GAHC020007002024 2026:GAU-NL:597

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

Case No. : WP(C)/262/2024

SHRI NRITHUNG ODYUO
S/O NTSEMO ODYUO
R/O SUNGRO VILLAGE
WOKHA NAGALAND

VERSUS

STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
NAGALAND KOHIMA

2:COMMISSIONERE AND SECRETARY
DEPT OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

3:THE PRINCIPAL DIRECTOR
DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

4:THE DIRECTOR
DIRECTORATE OF HEALTH AND FAMILY WELFARE
NAGALAND KOHIMA

5:THE CHIEF MEDICAL OFFICER
WOKHA NAGALAND

6:SHRI KHOCHAMO SHITIO
MEDICAL ATTENDANT
SUNGRO PHC
WOKHA NAGALAN

Advocate for the Petitioner : TOSHITEMJEN PONGENER,
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; Ms. Pichano, learned Government Advocate for the State respondent Nos. 1-5; and Mr. A. Ozukum, learned counsel for the respondent No. 6.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has prayed for issuing direction to the respondent authorities to cancel or revoke the communicating Administrative approval Order, dated 01.03.2024, of the private respondent No. 6 and the appointment order issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima dated 4th March 2024 and 8th July, 2024.

Background facts:-

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

> "During the year 1974, one land owner, namely, Shri Chiposao Ngullie had donated a plot of land for the construction of Primary Health Centre (PHC) at Sungro village, Wokha, Nagaland. Thereafter, upon coming to know of a vacancy of one grade IV post of Medical

Attendant in the said PHC, the petitioner had applied for the same. And the landowners had duly recommended the name of the petitioner for being appointed to the post of Medical attendant on the basis of landownership.

However the Sate respondents had arbitrarily appointed one person, namely, Shri Khochamo Shitio, respondent No.6 without following the employment policy, which has been followed in the state. The State respondent had also issued the appointment Order to the respondent No. 6 on two different occasions for the same post which clearly proved that there is bias and illegality.

Then subsequent to the appointment of respondent No.6, the petitioner had filed a representation to the State respondent and the same was forwarded to the higher authority, and the higher authority had assured the petitioner to look into the matter. But, till date his case was not considered.

Being aggrieved the petitioner has approached this Court challenging the impugned Order dated 4th March, 2024 and 8th July, 2024 issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima, whereby the respondent No. 6 was appointed to the post of Medical Attendant in violation of the Notification and without considering the appointment on the basis of land ownership, which the petitioner herein is entitled to.

Stand of the State Respondents:

4. The Secretary, Health and Family Welfare, Kohima for the respondent Nos. 1-5, filed affidavit-in-opposition, wherein it had taken a stand that - due to the resignation of Shri Bonathung Shitio, Medical Attendant at Sungro Primary Health Centre, under the establishment of Chief Medical Officer, Wokha which was accepted by the Department vide Order dated 01.08.2023, one vacancy of Medical Attendant arose and against the said vacant post two applications were received by the department. One such application, dated 08.08.2023, was received from the petitioner and the same indicates that he is the son of Ntsemo Odyuo. The said application was supported by NOC, dated 07.08.2023, issued to him by Shri Chiposao Ngullie and Shri Subemo Ngullie who had recommended him for being appointed on landownership basis. It is also stated that perusal of the purported agreement, dated 04.09.1976, reveals that the petitioner's father, namely, Ntsemo Odyuo is not a signatory to the said agreement and as such it is evident that the petitioner is not the absolute landowner and hence not qualified for appointment on the basis of landownership.

4.1. It is also stated that, Shri Chiposao Ngullie who recommended the name of the petitioner, has lodged a complaint dated 10.07.2024, to the CMO, Wokha duly recommending the case of the petitioner for appointment on landownership basis. The complaint, dated 10.07.2024, was forwarded by the CMO, Wokha vide letter, dated 12.08.2024, to the Directorate and in the said

complaint dated 10.07.2024, Shri Chiposao Ngullie has annexed the list of 9 (nine) employees, who were appointed on landownership basis at Sungro PHC. Therefore, it becomes apparent that 9 (nine) Grade IV staff have already been appointed to the Sungro PHC on landownership basis.

4.2. Further it is stated that the State Government vide Notification, dated 05.03.2018 has framed the policy with regard to appointment to Grade IV posts, under the Government of Nagaland on Landownership basis. Clause 3(C) of the said Notification stipulated that **'It is not the policy of the Government to provide employment to the landowner in perpetuity".** And in the instant case, as per the statement made by Shri Chiposao Ngullie, it is an admitted fact that 9 (nine) Grade IV staffs has already appointed at Sungro PHC, on landownership basis. Therefore, going by the said Notification, petitioner is not qualified for appointment under any circumstance. And that the Government does not have policy to provide employment to Landowner in perpetuity. It is also stated that in absence of such written agreement the petitioner has no legal rights, whatsoever, to file the instant petition in a capacity of landownership. Further it is stated that the petitioner had no locus standi to file the instant petition since his legal rights has not been violated by the respondents and the petitioner's have completely failed to make out any case, warranting interference of this Court. Therefore, it is contended to dismiss this petition.

Stand of the private respondent No.6:-

5. The respondent No.6 has challenged the maintainability of the present petition, mainly on two grounds. Firstly, it is stated that the petitioner has no **locus standi** to challenge his appointment. It is stated that the petitioner has prayed for considering his case for appointment on landownership basis. But, he has miserably failed to demonstrate that he is the absolute and genuine landowner where the Primary Health Centre at Sungro, Wokha was established. The 'NOC' was issued in favour of Shri Chiposao Ngullie son of Shri Etsungo Ngullie, who is the actual landowner and the subsequent NOC issued in favour of the petitioner is only a certificate issued by the former actual landowner validating a status of landownership otherwise the petitioner is not one of the land donor. And as such, the petitioner has no locus to file this instant Writ Petition.

5.1. Maintainability of the present petition is also challenged on the second ground that the petitioner is before this Court with a distorted question of fact and also claiming to be one of the actual landowners, only with an ulterior motive to frustrate the appointment of respondent No. 6. He made contradictory statements in respect of filing representation and that the petition is filed under misconceived notion and is liable to be dismissed on this ground.

5.2. The third ground of challenge is that the NOC, enclosed by him to substantiate the genuineness of his right to claim appointment on the basis of landownership, does not qualify him to claim such opportunity, in contrary to the policy. It may be noted that a landowner has already been appointed in this regard vide order dated 03-07-2000, and as such, the present claim made by the petitioner, on the basis of the NOC is unsustainable, and the same will amount to violation of the Notification/O.M. dated 05-03-2018, as there can be only one time appointment on the basis of landownership. Since the petitioner is not a genuine landowner and has no **locus-standi,** in this present Writ Petition, as he is not an aggrieved landowner.

5.3. It is also stated that appointment of the respondent No. 6 was done on exigency of service, with the approval from the Government, vide order, dated NO.DHFW-3/GRADE-IV/Wokha/2018-19, dated 04-03-2024, and the subsequent order issued vide No.DHFW-3/Grade-IV/Wokha/2018-19, dated 08-07-2024, and the said order does not, in any manner, demonstrates biasness or illegality as contented by the petitioner. It is also stated that neither the petitioner's father nor his forefathers have donated any land within the area where the Primary Health Center, Sungro is established. But, it is the petitioner's in-law who had donated the said land, and on that ground the petitioner is not entitles to be considered for being appointed on the basis of the scheme. It is further stated that the petitioner has failed to make out a prima facie case before this Court to be considered for appointment on

landownership basis. Therefore, it is contended to dismiss this petition.

Submission of the learned counsel for the petitioner:

6. Mr. Pongner, learned counsel for the petitioner submits that the petitioner has applied to the post of Medical Attendant, Sungro PHC, under CMO, Wokha, on land ownership basis and his application was supported by one NOC, dated 07.08.2023, issued to him by Shri Chiposao Ngullie and Shri Subemo Ngullie recommending him for being appointed on landownership basis. Mr. Pongner also submits that despite such recommendation, the respondent authority had appointed the respondent No.6 and thereby deprived the petitioner from his legitimate claim.

6.1. Mr. Pongner also submits that the private respondent No. 6 was appointed not on the basis of the land ownership. He was appointed without any advertisement and without constitution of any selection committee and interview and the respondent authorities have not followed any the Office Memorandum, concerning appointment to Group 'D' posts. And as such, his approval by the respondent authorities and subsequent appointment to the post of Medical Attendant is illegal and liable to be interfered with.

6.2. Mr. Pongner has referred following case law in support of his submission:-

(i) **Smti. Imsunaro vs. The State of Nagaland and 6 others, WP(C) No. 132/2023**

Submission of the learned counsel for the State respondents:

7. Per contra, Ms. Pichano, learned Govt. Advocate, for respondent Nos. 1-5, submits that the petitioner is not the real land owner and his name was recommended by the land owners by issuing NOC. She further submits that as per the letter, dated 10.07.2024 of Shri. Chiposao Ngullie and the list of employees annexed therewith indicates that 9 (nine) Grade IV staffs has already been appointed to the Sungro PHC on landownership basis. She further submits that in view of the Government Notification, dated 05.03.2018, especially under Clause 3 (C) it is not the policy of the Government to provide employment to the landowner in perpetuity.

7.1. She also submits that the private respondent No. 6, has also applied for the post of Medical Attendant and the same was processed and the Government has approved the appointment of the respondent No. 6, by following due process of law.

7.2. However, to a query put by this Court, the learned

Government Advocate replied that no advertisement inviting application from the intending candidates was made and no selection committee was constituted and no interview was held and the existing Office Memorandum were not followed, while appointing respondent No.6, and only on the basis of approval of the Government his appointment was made.

8. On the other hand, Mr. A. Ozukum, learned counsel for the respondent No.6, submits that the petitioner is not entitled to be appointed on the basis of landownership as the same has already been availed, and 9 appointments have already been made. It is his further submission that the petitioner is not belonging to the family of actual land owner, rather his name was recommended by the land owners, who have already availed the said quota.

8.1. Mr. Ozukum also submits that the application of the private respondent No. 6 was approved by the Government, as he was found to be qualified and eligible for the said post. It is his further submission that the petitioner has no **locus standi** to challenge the appointment of the respondent No.6 as his claim for the post of Medical Attendant, on the basis of the landownership fall flat. He also submits that the petitioner has taken contrary pleas in his petition, and on such count also the same is liable to be dismissed.

8.2. Mr. A. Ozukum has referred following decisions in support of

his submission:-

(i) **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra,** reported in **(2013) 4 SCC 465;**

(ii) **Shri Namheirai vs. The State of Nagaland and 4 others, (WP(C) No. 79/2024;**

(iii) **Shri Kayeto T Sema vs. The State of Nagaland and 5 others, (WP(C) No. 72/2024;**

8.3. However, to a query put by this Court, the learned counsel for the respondent No.6 replied that for the post of Medical Attendant at Sungro PHC, no advertisement inviting application from the intending candidates was made and no selection committee was constituted and no interview was held by the state respondent. He also replied that the respondent No.6 was appointed only on the basis of approval of the Government.

9. In view of the rival submissions 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 Sungro PHC, 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.6 is illegal?

(iv) Whether the petitioner has the locus-standi to challenge the appointment of respondent No.6?

Discussion and Analysis:

10. 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-12/88/2019, dated 01-03-2024, and the impugned Appointment Order No. DHFW-3/GRADE-IV/Wokha/2018-19, dated 04th March 2024, also gone through the subsequent impugned Appointment Order No. DHFW-3/GRADE-IV/Wokha/2018-19, dated 8th July, 2024, the NOC dated 22.01.2024, the NOC, dated 22.01.2024, issued by Head GB of Sungro and also the NOC ,dated 07.08.2023, issued by two land owners, namely, Shri Chipesao Ngullie and Subemo Ngullie, and also gone through the representation, dated 15.04.2024, and the Notification of Land Revenue Department, dated 05.03.2018.

11. It is apparent from the stand taken by the respondent Nos. 1-

5 in their affidavit-in-opposition that neither the petitioner nor his father was the owner of the land who had donated land for establishment of Sungro PHC. The petitioner claimed for being appointed to the post of Medical Attendant on the basis of NOC, dated 22.01.2024, issued by Head GB of Sungro and also the NOC, dated 07.08.2023, issued by two land owners, namely, Shri Chipesao Ngullie and Subemo Ngullie.

11.1. Further from the letter, dated 10.07.2024, of Shri. Chiposao Ngullie, who is one of the landowners, and the list of employees annexed therewith indicates that 9 (nine) Grade IV staffs has already been appointed to the Sungro PHC, on landownership basis.

11.2. And from the Government Notification, dated 05.03.2018, especially under Clause 3 (C) it appears that it is not the policy of the Government to provide employment to the landowner in perpetuity. And since already 9 persons had been appointed on land ownership basis, in view of Clause 3 (C) of the said Notification dated 05.03.2021, appointment cannot be provided in perpetuity to the land owners.

11.3. The petitioner, however, in his affidavit in reply to the affidavit filed by the state respondent, stated that the landowner, namely, Shri Chiposao has neither availed any sort of compensation nor any Grade-IV post as per Annexure-2 of the affidavit in opposition indicating at Sl. No. 10 as NIL, yet, such contention cannot be accepted, in as much as neither the petitioner nor his

father is the real land owner, who had donated land for establishment of the said PHC at Sungro. The scheme is available only to the land owners not to a candidate whose name is recommended by land owners.

11.4. 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, is legally unsustainable.

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

12. Now, moving forward to the Issue No.(ii) and (iii), this Court finds that the petitioner has challenged the appointment of respondent No. 6, 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.

12.1. In his affidavit in reply, to the affidavit-in-opposition, filed by the state respondent, the petitioner has taken a categorical stand that he being one of the indigenous inhabitant of Wokha and being eligible candidate had applied for the post and his name was duly recommended by the landowner for being appointed on behalf of

landowner on the basis of landownership and despite, and also in view of the clear Office Memorandum, No. AR-3/GEN-174/2017(Pt) Dated Kohima the 3rd March, 2022 issued by the Government of Nagaland Personnel & Administrative Reform Department of Nagaland, Kohima the state respondent, without proper verification, and without advertisement of the post and without following the Office Memorandum, had appointed the respondent No. 6, who is not the landowner nor he has been recommended by landowners and ignoring the fact that the petitioner is one of the duly recommended candidate to be appointed on behalf of the landowner, and his case was not considered by the state respondent, instead appointed respondent No.6, without conducting any sort of selection/interview.

12.2. There appears to be considerable 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 Medical Attendant in Sungro PHC, and no Selection Board was constituted, and no interview was held.

12.3. Further, it is not clear on what basis the respondent authorities have approved the appointment of respondent No. 6, and also appointed him to the post of Medical Attendant in Sungro PHC, which is indisputably, a public post.

12.4. 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. 6 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. 6 to the post of Medical Attendant in Sungro PHC, by the respondent authorities.

13. This issue is, however, well-settled in a galaxy of decisions of the Hon'ble Supreme Court. 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 **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.

13.2. It is also to be noted here that 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.

13.3. Similar proposition is laid down in the case of **Smti. Imsunaro (supra)** so referred by Mr. Pongner, learned counsel for the petitioner

and the same also emboldened his submission.

13.4. 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.

13.5. Thus, from the aforesaid discussion it becomes clear 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.

13.6. Thus, an appointment made by the state or its instrumentalities, without any advertisement/notice, or 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.

14. Further, it is to be noted here that in respect of recruitment to the Grade-IV post 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.

14.1. 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 arisen 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.

14,2. Further, in the Office Memorandum, dated 24.03.2018, it has been clarified that all the direct recruitment vacancies to be filled up through Deputy Departmental Recruitment Board, shall invariably be advertised. Further, it appears from the Office Memorandum, dated 03.03.2022, that 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.

14.3. 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.

14.4. This Court also finds that though the State Government had accorded approval for the appointment of respondent No. 6, the affidavit of the State respondent 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. 6 is approved, left this Court unimpressed.

14.5. The State respondents, thus, appears to have not followed its own OMs while according approval to the respondent No. 6, to the post of Medical Attendant in Sungro PHC. In that view of the matter appointment of respondent No.6, to the post of Medical Attendant in Sungro PHC, Wokha, Nagaland failed to withstand the legal scrutiny and on such count it requires interference of this Court.

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

15. Moving forward to the last issue, i.e. Issue No. (iv) this Court finds that though an argument was advanced by the respondent No.6 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.6, which is held to be illegal herein above, directly affects the right to equal opportunity of the petitioner, under Articles 14 and 16 of the Constitution of India, notwithstanding his prayer for being appointed on a landownership basis falls flat.

15.1. This Court has gone through the proposition laid down in the case of **Ayaaubkhan Noorkhan Pathan(supra**), so referred by Mr.

Ozukum, learned counsel for the respondent No.6. In the said case Hon'ble Supreme Court has dealt with the issue of aggrieved person as under:-

"**9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in**

the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [1951 SCC 1024, Saghir Ahmad v. State of U.P. [AIR 1954 SC 728], Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044], Rajendra Singh v. State of M.P. [(1996) 5 SCC 460 and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784] .]

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized. (Vide Shanti Kumar R.

Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 and State of Rajasthan v. Union of India [(1977) 3 SCC 592])

11. In Anand Sharadchandra Oka v. University of Mumbai [(2008) 5 SCC 217], a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In A. Subash Babu v. State of A.P. [(2011) 7 SCC 616 this Court held: (SCC pp. 628-29, para 25)

> **"25. … The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."**

15.2. Thus, in view of the above decisions, especially, in A**. Subash Babu(supra),** the expression 'aggrieved person' denotes an elastic and an elusive concept, and it cannot be confined within the bounds of a rigid, exact and comprehensive definition and if its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant, in the given factual scenario, it cannot be said that the petitioner is not an aggrieved person.

15.3. In view of above, and as already held, the petitioner herein is an aggrieved person and being an aggrieved person, he can maintain a writ under Article 226, to quash the appointment of the respondent No.6. He has the **locus-standi** to challenge the appointment of respondent No.6.

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

16. This Court has also carefully gone through the decision of a co-ordinate Bench of this Court in (i) **Shri Namheirai (supra) and in (**ii) **Shri Kayeto T Sema(supra),** and finds that the said decisions proceeds on their own facts and the same are clearly distinguishable from the present case, and are not applicable in all force to facts herein this case. Therefore, this Court is afraid that the proposition laid down therein would come into assistance of the respondent No.6 herein.

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

(i) The prayer of the petitioner, for being appointed as Medical Attendant in Sungro PHC, Wokha, Nagaland on landownership basis, is rejected.

(ii) The appointment of the respondent No.6, being made 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 by 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.6 herein, shall be allowed to participate in the said selection process.

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

JUDGE

Comparing Assistant