GAHC020005652025 2026:GAU-NL:600

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

Case No. : WP(C)/175/2025

SHRI RENBENTHUNG N. ODYUO
S/O NTSEMO ODYUO, R/O C KHEL SUNGRO, WOKHA NAGALAND

VERSUS

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

2:THE SPECIAL SECRETARY
GOVT. OF NAGALAND
SCHOOL EDUCATION DEPARTMENT
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
SCHOOL EDUCATION
NAGALAND KOHIMA

4:THE DISTRICT EDUCATION OFFICER
WOKHA NAGALAND

5:SHRI YIBEN R. SHITIRI
DUFTRY/MTS
GOVT. HIGHER SECONDARY SCHOOL
SUNGRO
WOKHA
NAGALAN

Advocate for the Petitioner : TOSHITEMJEN PONGENER, MUGHAKA

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

02.11.2026.

Heard Mr. T. Pongener, learned counsel for the petitioner. Also heard Mr. M. Longkumer, learned Government Advocate for the respondent No. 1, 2, 3 & 4 and Mr. S. Yanthan, learned counsel for the respondent No. 5.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely Shri Renbenthung N. Odyuo, challenges the Administrative Approval order, dated 18/06/2025, issued by the Deputy Secretary to the Government of Nagaland, Department of School Education, and the appointment order, dated 04/07/2025, issued by the Principal Director, Directorate of School Education, Nagaland, Kohima, appointing the respondent No. 5 as the Multi-Tasking Staff (MTS) Grade-IV, at Government Higher Secondary School, Sungro, under the establishment of District Education Officer, Wokha.

3. Mr. T. Pongener, learned counsel for the petitioner submits that the petitioner is a permanent resident of Sungro village under Wokha District, Nagaland, and he is one of the real and genuine owners of the land, which was acquired for pavement of road to Government Higher Secondary School, Sungro, in the year 1984.

3.1. During the establishment of Government Higher Secondary School, Sungro, the land belonging to the Odyuo clan was acquired by the respondents for pavement of the road to the School, on the verbal assurance that a Grade-IV post will be given to the largest acquired

affected land owner, amongst the different affected land owners, and no sort of compensation was given to the land owners. However, verbally it was agreed to provide for the provision of Grade-IV post to the largest affected land owner, and on account of one vacancy, arising in the Government Higher Secondary School, Sungro, on promotion of Shri Ekyimo Odyuo as MTS Duftry, the petitioner, being the unemployed and affected land owner, has filed an application for being appointed to the post of MTS.

3.2. Thereafter, the Principal, Government Higher Secondary School, Sungro, Wokha, has forwarded the application of the petitioner to the Principal Director, Directorate of School Education, Nagaland, Kohima and while the petitioner was waiting for being appointed to the said post, the respondent authorities have accorded administrative approval for being appointed to the respondent No. 5, who is not a land owner, however, without conducting any examination/interview and the appointment of the respondent No.5 is against the employment policy of the Government.

3.3. Mr. Pongener also submits that the appointment of the respondent No. 5 is illegal, and arbitrary as his appointment was neither on land ownership basis nor on merit, through open competition, and therefore, the petitioner approached this Court by filing the present petition, challenging the administrative approval order dated 18/06/2026, by which the appointment of the respondent No. 5 is approved, and also the appointment order, dated 04/07/2025 by the Principal Director, Directorate of School Education, Nagaland.

3.4. Mr. T. Pongener, in support of his submission, has referred to a

decision of a Co-ordinate Bench of this Court in **Thungbemo C. Shitiri** vs. **State of Nagaland and 8 Others,(WP(C) No. 115 of 2019)**, specially to paragraph Nos.10, 11 and 12.

4. Per contra, Mr. M. Longkumer, learned Government Advocate for the State respondents Nos. 1, 2, 3 & 4, referring to the affidavit-in-opposition filed by the respondent Nos. 1 to 4, submits that admittedly, there was no written agreement between the Government and the petitioner and that the petitioner has failed to prove the oral agreement also. He further submits that as per the said Notification, dated 05/03/2023, issued by the Government of Nagaland, Revenue Department, any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned, who shall examine such claim carefully.

4.1. Mr. M. Longkumer, also submits that in view of the paragraph No. 3(b) of the aforesaid Notification, dated 05/03/2023, the Principal Director, Directorate of School Education, vide letter dated 08/10/2025, 11/01/2025, and 06/03/2025, directed the Deputy Commissioner, Wokha to verify the authenticity of the claim of the petitioner and to submit a detailed report of verification/findings and accordingly, the Deputy Commissioner, Wokha has forwarded a verification report wherein, it is stated that there were two approach roads leading to Government Higher Secondary School, Sungro, one road from the East and another from the West. The approach road that led to Government Higher Secondary School, Sungro, from the East, belongs to the Odyuo clan and not to any individual, and the writ petitioner also belongs to the Odyuo clan and in

respect of the claim of the petitioner that there was a verbal assurance from the Department/Government that Grade-IV employment would be provided in lieu of the land acquired for making the road, the elder brother of the petitioner, Shri Janbemo N. Odyuo, who was present at the meeting when asked, was not able to substantiate his claim of verbal assurance with any evidence, except for producing a letter dated NIL, addressed to the Director of School Education, *inter-alia*, stating that they be considered as land owners of the said school and on further deliberation, it was found that though none of the immediate family members of the petitioner had availed the benefit of employment under the said establishment, but, one Shri Ekyimo Odyuo, belonging to the Odyuo clan, has been appointed and is presently serving as Dufftry under the said establishment. However, no record could be traced with regard to the ground of his employment and therefore, it is clear that both Ekyimo Odyuo, the person already employed under the said establishment, and the writ petitioner have a common plot of land, that is, the approach road leading to Government Higher Secondary School, Sungro from the East.

4.2. Mr. Longkumar also submits that during verification, it is also noted that the Headmaster of the Government High School, Tseminyu, Shri P. R. Nag, entered into an oral agreement with the Odyuo clan, but said Headmaster is not an authorized official, and as such, said agreement is not valid and that the claim of the petitioner that on verbal assurance by the Department/Government for providing employment to the petitioner on a land ownership basis in lieu of the land donated has not been established and therefore, in the light of the Notification, dated 05/03/2018, the writ petitioner cannot claim for being appointed to a

Grade-IV post, on land ownership basis, and that the respondent No. 5 has also applied for the said post, and he was found eligible. Accordingly, Administrative Approval was granted vide letter dated 18/06/2025, and appointment was made vide appointment order, dated 04/07/2025, and that there is no merit in this petition, and therefore, it is contended to dismiss the same.

5. Per contra, Mr. S. Janthan, learned counsel for respondent No. 5, referring to the affidavit filed by him, submits that the respondent No.5 is one of the indigenous inhabitants of that locality where the Government Higher Secondary School, Sungro is situated, and that knowing about the vacancy of Multi-Tasking Staff (MTS) that arose in the Government Higher Secondary School, Sungro, he applied for the same. Thereafter, the Government approved his appointment, and subsequently, he was appointed vide appointment order, dated 04/07/2025, and that the petitioner has failed to establish the ground he claimed for being appointed to the post of MTS in the Government Higher Secondary School, Sungro, and as such, he has no **locus standi** to challenge the appointment of respondent No. 5.

6. However, to a query of this Court, Mr. S. Yanthan, learned counsel for respondent No. 5, however, submits that no interview was held in respect of the said post, and no advertisement was published inviting any application for the said post.

7. In reply to the submission of learned counsel for the respondents, Mr. Pongener, learned counsel for the petitioner, submits that there was verbal agreement between the petitioner and the authority and was also

verbal assurance at the time of acquiring the land that a Grade-VI post will be provided to the land owner in lieu of the land and that none of the family member of the petitioner had availed the same. He also submits that the stands taken by the respondents in their affidavit are baseless and there is nothing on the record to suggest that Shri Ekyimo Odyuo was appointed on land ownership basis.

8. 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 MTS in Government Higher Secondary School, Sungro 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.5 is illegal?

(iv) Whether the petitioner has the

locus-standi to challenge the appointment of respondent No.5?

9. Having heard the submissions of learned counsel for both parties, this Court has carefully gone through the petition and the documents placed on record, and also gone through the decision referred to by Mr. T. Pongener, learned counsel for the petitioner, in W.P.(C) No. 115 of 2019. Also gone through the Notification, dated 05/03/2023 issued by the Government of Nagaland, Revenue Department.

10. It is to be noted here that paragraph No.3 of the Notification, dated 05/03/2023, read as under: -

> "**If there is any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned, who shall examine such claim carefully including whether any employment or any other facility, including contract or supply order, has been given in the past. Written statement from witnesses, that is, Government official of the concerned Department and the District Administration and village functionaries present at the time of such oral agreement, should be taken by the Deputy Commissioner. The recommendation of the Deputy Commissioner should be referred**

with relevant documents to the Department of Land Revenue"

11. In the instant case, admittedly, there was no written agreement between the Government and the petitioner. Further, the petitioner has failed to prove existence of an oral agreement also. As per the said Notification, dated 05/03/2023, issued by the Government of Nagaland, Revenue Department, any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned, who shall examine such claim carefully, and accordingly, the Principal Director, Directorate of School Education, vide letter dated 08/10/2025, 11/01/2025, and 06/03/2026, directed the Deputy Commissioner, Wokha to verify the authenticity of the claim of the petitioner and to submit a detailed report of verification/findings. And accordingly, the Deputy Commissioner, Wokha has forwarded a verification report wherein, it is stated that there are two approach roads leading to Government Higher Secondary School, Sungro, one road from the East and another from the West.

11.1. The approach road that led to the Government Higher Secondary School, Sungro, from the East, belongs to the Odyuo clan and not to any individual, and the writ petitioner also belongs to the Odyuo clan and in respect of the claim of the petitioner that there was a verbal assurance from the Department/Government that Grade-IV employment would be provided in lieu of the land acquired for making the road, the elder brother of the petitioner, Shri Janbemo N. Odyuo, who was present at the meeting when asked, has not been able to substantiate his claim of verbal

assurance with any evidence, except for producing a letter dated NIL, addressed to the Director of School Education, **inter alia,** stating that they be considered as land owners of the said school and on further deliberation, it was found that though none of the immediate family members of the petitioner had availed the benefit of employment under the said establishment, except however, one Shri Ekyimo Odyuo, who belongs to the Odyuo clan, and is appointed, and presently, serving as Dufftry, under the said establishment. However, no record could be traced with regard to the ground of his employment and therefore, it is clear that both Ekyimo Odyuo, the person already employed under the said establishment, and the writ petitioner have a common plot of land, that is, the approach road leading to Government Higher Secondary School, Sungro from the East.

11.2. It also appears that during verification it is also learnt that the Headmaster of the Government High School, Tseminyu, Shri P. R. Nag, entered into an oral agreement with the Odyuo clan. But, said Head Master is not an authorized official in view of Section 12 of the Nagaland Rules of Executive Business, 2020 which contains the list of Officers, who can sign orders or instruments on behalf of the Government of the State.

11.3. And as such, said oral agreement is not a valid agreement. And that being so, the claim of the petitioner that on verbal assurance by the Department/Government for providing employment to the petitioner on a land ownership basis, in lieu of the land donated has not been established. And therefore, in the light of the Notification, dated

05/03/2023, the writ petitioner cannot claim to be appointed to a Grade-IV post, on a land ownership basis.

11.4. Though, in his reply to the affidavit, to the affidavit in opposition of the state respondents, the petitioner herein has denied the stand taken by the State respondents, yet, he has not denied that the agreement was entered into by the Headmaster, who is not an authorized person to enter into such an agreement on behalf of the Government. 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.

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

12. Moving forward to the Issue No.(ii) and (iii), this Court finds that the petitioner has challenged the appointment of respondent No. 5 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. 5 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.

12.1. There appears to be force in the aforesaid contention. Indisputably, no advertisement in the local Newspapers was published inviting applications from the intending candidates for filling up the post of MTS, in Government High School, Sungro, and no Selection Board was

constituted, and no interview was held.

12.2. Further, it is not clear on what basis the respondent authorities have approved the appointment of respondent No. 5, and also appointed him to the post of MTS in the Government Higher Secondary School, Sungro which is indisputably, a public post.

12.3. And inspite of the same being a public post, no advertisement was published inviting applications from the intending candidates and no interview was held. The respondent No. 5 was appointed only on the basis of the application filed by him. And as such, this Court is of the view that the mandate of Articles 14 and 16 of the Constitution of India is violated, while appointing the respondent No. 5 to the post of MTS, by the respondent authorities.

13. This issue is, however, well-settled in a catena of decisions of the Hon'ble Supreme Court. Reference in this context 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 **State of Orissa v. Mamata Mohanty,** reported in **(2011) 3 SCC 436,** 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.

13.1. The proposition, that can be crystalized 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.

And this requires the following:-

(i) A proper public advertisement or equivalent, with wide publicity, inviting applications from all intending and eligible candidates.

(ii) A fair selection process, such as written test, interview, or other rational method, so that eligible persons get an equal opportunity to compete on merit.

13.2. 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.

13.3. Further, it is to be noted here that in respect of recruitment to the Grade-IV posts, of the Government Departments, in the District, presently, three OMs are holding the field. These are:-

(i) Office Memorandum No. AR-3/GEN-174/2007, dated 26.11.2017.

(ii) Office Memorandum No. AR-3/GEN-174/2007(Pt.), dated 24.03.2018.

(iii) Office Memorandum No. AR-3/GEN-174/2007, dated 03.03.2022.

13.4. A careful perusal of the clause 1 of the Office Memorandum, dated 26.10.2017, reveals that it speaks about filling up of all direct recruitment vacancies, arising in Non-gazetted posts, including Grade-III and Grade-IV posts, under the establishment of Deputy Commissioner in District Administration, by Indigenous Tribes of the respective district through a Selection Committee headed by the Deputy Commissioner and having three district level heads of offices, and Administrative Officer, the Regional Employment Officer or District Employment Officer and the Principal or Senior Lecturer of the local colleges to the nominated by the Deputy Commissioner.

13.5. Further, in the Office Memorandum dated 24.03.2018, it has been clarified that all the direct recruitment vacancies to be filled up through the Departmental Recruitment Board, shall invariably be advertised.

13.6. Again, in the Office Memorandum, dated 03.03.2022, the condition of advertisement is, however, dispensed with, whenever such difficulties are faced by a department, as long as fair and transparent eligibility criteria process is followed and in all such cases approval of the Government is obtained.

13.7. Thus, the proposition that can be crystallized from the aforesaid discussion is that an appointment to a public post cannot be made without making any open advertisement in Newspapers and Notice Boards, inviting applications from intending candidates, without constituting a Selection Board, and without there being any interview.

13.8. This Court also finds that though the State Government had accorded approval for the appointment of respondent No. 5, the affidavit of the State respondents is silent as to whether it has faced any difficulties in advertising the aforementioned post and that on account of such difficulties faced by the department, it has adopted fair and transparent eligibility criteria and process as mandated. In absence of such pleading, the stand of the State respondents that following the procedure, the appointment of the respondent No. 5 is approved, fails to inspire confidence of this Court.

13.9. The State respondents, thus, appears to have not followed its own OMs', while according approval to the respondent No. 5, for being appointed to the post of MTS. In that view of the matter, appointment of respondent No.5 to the post of MTS at Government High School Sungro, Wokha, Nagaland failed to withstand the legal scrutiny. And on such count it requires interference of this Court.

13.10. The Issue No. (ii) and (iii) are answered accordingly.

14. Moving forward to the last issue, i.e. Issue No. (iv) this Court finds that though an argument was advanced by the respondent No.5 that the petitioner has no **locus-standi** to challenge his appointment as MTS in Government Higher Secondary School, Sungroi, yet, said argument is found to be bereft of merit. The petitioner, who is eligible to the post and was denied the opportunity to compete, as there was no public advertisement and no selection board was constituted in terms of the Office Memoranda, presently occupying the field and without there being any interview, is an 'aggrieved person'. And as such, the appointment of

respondent No.5, which is held to be illegal herein above, directly affects the right to equal opportunity under Articles 14 and 16.

14.1. Thus, the petitioner being an aggrieved person can maintain a writ petition, under Article 226, to quash the appointment of the respondent No.5. He has the **locus-standi** to challenge the appointment of respondent No.5.

14.2. The issue No.(iv) is answered accordingly.

15. This Court has also gone through the decision of a co-ordinate Bench of this Court in **Thungbemo C. Shitiri (supra)** wherein appointment of private respondent No.8 of the said petition to Group 'D' post was interfered with, for being made without following any process, and who was also found to be not qualified for being appointed on land ownership basis. Thus, the said decision also strengthened the submission of Mr. Pongener, learned counsel for the petitioner.

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

(i) The prayer of the petitioner for being appointed as MTS in Government Higher Secondary School, Sungro, on landownership basis, is rejected.

(ii) The appointment of the respondent No.5, by the respondent authorities, without open advertisement and without any interview or competitive selection process, is constitutionally flawed, being violative of Article 14 and 16 of the Constitution of India, and ignoring its own Office Memoranda, 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.

(iv) Subject to eligibility/suitability, the petitioner and respondent No.5 herein, shall be allowed to participate in the said selection process.

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

JUDGE

Comparing Assistant