GAHC020000852024 2026:GAU-NL:599

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

**Case No. : WP(C)/30/2024**

SHRI B. BINYONGKHONG CHANG
S/O SHRI BUBENMONGKO CHANG
R/O KEJOK VILLAGE
P.P/P.S TUENSANG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF 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:SMTI. NATIMOUNG
MEDICAL ATTENDANT
KEJOK SUB CENTRE
UNDER CHIEF MEDICAL OFFICER
TUENSANG- NAGALAN

**-BEFORE-**

**HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocates for the petitioner : Mr. H. Mukam

Advocate for the respondents : M. Longkumar, respondent Nos. 1, 2 & 3.

Date of which Judgment is reserved : 25.08.2026

Date of pronouncement of Judgment : **02.11.2026**

Whether the pronouncement is of the operative part of the Judgment? : N/A

Whether the full judgment has been pronounced? : Yes

## JUDGMENT & ORDER (CAV)

Heard Mr. H. Mukam, learned counsel for the petitioner and Mr. M. Longkumar, learned Government Advocate for the respondent Nos. 1-3. None appears for the respondent No. 4.

**2.** In this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the Government Approval Letter No. HFW(A)Appt-8/114/2022/782, dated 03-11-2023 (Annexure-J), approving the appointment of the respondent No. 4 to the post of Medical Attendant, Kejong Sub-Centre; and for quashing and setting aside the impugned Appointment Order No. DHFW-3/117/TSG/GRADE-IV/2022/6110-14, dated 13-11-2023 (Annexure-K),

appointing the respondent No. 4 to the post of Medical Attendant, Kejong Sub-Centre; and also to direct the State respondents to consider the case of the petitioner for appointment to the post of Medical Attendant, Kejong Sub-Centre, on landownership basis, in accordance with the standing Government policy, against the post held by the respondent No. 4.

**Background facts:-**

**3.** The background facts, leading to filing of the present petition, are briefly stated as under -

"The petitioner, namely Shri. B. Binyongkhong Chang, son of Shri. Bubenmongko Chang, is a resident of Kejok village, P.O. & P.S.- Tuensang, Nagaland. The Kejok Sub-Centre, under Chief Medical Officer (CMO), Tuensang, was established over the land donated by petitioner's father, namely, Shri Bubenmongko Chang, who had donated the said land without claiming any compensation from the State Government and moreover, no written agreement was executed between the petitioner's father and the State Government to that effect. The said land was donated on good faith that the State Government will give appointment to the landowners in lieu of the donated land. Also, no one was earlier appointed from the petitioner's family on the basis of land ownership, and to that effect, the Kejok Village Council had also issued one certificate, being 'Annexure-B' of the petition.

However, on the retirement of Shri Bubenmongko Chang, a vacancy of Medical Attendant arose at Kejok Sub-Centre and as such, the petitioner submitted an application before the respondent No. 3

for being appointed against the said vacancy on land ownership basis, along with the certificate 'Annexure-B', issued by the Kejok Village Council through the CMO, Tuensang.

Thereafter, when the petitioner enquired about the status of his application, he discovered that his first application went missing from the appointment File No. DHFW-3/117/TSG/GRADE-IV/2022/7564, at the Directorate, Health & Family Welfare, Kohima, Nagaland. And when the said file was found out and was being processed, it was found that the same was processed only with the application filed by the respondent No. 4, a non landowner candidate, who also applied for the vacancy in question, by enclosing a No Objection Certificate (NOC) of Kejok Village Council. But subsequently, the Kejok Village Council submitted a letter, dated 26-07-2023, to the respondent authorities, recalling the NOC issued in favour of the respondent No. 4.

As the first application filed by the petitioner went missing, the petitioner had filed another application through the CMO, Tuensang, which was forwarded vide Letter No. CMO-1/Tsg-21/2022-2023/229, dated 28-04-2023, and also vide Letter No. DHFW-3/117/TSG/Grade-IV/2022/3159, dated 07-07-2023, to the respondent No. 3, seeking Government's approval for appointment in the said vacancy. It is pertinent to mention here that by the said letter dated 7/07/2023, the application of both the petitioner as well as the respondent No. 4, both were forwarded to the Government for consideration.

While the petitioner was waiting to be considered for

appointment, then vide impugned Government approval Letter No. HFW(A)Appt-8/114/2022/782, dated 03-11-2023, the State respondents had approved the appointment of respondent No. 4 against the vacant post, who is not even a landowner candidate; and thereafter, vide impugned Order No. DHFW-3/117/TSG/GRADE-IV/2022/6110-14, dated 13-11-2023, appointed the respondent No. 4, as Medical Attendant at Kejok Sub-Centre.

It is the case of the petitioner that even assuming, but not admitting, that landowner candidates have no right to be considered for appointment to the vacancy in question, even then, the post is liable to be advertised and all eligible candidates, including the petitioner herein, must be given equal opportunity to compete for the post through a selection process, as mandated by the constitutional provisions. The same cannot be filled up by way of backdoor appointment, as done in the instant case and on such ground, the impugned Government Approval, dated 03.11.2023, and impugned Order, dated 13.11.2023, appointing the respondent No. 4, without conducting any selection process, is unconstitutional and therefore, is liable to be interfered with.

It is also the case of the petitioner that he is the genuine land owner of the Sub-Centre Kijok village, and being a land donor and in the light of the O.M., dated 05.03.2018, the petitioner has accrued a right to be considered for appointment on land ownership basis, and that the appointment of the respondent No. 4, to the post in question, has deprived the right of the petitioner to be considered for appointment on land ownership basis, and that it is a clear violation

of the provision of the Articles 14, 16 & 21 of the Constitution of India and under such circumstances, it is contended to interfere with the same."

**Stand of the respondents:**

**4.** The respondent Nos. 1-3, in their affidavit-in-opposition, have challenged the maintainability of the petition, on the following grounds–

(a) The father of the petitioner has already availed the benefit of employment on landownership basis, who was being appointed as a Medical Attendant, under the establishment of Kejok Sub-Center, CMO, Tuensang, on landownership basis, and he joined in his service on 15.05.1986, and retired on 31.05.2021, upon completion of 35 years of service.

(b) As per Clause 3(c) of the Notification No. LR/6-181/LIT/2015, dated 05.03.2018, in regards to appointment on landownership basis under the Government of Nagaland, it is clearly stated that–

"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 as landowner in Government service and does not entitle his descendents for further employment on his retirement from service".

Therefore, the question of appointment of the petitioner on landownership basis does not arise, as it will be tantamount to the negation of the standing policy notification of the state and as such, the petitioner has no **locus-standi** to claim appointment on land ownership basis.

(c) In light of the said Notification, dated 05.03.2018, and the father of the petitioner having already availed the benefit of employment as a Medical Attendant under the establishment of Kejok Sub-Center, CMO, Tuensang, the claim of the petitioner for appointment on land ownership basis is wholly unfounded and liable to be dismissed.

**4.1.** It is the further stand of the respondent Nos. 1, 2 & 3, that with regard to the appointment of the private respondent No. 4, the department has processed the file in due manner, observing all codal formalities for employment in public service, and vide letters dated 19.01.2023 and 07.07.2023, the Department has forwarded two applications to the Government for appointment to the post of medical attendant at Kejok Sub Centre, under CMO Tuensang, thereby requesting the government to examine the matter and accord necessary approval.

**4.2.** Thereafter, upon consideration, the application of the private respondent No. 4 was approved for appointment vide approval letter, dated 03.11.2023, and in pursuance of the said approval letter, she was appointed, vide Order dated 13.11.2023, to the post of Medical Attendant at Kejok Sub-Center, CMO, Tuensang.

**5.** It is to be noted here that the private respondent No. 4 remained un-represented, when the matter was called for hearing. Moreover, on observing that the respondent No. 4 has not filed her affidavit-in-opposition, despite getting sufficient opportunities to do so; a Co-ordinate Bench of this Court, vide Order dated 24.03.2026, deprived her from filing her affidavit-in-opposition, as she has taken 22 (twenty two) adjournments, since 03.07.2024.

**6.** The petitioner has filed one affidavit-in-reply to the affidavit-in-opposition filed by the respondent Nos. 1 - 3, and he has admitted that the father of the petitioner, Shri Bubenmongko Chang, had served as a Medical Attendant under the establishment of Kejok Sub-Centre, CMO, Tuensang. However, he denied the fact that he was appointed on landownership basis, in as much as the record of his service book clearly speaks the volume that he was appointed as Medical Attendant by normal recruitment process and not on the basis of landownership.

**6.1.** Referring to a decision of the Hon'ble Supreme Court in the case of **State of Orissa and Another vs. Mamata Mohanty**, reported in **(2011) 3 SCC 436,** he submits that the no person can be appointed against any post, even on temporary or *ad-hoc* basis, without inviting applications from all eligible candidates by way of an advertisement in newspapers, having wide circulation and by other forms of mass media, as otherwise, it would violate Articles 14 & 16 of the Constitution of India and as such, the appointment of respondent No. 4 is illegal and is in violation of Articles 14 & 16 of the Constitution of India and therefore, he has contended to interfere with the same.

**Submission of the learned counsel for the petitioner:**

7. Mr. Mukam, learned counsel for the petitioner submits that he has applied to the post of Medical Attendant, Kejong Sub-Centre, under CMO, Tuensang, on land ownership basis and he has also enclosed one NOC issued by the Kejok Village Council, and that the private respondent No. 4 has also applied to the said post. He also submits that the State respondents have processed the applications filed by both the petitioner and the respondent No. 4, but ultimately, vide impugned appointment letter, dated 03-11-2023, has approved the appointment of the private respondent No. 4 and vide impugned appointment order, dated, 13-11-2023, has appointed the private respondent No. 4 as Medical Attendant of Kejong Sub-Centre, under CMO, Tuensang.

7.1. Mr. Mukam further submits that though the respondent authorities have taken a stand in their affidavit that the father of the petitioner has already availed appointment on land ownership basis, yet, nothing has been reflected in his service book, which is enclosed with the affidavit-in-reply; regarding appointment on the basis of land ownership.

7.2. It is the further submission of Mr. Mukam, that the private respondent No. 4 is admittedly not a land owner and her appointment was not based upon the land ownership, and that it is well settled in a catena of decisions of the Hon'ble Supreme Court that appointment to a public post, without inviting application from eligible candidates, by publishing advertisement, is contrary to the constitutional provision under Articles 14 and 16 of the Constitution of India and as such, the appointment of the private respondent No. 4, who also failed to file her affidavit-in-opposition

and also remained unrepresented today; is liable to be set aside and quashed.

**Submission of the learned counsel for the State respondents:**

**8.** Per contra, Mr. Longkumer, learned Government Advocate for the respondent Nos. 1-3 submits that the applications filed by the petitioner and the private respondent No. 4, were processed in the same file and while the same were forwarded to the Government, the Government has approved the appointment of the respondent No. 4, by following due process of law.

**8.1.** Mr. Longkumer further submits that the father of the petitioner has already availed the benefit of appointment on land ownership basis and in view of the Government Notification, dated 05.03.2023, such benefit cannot be extended in perpetuity and as such, the appointment of the petitioner on the basis of land-ownership, could not be made. However, the application of the private respondent No. 4 was approved by the Government, as she was found to be qualified and eligible for the said post.

**Submission of learned counsel for the respondent:-**

**9.** As stated in paragraph No.1, none appears for the respondent No. 4 on the date fixed for hearing, though the petitioner was earlier represented by an engaged counsel.

**Issues before this Court:-**

**10.** In view of rival submission of learned counsel for both the parties the

issues to be addressed by this Court, in this petition, are formulated as under:-

**(i) Whether the petitioner is legally entitled to be appointed to the post of Medical Attendant in Kejok Sub Centre on land ownership basis?**

**(ii) Whether an appointment to a public post can be made without making any advertisement in newspapers and notice boards inviting applications from intending candidates, without constituting a Selection Board, and without there being any interview?**

**(iii) Whether the appointment of the respondent No.4 is illegal?**

**Discussion and Analysis:**

**11.** Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also gone through the impugned Government Approval Letter No. HFW(A)Appt-8/114/2022/782, dated 03-11-2023, and the impugned Appointment Order No. DHFW-3/ 117/TSG/GRADE-IV/2022/6110-14, dated 13-11-2023.

**12.** It is apparent from the stand taken by the respondent Nos. 1, 2 & 3 in their affidavit-in-opposition that the father of the petitioner was appointed as a Medical Attendant, at Kejong Sub-Centre, under CMO, Tuensang, on the basis of land ownership, as he has donated the land where the Kejong Sub-Centre, under CMO, Tuensang, is situated.

**12.1.** Though, the petitioner has denied that his father was appointed on

land ownership basis, by producing the service book of his father, this Court in unable to accept the said contention of the petitioner for the reason that a service book reflects only the 'particulars of service' of the concerned employee only. Not the basis of his selection and appointment. And it is the appointment letter, which reflects the terms and conditions of appointment. And indisputably, the same has not been produced before this Court by the petitioner. Had the same been produced before this Court and had it been reflected there that he was appointed not on the basis of land ownership, then the matter would have stand in a different footing. But, as the same has not been done, the contention of the petitioner as well as the submission of his counsel has left this Court unimpressed.

**12.2.** It is the categorical contention of the state respondents that the father of the petitioner has already availed the benefit of appointment on land ownership basis and in view of the Government Notification, dated 05.03.2023, such benefit cannot be extended in perpetuity and as such, the appointment of the petitioner on the basis of land-ownership, could not be made. A perusal of the said Notification dated 05.03.2023, which is annexed with the affidavit-in-opposition by the state respondents; especially Clause 3(C) indicates that the employment of landowner is limited to the person first appointed as landowner in Government service. His descendents are not entitled to, for further employment on his retirement from service. The relevant clause is extracted herein below:-

> "**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 as landowner in Government service and does not entitle his descendents for further employment on 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."**

**12.3.** In that view of the matter, the claim of the petitioner, for being appointed on the basis of land ownership, to the considered opinion of this Court, legally unsustainable.

**12.4.** Issue No.(i) as formulated herein above is answered accordingly.

**13.** Now, moving forward to the Issue No.(ii) and (iii), this Court finds that the petitioner has challenged the appointment of respondent No. 4 on the ground that the respondent authorities have neither called for any application, nor published any advertisement, inviting applications from intending candidates, for filling up the post, and also without holding any interview and also on the ground that the respondent No. 6 was neither a land owner nor did he appear in any interview or examination, and on such grounds, his appointment is illegal, being against the employment policy of the government.

**14**. It appears from the affidavit-in-opposition of the respondent Nos. 1-3 that the respondent No. 4 was appointed not on the basis of land-ownership. Though the respondent Nos. 1-3 had taken a plea that the respondent No. 4 was found eligible and she was appointed after following

due process, yet, nothing has been brought on record to show that applications were invited from the eligible candidates to fill up the said vacant post, by making advertisement in notice boards and newspapers, widely circulated in the locality. And admittedly, nothing is produced before this Court to show that she has passed in an interview.

**15**. It is well-settled in a galaxy of decisions of the Hon'ble Supreme Court that regular appointment to a post under the State without proper advertisement and selection and without following the prescribed procedure and without open invitation of applications from the market breach Articles 14 and 16 of the Constitution of India. Reference can be made to following decisions:-

(i) In **Union Public Service Commission v. Girish Jayanti Lal Vaghela,** reported in **(2006) 2 SCC 482,** Hon'ble Supreme Court has held that regular appointment to a post under the State without proper advertisement and selection violates Article 16. Appointments made without following the prescribed procedure and without open invitation of applications from the market breach Articles 14 and 16.

(ii) In **Secretary, State of Karnataka v. Uma Devi,** reported in **(2006) 4 SCC 1,** Hon'ble Supreme Court has held that appointments in violation of the constitutional scheme and statutory rules are nullities.

(iii) In **State of Bihar v. Upendra Narayan Singh,** reported in **(2009) 5 SCC 65,** Hon'ble Supreme Court has held that

back-door or non-advertised appointments are unconstitutional and can be terminated; length of service does not cure the initial illegality.

(iv) In **the case of Mamata Mohanty(supra),** Hon'ble Supreme Court has held that no person, even temporarily or on ad hoc basis, can be appointed without inviting applications from all eligible candidates. Appointment by merely inviting names from the employment exchange or putting a note on the notice board violates Articles 14 and 16. Such an appointee is not entitled to any relief.

(v) In **Renu v. District & Sessions Judge, Tis Hazari Courts,** reported in **(2014) 14 SCC 50,** Hon'ble Supreme Court has reiterated the same proposition.

**16.** The proposition, which can be crystallized from the aforesaid decisions, is that any public employment, under the State or its instrumentalities, must comply with the equality guarantees in Articles 14 and 16.

**16.1.** It is pertinent to mention here that a valid recruitment process typically requires :

**(i)** Proper advertisement inviting applications from eligible candidates (in newspapers with wide circulation or equivalent public notice).

**(ii)** Clear details in the advertisement (number of posts/vacancies, reservation position, if any, qualifications, and

selection procedure).

**(iii)** Selection by a fair and impartial body through written examination, interview, or other rational merit-based criteria.

**(iv)** Appointment only against advertised vacancies (appointments beyond advertised vacancies are generally impermissible, except in limited exceptional circumstances).

**(v)** Failure on these counts renders the process (and consequent appointments) violative of Articles 14 and 16 of the Constitution of India.

**16.2.** Thus, an appointment made by the state or its instrumentalities, without any advertisement/notice inviting applications from the intending and eligible candidates, and without any selection/interview, is not a mere irregularity. It is illegal and void ab initio, because, it denies equal opportunity, and on such count, the same is arbitrary. Mere notice on a notice board, or consideration of only those who happened to apply informally, does not satisfy the constitutional requirement.

**16.3.** Notably, Article 14 of the Constitution of India guarantees equality before law and equal protection of the laws and this article prohibits arbitrariness. And Article 16 of the Constitution of India guarantees equality of opportunity in matters of public employment.

**16.4.** It is also to be noted here that in public employment, equal opportunity must be provided to all the eligible candidates. Appointments, without open advertisement, deny this opportunity and amounts to 'backdoor' entries. Even temporary or ad-hoc appointments, without

inviting applications from the open market, violate these provisions.

**17.** In the case in hand, it is apparent from the contentions made in the petition and also from the affidavit-in-opposition filed by the respondent Nos. 1-3, that no advertisement was published, inviting applications from the eligible candidates in newspapers, etc., and also, no interview was held. The respondent No. 4 was selected only on the basis of the application filed by her and as such, her approval for appointment to the post of Medical Attendant, under the establishment of Kejok Sub-Center, CMO, Tuensang, vide Government Approval Letter No. HFW(A)Appt-8/114/2022/782, dated 03-11-2023; and her subsequent appointment vide Appointment Order No. DHFW-3/117/TSG/GRADE-IV/2022/6110-14, dated 13-11-2023; fails to withstand the legal scrutiny, as the same is in total violation of Articles 14 & 16 of the Constitution of India. And on such count it requires interference of this Court.

**17.1.** The Issue Nos. (ii) and (iii) are answered accordingly.

**Conclusion:**

**18.** In the result, this writ petition stands partly allowed with following observation and directions:-

(i) Prayer of the petitioner for directing the state respondents to appoint him to the post of medical Attendant at Kejok Sub-Centre, under CMO, Tuensung Nagaland is rejected.

(ii) The impugned Government Approval Letter No. HFW (A)Appt-8/114/2022/782, dated 03-11-2023; and the impugned Appointment Order No. DHFW-3/117/TSG/ GRADE-IV/2022/6110-

14, dated 13-11-2023; appointing the respondent No. 4 to the post of Medical Attendant, under the establishment of Kejok Sub-Center, CMO, Tuensang stands set aside and quashed.

(iii) The state respondents are directed to initiate fresh recruitment process in accordance with law, after proper advertisement and selection process, as provided in the three Office Memoranda, as discussed in the foregoing paragraph especially, in paragraph No. 17 of this judgment.

(iv) Subject to eligibility, the petitioner and respondent No.4 herein, shall be allowed to participate in the said selection process.

**19.** In terms of the above, this petition stands disposed of, leaving the parties to bear their own costs.

**JUDGE**

**Comparing Assistant**