GAHC020004912026 2026:GAU-NL:595-DB

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

Case No. : WA/31/2026

SHRI SEYIENEKHO
S/O THEPFUWHEKHOLIE, R/O HOUSE NO. 20, TSIEPAMA VILLAGE, CHUMOUKEDIMA, NAGALAND

VERSUS

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

2:THE COMMISSIONER AND SECRETARY
HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA - 797001

3:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND
KOHIMA - 797001

4:THE CHIEF MEDICAL OFFICER
DIMAPUR
NAGALAND.

5:SMTI. NEISASIENO
C/O TSIEPAMA SUB CENTRE
CHIEF MEDICAL OFFICER
DIMAPUR UNDER THE HEALTH AND FAMILY WELFARE DEPARTMENT

Advocate for the Petitioner : HISINLO HIMB,

Advocate for the Respondent : GOVT ADV NL,

BEFORE:

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER
HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Advocates:

For the Appellant : Hisinlo Himb
For the Respondents : A. Ayemi, Govt. Adv. (R-1 to R-4)
: L. Iralu (R-5)
Menosieno

Date on which Judgment was reserved : **28.10.2026**
Date of pronouncement of Judgment : **03.11.2026**

Whether the pronouncement is of the operative part of the Judgment? : --
Whether the full Judgment has been pronounced? : Yes

:JUDGMENT & ORDER (CAV):

(Y. Longkumer, J)

1. The instant appeal has been preferred against the judgment and order dated 22.05.2026 passed by the learned Single Judge in WP(C)/145/2025.

2. Heard Mr. Hisinlo Himb, learned counsel for the Appellant. Also heard Ms. A. Ayemi, learned Government Advocate appearing for the State Respondent Nos. 1 to 4 (R- 1 to R-4), and Mr. L. Iralu, learned counsel appearing for the Respondent No. 5 (R-5).

3. The case of the Appellant/Petitioner in WP(C)/145/2025 was that the Appellant is the nephew of one Shri Visakolie Kuotsu and Shri Seyieleto Kuotsu, who had donated the plot of land on which the Tsiepama Sub-Center under the Medical Department was constructed in the year 2011.

4. A written agreement was executed on 20.07.2011 between the parties to provide a Grade-IV post to the landowner in *lieu* of the allotment of land. It is the case of the Appellant/Petitioner that none of the family members of the land donors had availed the appointment on the basis of landownership. As such, the landowner's right for appointment in *lieu* of the donation of the land still exists.

5. Accordingly, in the year 2021 when a Grade-IV post of Medical Attendant fell vacant, the Appellant applied for appointment to the said post on the basis of landownership. His application was forwarded by the Chief Medical Officer, Dimapur, Nagaland, to the Principal Director, Department of Health & Family Welfare, Nagaland. In support of his candidature as a landowner, the Tsiepama Village Council and SDO (Civil), Dimapur, also issued recommendation certificates.

6. Vide letter dated 28.11.2022, the Principal Director, Department of Health & Family Welfare, Nagaland, wrote to the Chief Medical Officer, Dimapur, for setting up a Selection Board/Screening Committee and forwarded eight applications for an interview to select a candidate for the post of Medical Attendant at the Tsiepama Sub-Center. Accordingly, the Screening Committee conducted an interview on 17.08.2023 and recommended one Smt. Seyienie-u Thepa for appointment to the post of Medical Attendant at the Tsiepama Sub-Center.

7. It was also alleged by the Appellant/Petitioner that the Screening Committee was not constituted in terms of the standing instructions of the State Government notified vide Office Memorandum No. AR-3/Gen-174/2007 (Pt) dated 07.12.2016.Therefore, the entire action of the Respondent Authorities in constituting the Departmental Screening

Committee ought to be treated as null and void. Moreover, the Screening Committee had recommended one Smt. Seyienie-u Thepa for appointment to the post of Medical Attendant at the Tsiepama Sub-Center; however, the R-5, who was not recommended by the Screening Committee, was approved and appointed by the Respondent Authorities.

8. Being aggrieved, the Appellant/Petitioner had filed WP(C)/145/2025 praying for quashing and setting aside the impugned approval order dated 03.04.2025 and the impugned appointment order of the R-5 dated 09.04.2025 appointing R-5 to the post of Medical Attendant at the Tsiepama Sub-Center under the Chief Medical Officer, Dimapur. A prayer was also made in the writ petition to consider the Petitioner's application for appointment on the ground of landownership.

9. The State Respondents filed their affidavit-in-opposition stating that upon verification and identification of the landowners by the District Administration and as per the report received from the District Administration, the plot was donated by two brothers and one of the landowners, Shri Seyieleto Kuotsu was appointed as a Sweeper at the Tsiepama Sub-Center on 06.06.2014. As per the policy of the State Government for appointment of landowners, which is governed by the notification No. LR/6-181/LIT/2015 dated 05.03.2018 employment to the landowners is not to be given in perpetuity. It was contended by the State Respondents that since one of the landowners had already been appointed, the Appellant/Petitioner had no right to claim appointment on the basis of landownership.

10. The private R-5 also filed an affidavit-in-opposition stating that the

uncle of the Appellant/petitioner, who was one of the landowners, had already been appointed to a Grade-IV post on the basis of land ownership and he was still in service. It was stated that this fact was not revealed by the Appellant and therefore the Appellant had not approached the court with clean hands.

11. Another contention of the R-5 was that the Appellant, having participated in the selection process voluntarily, cannot now turn around and question the selection process. It was also stated in the counter affidavit of the R-5 that the agreement relied upon by the Appellant regarding the donation of land was not executed by any Government authority and therefore it is not enforceable *vis-à-vis* the office memorandum dated 05.03.2018.

12. Ms. A. Ayemi, learned Government Advocate appeared for the State Respondent Nos. 1 to 4 and submitted that the procedure adopted by the Government was proper and rightly appreciated by the learned Single Judge and that the same does not call for interference. As regards the composition of the Selection Committee the learned Government Advocate submitted that since this is a matter of record she has nothing to submit beyond the record.

13. Mr. L. Iralu, learned counsel for R-5 submitted at the outset that the composition of the Selection Committee was never put to challenge before the learned Single Judge and having participated in the process the Appellant cannot now turn around and challenge the impropriety in the composition of the Selection Committee. The learned counsel submitted

that the Appellant cannot be allowed to approbate and reprobate. And that the decision of the Apex Court in the case of ***Dr. (Major) Meeta Sahai v. State of Bihar & Ors., (2019) 20 SCC 17*** would not apply to the instant case as they are based on different set of facts. It is further submitted by the learned counsel that the Appellant does not have the right to claim for appointment and that the learned Single Judge has rightly appreciated the case and no interference is called for.

14. In support of his submission the learned counsel for R-5 has relied on the following judgments:

i. ***S.S. Sharma & Ors. v. Union of India (UOI) & Ors.*, (1981) 1 SCC 397** (Para 6),

ii. ***Anil Kumar Gupta & Ors. v. Municipal Corporation of Delhi & Ors.*, (2000) 1 SCC 128** (Para 17),

iii. ***Sarva Shramik Sangh v. Indian Oil Corporation Ltd. & Ors.*, (2009) 11 SCC 609**,

iv. ***State of Uttar Pradesh v. Karunesh Kumar & Ors.*, 2022 SCC OnLine SC 1706**,

v. ***Allahabad University & Ors. v. Geetanjali Tiwari (Pandey) & Ors. ..(+)*, (2024) 20 SCC 23** (Para 52), and

vi. ***S.S. Sharma & Ors. v. Union of India (UOI) & Ors.*, (1981)**

1SCC 397 (Para 6).

15. The learned Single Judge, after hearing the parties, came to a conclusion that it is clear from the notification dated 05.03.2018, that employment in Government departments to landowners who have donated the land has to be on a one-time basis and certainly not in perpetuity. The Court held that benefit conferred on the landowners is not hereditary in nature. It was therefore held that the Petitioner had no right to claim appointment on the basis of landownership as one of the landowners had already been appointed.

16. The learned Single Judge, by relying on the case of ***Madan Lal & Ors v. State of Jammu and Kashmir & Ors.*****, (1995) 3 SCC 486**, held that if a candidate takes a chance in participating in the selection process, he cannot turn around to question the same. The learned Single Judge also held that there were three candidates who had secured more marks than the R-5, including the Petitioner. However, from the materials on record, it was not clear as to why the candidate securing the highest mark was not appointed and rather appointment was given to the R-5, who had secured lesser marks than three candidates. Moreover, the said candidates who secured higher marks than the R-5 have not assailed the selection process nor sought selection and appointment. In that situation, the Petitioner who had secured lesser marks than two candidates would not have the *locus standi* to challenge his non-appointment. Therefore, in the absence of the immediately affected candidates not coming forward to challenge the selection, the petitioner would not have the *locus standi* to

challenge the selection process.

17. Finally, the learned Single Judge held that the relief sought for by the Petitioner by way of seeking appointment to the Grade-IV post in the Tsiepama Primary Health Center cannot be granted as his uncle was already appointed to a Grade-IV post on the basis of landownership. Moreover, the Petitioner having participated in the selection process could not have turned around and assailed the constitution of the Selection Committee and the selection process pursuant thereto. Consequently, the writ petition was dismissed. Being aggrieved the instant appeal has been filed by the writ petitioner as appellant.

18. The learned counsel for the Appellant submits that the learned Single Judge committed an error for the reason that the doctrine of *locus standi* has been misapplied.

19. It is submitted by the learned counsel for the Appellant that a candidate who participates in a recruitment process and scores higher marks than the appointed R-5 is certainly an aggrieved person and undoubtedly has the *locus* to question the illegality of the appointment of a lower-ranked candidate. The learned counsel for the Appellant also submits that by not following the merit list and by giving appointment to the R-5, the Respondent Authorities have committed grave error in law and in facts.

20. It is also submitted that the learned Single Judge has committed grave error by not appreciating the facts in its right perspective. It is stated that the Appellant had challenged the selection process on the ground that the Screening Committee was not constituted as per the office memorandum concerning the constitution of the Committee. The

Appellant had also sought for his appointment to be considered on the basis of landownership, and thirdly, the appointment of R-5 was challenged on the ground that he was never recommended by the Screening Committee and that he had scored lesser marks than the Appellant. However, this aspect was not considered by the learned Single Judge in spite of the clear illegalities committed by the State Respondents by considering a candidate who was never recommended by the Screening Committee and by superseding and bypassing the merit list. However, these illegalities were not taken note of by the learned Single Judge while adjudicating the writ petition.

21. The learned Single Judge committed an error by not considering the Appellant/Petitioner's case as he had secured higher marks than the R-5 as per the merit list of the Screening Committee and by not considering the fact that the person at Sl. No. 1 in the merit list was not recommended since she was married to a non-local, and the person at Sl. No. 2 in the merit list was also shown as not interested in the selection. It is submitted that in a selection process, it is a settled principle of law that if the person at Sl. No. 1 in merit is not eligible, then the chance will go to Sl. No. 2, and if Sl. No. 2 is not interested, then the recommendation has to be given for Sl. No. 3. In the instant case, the Appellant/Petitioner was at Sl. No. 3 in the merit list and, therefore, he ought to have been recommended for appointment.

22. In view of the aforementioned submissions, the learned counsel for the Appellant prays that the impugned judgment and order dated 22.05.2026 passed by the learned Single Judge in WP(C)/145/2025 is liable to be quashed and set aside.

23. Learned counsel for the Appellant has relied on the following cases in support of his submissions:-

(i) ***Shankarsan Dash v. Union of India*****, (1991) 3 SCC 47**, and (ii) ***Dr. (Major) Meeta Sahai v. State of Bihar & Ors.,*** **(2019) 20 SCC 17**.

24. Due consideration has been given to the submissions made by the learned counsel for the parties. We have also perused the pleadings and the judgments relied upon by the parties.

25. In an intra-court appeal against the judgment of a single judge, exercising writ jurisdiction under Article 226 of the Constitution of India, the division bench, generally exercises appellate jurisdiction and does not confine to the narrow limits of judicial review applicable to the writ court. However, the scope of interference depends on the nature of the perversity, the findings under challenge, and the discretion exercised by the learned single judge.

26. The governing principles regarding the interference by the appellate court is that the division bench may examine whether the single judge correctly applied the law, interpreted the relevant statutory provisions and considered the material facts. Interference is justified where the judgment suffers from a legal error, a material factual error, a finding unsupported by the record, or a failure to consider relevant material. However, in a case where the learned single judge has exercised judicial discretion on relevant considerations and in accordance with settled principles, the appellate court ordinarily does not substitute its own view merely because another view is possible. An appellate court cannot re-assess the entire case as if deciding a regular first appeal. Even when an error is

established, the division bench must consider whether interference would result in effective and legally permissible relief.

27. The Apex Court has in a catena of cases held that intra-court appellate jurisdiction should be exercised only when the judgment under challenge is found to be erroneous or suffers from perversity. In the case of ***Rajasthan Public Service Commission, Ajmer v. Aakriti Saxena & Ors.***, ***2026 INSC 64***, the Supreme Court held: "*51. When and how such an appellate power in the intra-court jurisdiction may be exercised? In our considered opinion, exercise of intra-court appellate jurisdiction could be called for if the judgment/order under challenge is palpably erroneous or suffers from perversity; but, it may not be exercised when two views are possible on a given set of facts and one of two views has been taken which is a plausible view".* The decisive question, therefore, is whether the judgment of the learned single judge contains a demonstrable error affecting the outcome, or whether the appellant is merely asking the division bench to take a different view of the same matter.

28. Upon going through the materials on record, we have observed that in the writ petition, the case of the petitioner is that he should be appointed on the basis of land ownership. The second ground which the petitioner has taken in the writ petition is that the Screening Committee was constituted in violation of the standing office memorandum dated 07.12.2016. It was never the case of the writ petitioner before the learned Single Judge that he had received higher marks than the R-5 and therefore he should have been recommended by the Screening Committee. It is also an admitted fact that the petitioner appeared before

the Screening Committee and was not successful. The prayers made in the writ petition also shows that the petitioner has prayed for setting aside the entire selection process held on 17.08.2023 and also the appointment order of the R-5. Further, the appellant has prayed for a direction to the Respondent Authorities to appoint him to the post of Medical Attendant at Tsiepama Sub-Center on land ownership basis.

29. The learned Single Judge, had come to a finding that the relief sought by the petitioner on the ground of landownership cannot be granted as his uncle had already been appointed to a Grade-IV post on the basis of landownership. With regard to the challenge to the constitution of the Screening Committee, the learned Single Judge held that the petitioner, having participated in the selection process, could not turn around and assail the constitution of the Screening Committee and the selection process. The learned Single Judge also held that the immediately affected candidates, who were at Sl. No. 1 and Sl. No. 2 in the merit list, did not come forward to assail the selection of the R-5, and therefore the petitioner did not have the *locus standi* to assail the selection of the R-5.

30. Whether the petitioner, having appeared as a candidate in the selection process, is entitled to challenge the constitution of the Screening Committee after being unsuccessful is the question to be decided. In the case of ***Madan Lal & Ors. (supra),*** the Supreme Court held that "*it is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not favorable to him, he cannot turn around and subsequently contend that the process of interview was unfair or the selection committee was not*

properly constituted." It is seen from the records that there were two other candidates, who had secured more marks than the Appellant, but the two candidates did not assail the selection process nor did they assail the recommendation and selection of R-5. The Appellant, by relying on the case of ***Dr. (Major) Neeta Sahai* (*supra*)**, has argued that a candidate, by agreeing to participate in the selection process, only accepts the prescribed procedure and not the illegality in it. Therefore, even though he had participated in the selection process, he has the right to challenge the illegal constitution of the screening board. However, we are of the view that the cited case can be differentiated from the instant appeal in as much as the appellant in the case of ***Dr. (Major) Neeta Sahai* (*supra*)** had not challenged the selection process but has only assailed the respondents' interpretation of 'work experience' as part of merit determination. It is a settled position that setting aside the selection process and the consequent appointment of R-5 would not bestow right on the Appellant for appointment.

31. It has already been held in the case of ***Madan Lal (supra*)** and reiterated in various other cases that the candidates who have participated in the selection process cannot turn around after being unsuccessful to challenge the process on grounds which they could have raised earlier. The appellant has already acquiesced to the selection committee by appearing before it without protest. The Court has to consider whether the Appellant has suffered a legally cognizable prejudice and whether the relief sought would benefit him. In fact quashing the appointment of R-5 would not entitle the Appellant to be selected and appointed.

32. We are of the view, therefore, that the Appellant knowingly participated in the interview and challenged the constitution of the Screening Committee only after being unsuccessful and prays for appointment despite there being two other candidates who secured higher marks. The learned Single Judge has rightly held that the writ petition was not maintainable at the behest of the petitioner on account of waiver and in the absence of an established entitlement for appointment. We are also in agreement with the observation of the learned Single Judge that the petitioner could not have sought for appointment on the ground of landownership as the policy of the Government by notification dated 05.03.2018 categorically states that the appointment is limited only to the person first appointed as landowner in government service and does not entitle his descendants for further appointment on his retirement from service. The notification states that 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. It is not disputed that the petitioner's uncle was already appointed to a Grade-IV post on land-ownership basis. It has been rightly held that the petitioner did not have any right to claim appointment on the basis of landownership.

33. We are inclined to accept the submission of the learned counsel for R-5 that it was never the case of the Appellant before the learned Single Judge that since he got more marks than the R-5 and since the persons at Sl. Nos. 1 and 2 in the merit list were not considered for appointment, he should have been recommended by the screening committee for appointment. In the absence of any pleadings with regard to the same in

the writ petition, we decline to make any observation in this regard at the stage of appeal.

34. Having found no perversity or illegality in the judgment of the learned Single Judge, the writ appeal fails and, resultantly, the judgment dated 22.05.2026 passed in WP(C)/145/2025 is hereby upheld.

35. The writ appeal is disposed of.

JUDGE **JUDGE**

Comparing Assistant

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