learned Government Advocate appearing for the State respondents.

2. By filing this writ petition, the petitioner challenges letter No. NL/AC-83/87(Vol-II) dated 31.10.2019 and termination notice No. AC/ESTT/ED-NG/394/2019-20/793 dated 8.11.2019. In the letter dated 31.10.2019, the Under Secretary to the Government of Nagaland, Department of Art & Culture, wrote to the Director of Art & Culture regarding the termination of 13 (thirteen) Gr. III & IV irregular appointees. The petitioner's name appeared at Sl. No. 1 in this letter. Subsequently, by notice dated 8.11.2019, the Additional Director & Head of Department of Art & Culture served the termination notice to the petitioner.

3. The petitioner's case, in brief, is that upon learning that a vacant post of LDA under the establishment of the District Culture Office (hereinafter referred to as DCO) was available, she applied for the post. Her application was considered and approved via letter No. AC/ESTT/1/2010 dated 1.9.2017, in her favor for appointment to the said post, where her name appeared at Sl. No. 8 on the waitlist. Following the approval letter dated 1.9.2017, the petitioner was appointed to the post of LDA (District) under the establishment of

DCO, Peren, via order No. AC/ESTT/BOI/15-16(P) dated 1.9.2017, on a regular basis, with the condition that the appointment could be terminated with one month's notice from either side in writing. The petitioner subsequently joined her duties.

4. The petitioner contends that while she was serving in the Department, the Under Secretary to the Government of Nagaland, Department of Art & Culture, issued the impugned letter dated 31.10.2019 to the Director of Art & Culture for the termination of 13 (thirteen) Gr. III & IV irregular appointees, with the petitioner's name listed at Sl. No. 1. This proposal was initiated and approved by the Chief Minister of Nagaland. Based on the aforementioned impugned letter dated 31.10.2019, the Additional Director & Head of Department of Art & Culture served the impugned termination notice dated 8.11.2019 to the petitioner. The reason for issuing the termination notice was that the petitioner was appointed without following the proper procedure for appointments in government service.

5. The learned counsel for the petitioner submitted that the petitioner was appointed by order dated 1.9.2017, with the condition that the appointment could be terminated with one month's notice from either side in writing. However, by the impugned termination notice dated 8.11.2019, the petitioner's service was effectively terminated one month after the issuance of the notice. The learned counsel argues that the respondent authorities should have provided the petitioner with an opportunity to be heard. Therefore, the actions of the respondent authorities are illegal, arbitrary, and violate the principles of natural justice; thus, the impugned letter dated

31.10.2019 and the termination notice dated 8.11.2019 should be quashed and set aside.

6. The learned counsel for the petitioner further submitted that while issuing the impugned termination notice, the respondent authorities should have considered that the petitioner had already served for more than two years with due sincerity and devotion and that she is now over-aged for any public employment. In support of his submission, the learned counsel for the petitioner cited the decision of the Hon'ble Supreme Court in the case of ***Satwati Deswal vs State of Haryana and Others*** reported in **(2010) 1 SCC 126**, whereby at paragraphs 4 and 5, it is observed as under:

"4. Admittedly, in this case, no show-cause notice was issued to her nor the order of termination was passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question."

7. On the contrary, the learned Government Advocate for the State respondents, while referring to the affidavit-in-opposition filed on behalf of respondent Nos. 1, 2, and 3, submitted that the

Manpower Rationalization Committee, in its meeting held on 23.9.2016, recommended the creation of 15 various categories of posts in the districts of Peren, Kiphire, Longleng, and Kohima (World War Museum) under the Art & Culture Department. The recommendation included 3 posts of District Cultural Officer, 3 posts of LDA cum Computer Assistant, 3 posts of Driver, 3 posts of Peon cum Chowkidar in the districts mentioned, and 1 post each of Chowkidar, Museum Guard, and Museum Cleaner for the World War II Museum in Kohima. These posts were to be filled through the Nagaland Public Service Commission (NPSC) or the departmental recruitment board, and no contract appointments were to be made against these posts. The minutes of the meeting were forwarded to the Secretary of Art & Culture, Nagaland, Kohima, on 30.9.2016.

8. The learned State counsel further submitted that the Cabinet, in its meeting held on 13.12.2016, approved the creation of 15 various categories of posts in the district offices of Peren, Kiphire, Longleng, and in the World War II Museum in Kohima. The extract of the minutes of the Cabinet meeting held on 13.12.2016 was approved vide OM NO. CAB-2/2013 dated 14.12.2016 by the Cabinet Secretary. Subsequently, the Joint Secretary to the Government of Nagaland, Art & Culture Department, by his letter No. AC/ESTT-4/2013 dated 18.1.2017, conveyed the sanction of the Government of Nagaland for the creation of these posts and requested the Department to constitute a Departmental Screening Committee (DSC) for appointments.

9. It is further submitted that out of the 15 various categories of posts created in the district offices of Peren, Kiphire, Longleng, and in the World War II Museum in Kohima, 3 posts fall under the category of LDA cum Computer Assistant, with one post each for the district offices of Peren, Kiphire, and Longleng. The present case pertains to one post of LDA in Peren district. The learned State counsel stated that the Director of Art & Culture received applications from the petitioner as well as from one Shri Namdibe for the lone post of LDA cum Computer Assistant under Peren district. Subsequently, the Directorate of Art & Culture, Nagaland, published notifications in different newspapers dated 29.5.2017, 30.5.2017, and 31.5.2017, inviting applicants for interviews for Gr. III & IV posts scheduled for 8.6.2017. The interview was conducted on 8.6.2017. Following this, by letter No. AC/ESTT/1/2010 dated 1.9.2017, the Joint Secretary to the Government of Nagaland, Art & Culture Department, conveyed to the Director of Art & Culture the list of administrative approvals based on the recommendations of the Departmental Screening Committee. This list included the names of both approved candidates and those on the waiting list. In this list, Shri Namdibe was shown as the approved candidate for the lone post of LDA cum Computer Assistant under Peren district, while the petitioner was shown at Sl. No. 8 in the waiting list column. Consequently, the Directorate of Art & Culture issued an appointment order No. AC/ESTT/DSC/328/2017-18 dated 1.9.2017 to Shri Namdibe.

10. The learned State counsel further submitted that anomalies were detected, revealing that the appointment order dated 1.9.2017 for the petitioner bore the same date as the order and administrative approval for Shri Namdibe. Consequently, upon discovering that the appointment had been made without a sanctioned post and administrative approval of the Government, the petitioner's service was terminated. The learned State counsel also stated that the Under Secretary to the Government of Nagaland sent a series of letters dated 16.7.2019, and reminder letters dated 9.8.2019 and 4.9.2019 to the Director of Art & Culture, informing them that anomalies had been detected, where 14 posts in respect of Gr. III & IV had been made in excess. The Under Secretary requested the submission of appointment orders and administrative approvals concerning these excess appointees. In response to these queries, a list detailing the appointments of Gr. III & IV employees made from 2017-18 was submitted to the Commissioner & Secretary to the Government of Nagaland, Art & Culture, on 12.9.2019. In this list, the petitioner's name was reflected at Sl. No. 1, with her appointment remarked as "***appointed without sanctioned post and administrative approval.***" Consequently, the Government of Nagaland, by letter dated 31.10.2019, directed the Director of Art & Culture, to issue termination orders separately to 14 Gr. III & IV irregular appointees. Accordingly, the Directorate of Art & Culture issued a termination notice dated 8.11.2019 to the petitioner, informing her that upon the expiry of 30 days, her service would be treated as terminated.

11. It is evident that upon finding that the petitioner's appointment was made without a sanctioned post and administrative approval, the Director of Art & Culture issued the termination notice dated 8.11.2019, stating that her service would be treated as terminated after 30 days from the date of the notice. The learned State counsel asserted that the petitioner was granted a 30-day opportunity during which she submitted a representation dated 25.11.2019 (Annexure 17 to the affidavit -in-opposition) against the termination notice dated 8.11.2019. However, since the petitioner's appointment was not made in accordance with the law and was not against any sanctioned post, her representation was not considered. Furthermore, the petitioner has not disclosed that she made a representation before the concerned authorities on 25.11.2019, for redressal of the termination notice issued against her, but rather claims that no opportunity was afforded to her. This indicates that the petitioner has not approached this Court with clean hands. The learned State counsel argued that the Government has been gracious enough to pay her salary until December, i.e., until the expiry of the termination notice. Therefore, no violation of the principles of natural justice has occurred in terminating the petitioner's service. The learned State counsel further contended that the petitioner must demonstrate that there was no illegality in her appointment. However, in this case, the petitioner has failed to satisfy this Court that her appointment was legal.

12. In addition to that, the learned State counsel stated that the petitioner's case is not an isolated instance of illegal

appointment by the officers in the Department. There are additional cases of illegal appointments against which the State has issued similar termination notices and initiated departmental action against the responsible officers. It is noted that, apart from the present petitioner, none of the other illegal appointees have approached the authorities or the Court regarding the termination of their illegal appointments. Since the petitioner's appointment was illegal and she has failed to demonstrate to the Court that her appointment was legal or made according to the process of law against a sanctioned post, she is not entitled to such notice. In support of her submission, the learned Government Advocate has cited the decision of the Division Bench of this Hon'ble Court in the case of **Abdul Kalam Borbhuya vs State of Assam & Ors** reported in **2006(1) GLT 771**. The relevant paragraph 12 is reproduced below:

"12. *The Principles of Natural Justice is not inflexible and cannot be put in a straight jacket formula. Whether a person is entitled to a notice before taking any action against him, depends on the fact of each case. If a - person is appointed dehors the Rules and in - complete violation of the statutory rules framed for that purpose, without any advertisement and without any selection, his entry into the service is through the back door. The person who entered the service through the back door, by depriving other eligible candidates from competing in selection, cannot subsequently complained of the violation of the Principles of Natural Justice, when his services is terminated on the ground of illegal appointment, as such appointment does not confer any right on such person to continue in ser-vice. Even, in the case where a person is en-titled to notice before termination, non issu-ance of such notice, ipso facto, will not render such order of termination invalid, as he has to show what prejudice has been caused to him for non-issuance of such notice. In the instant case, the appellant has admitted that he was appointed without any advertisement and without any selection and in complete violation of Rules, therefore, petitioner's entry into service*

being through backdoor cannot be allowed to say that the order of termination is bad in law being violative of natural justice, as he is not entitled to such notice. Moreover, non issuance of any notice before passing the order of termination has not caused any prejudice to the petitioner. There-fore, the contention of the appellant that the order of termination of service is bad in law for non issuance of notice cannot be accepted:

13. In light of the facts and circumstances of the case, the learned Government Advocate pray for the dismissal of the writ petition.

14. I have heard the learned counsel for both parties and considered the documents submitted by both sides.

15. The petitioner contended that the authority was required to issue a notice to show cause as to why her service should not be terminated, providing her an opportunity to explain her case. According to the learned counsel for the petitioner, since no such notice was issued, the order of termination from service violates the principles of natural justice and is therefore invalid.

16. On the other hand, the State counsel argued that since the petitioner's appointment was made illegally, in excess of the available posts, without any sanction or administrative approval from the Government, and since she was given one month's notice with salary benefits during which she made a representation against her termination notice, the principles of natural justice were not violated.

17. In this case, the record indicates that the Manpower Rationalization Committee, in its meeting held on 23.9.2016, recommended the creation of 15 various categories of posts in the

districts of Peren, Kiphire, Longleng, and Kohima (World War Museum) under the Art & Culture Department, including one post of LDA-cum-Computer Assistant in Peren district. These posts were to be filled through the Nagaland Public Service Commission (NPSC) or the departmental recruitment board, and no contract appointments were to be made against these posts. The minutes of the meeting were forwarded to the Secretary of Art & Culture, Nagaland, Kohima, on 30.9.2016.

18. Subsequently, the Cabinet, in its meeting held on 13.12.2016, approved the creation of these 15 various categories of posts, which were then sanctioned and conveyed to the Director of Art & Culture, Kohima, Nagaland, by the Joint Secretary to the Government of Nagaland, Art & Culture Department, in his letter dated 18.1.2017, along with a request to constitute a Departmental Screening Committee (DSC) for appointments.

19. The present case pertains to one post of LDA-Cum-Computer Assistant in Peren district, for which the Director of Art & Culture received applications from both the petitioner and Shri Namdibe. Following this, the Directorate of Art & Culture, Nagaland, published notifications dated 29.5.2017, 30.5.2017, and 31.5.2017 in three different local newspapers, inviting applicants for interviews for Gr. III & IV posts scheduled for 8.6.2017. The interview was conducted on 8.6.2017. Subsequently, by letter dated 1.9.2017, the Joint Secretary to the Government of Nagaland, Art & Culture Department, conveyed the list of administrative approvals based on the recommendations of the Departmental Screening Committee to

the Director of Art & Culture. This list included the names of both approved candidates and those on the waiting list. In this list, Shri Namdibe was shown as the approved candidate for the lone post of LDA-cum-Computer Assistant under Peren district, while the petitioner was listed at Sl. No. 8 on the waiting list. Consequently, on 1.9.2017, the Directorate of Art & Culture issued an appointment order to Shri Namdibe. There was no direction for the appointment of the waitlist candidate, as only one post was advertised against the lone sanctioned post of LDA-cum-Computer Assistant.

20. However, it appears that anomalies regarding the illegal appointment of the petitioner were detected when it was found that the appointment order dated 1.9.2017 issued in favor of the petitioner bore the same date as the order and administrative approval for the selected candidate, Shri Namdibe. Following this, the Under Secretary to the Government of Nagaland sent a series of letters on 16.7.2019, along with reminder letters on 9.8.2019 and 4.9.2019, informing the Director of Art & Culture that anomalies had been detected, where 14 posts in respect of Gr. III & IV had been made in excess. The Under Secretary requested the submission of appointment orders and administrative approvals concerning these excess appointees. In response to these queries, a list detailing the appointments of Gr. III & IV employees made from 2017-18 was submitted to the Commissioner & Secretary to the Government of Nagaland, Art & Culture, on 12.9.2019, including the name of the petitioner at Sl. No. 1, with her appointment remarked as "*appointed without sanctioned post and administrative approval.*" As

a result of this report of anomalies, all excess appointments, including that of the petitioner, were terminated with one month's notice. The petitioner has been unable to demonstrate that her appointment was legal and made after following due process of law.

21. The present case pertains to an appointment to a public position. It is a well-established principle that appointments to public posts must be made in accordance with the law. However, the appointment of the petitioner appears to be an instance of arbitrary appointment without the sanction of the authority, which is impermissible under the law. For an appointment to be valid and lawful, strict adherence to constitutional requirements must be fulfilled. In this case, the constitutional mandate has not been fulfilled, and it covers with the principles laid down in the case of *Abdul Kalam Barbhuyan Vs. State of Assam (Supra)*.

22. In that case it was observed, that whether a person is entitled to notice before taking any action against them depends on the facts of each case. If a person is appointed in complete violation of statutory rules, without any advertisement or selection, their entry into service is through the back door. Such individuals cannot subsequently complain of a violation of the principles of natural justice when their services are terminated on the grounds of illegal appointment, as such appointments do not confer any right to continue in service. Furthermore, even in cases where a person is entitled to notice before termination, the non-issuance of such notice does not automatically render the termination invalid, as they

must demonstrate what prejudice has been caused by the non-issuance of notice.

23. In this case, the petitioner has failed to show that her appointment was legal and it was not done without any advertisement or in violation of the rules. Therefore, her entry into service, being illegally made through the back door, cannot be allowed to claim that the order of termination is invalid due to a violation of natural justice, as she is not entitled to such notice. Moreover, the non-issuance of any notice before the termination order has not caused any prejudice to the petitioner. Therefore, the argument that the termination order is invalid due to the non-issuance of notice cannot be accepted.

24. The decision in **Satwati Deswal vs State of Haryana and Others** (Supra), as cited by the learned counsel for the petitioner is not applicable in this case, as the facts and circumstances of the said case differ significantly from the present situation. The cited case involved an employee whose appointment and promotion were duly approved by the competent authorities, but her services were terminated by an unreasoned order.

25. In light of the above discussion, I do not find any merit in the present writ petition. This writ petition is accordingly dismissed.

26. However, no order as to costs.

JUDGE