THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

KOHIMA BENCH

Writ Petition(C) No. 289 of 2024.

Smti. Thungbani Ezung,
D/o Mhonlumo Ezung,
R/o – Sungro Village, Wokha, Nagaland.

……Petitioner.

-**Versus**-

1. The State of Nagaland,
Represented by the Chief Secretary to the Government of Nagaland.

2. Commissioner and Secretary to the Government of Nagaland,
Department of School Education, Nagaland, Kohima.

3. The Principal Director, School Education, Nagaland, Kohima.

4. The Director, School Education, Nagaland, Kohima.

5. Smti. L. Nyanbeni Ngullie, MTS, Wokha, Nagaland.

…… Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioner	:-	Mr. T. Pongener.
Advocate for the respondent Nos. 1 – 4	:-	Mr. E.T. Phom.
Advocate for the respondent No. 5	:-	Ms. K.L. Swu.

Date of Hearing	:-	25.08.2026.
Date on which judgment is reserved	:-	25.08.2026.
Date of pronouncement of judgment	:-	**13.10.2026**.
Whether the pronouncement is of the operative part of the judgment?	:-	N/A
Whether the full judgment has been pronounced?	:-	Yes

JUDGEMENT & ORDER (CAV)

Heard Mr. T. Pongener, learned counsel for the petitioner; Mr. E.T. Phom, learned Government Advocate for the State, being respondent Nos. 1 – 4; and Ms. K.L. Swu, learned counsel for the private respondent No. 5.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the appointment of the respondent No. 5 to the post of Sweeper/Multi Tasking Staff (MTS hereinafter), at Government High School Sungro, Wokha, Nagaland issued by the Principal Director, School Education, Nagaland, Kohima, vide order, dated 26.04.2026, and also to appoint her to the said post on land ownership basis.

Submission of learned counsel for the petitioner:-

3. Mr. Pongener, learned counsel for the petitioner, submits that the petitioner was one of the applicants for the vacant post of MTS, which arisen on retirement of one Smti. Nochamoni, at Government High School Sungro, Wokha, Nagaland (the School hereinafter). He further submits that the name of the petitioner was recommended by the land owner, in whose land the School was established in the year 1984 and while the petitioner was waiting for being appointed to the said post, on the basis of the land ownership, the department had arbitrarily appointed the private respondent No. 5 against the existing vacancy.

3.1. Mr. Pongener further submits that the said appointment is being challenged in this petition by the petitioner on two counts. Firstly, ignoring the claim of the petitioner to the post on land ownership basis, the respondent No. 5 was appointed and secondly, the said appointment was made without following the procedure of law and without publishing any advertisement and without any interview. As such, the same is contrary to the employment policy, which is being followed in the State of Nagaland. He also submits that the petitioner had preferred one appeal to the department for being appointed him to the post of MTS on the basis of the land ownership. But, the same failed to evoke any response. Instead, the Deputy Secretary to the Government of Nagaland had written a letter to the Principal Director, School Education, Kohima, Nagaland, stating that a copy of the application and documents of Smti. Nyanbeni Ngullie has been received and based on which, her

candidature was approved for being appointed to the post of MTS at the School.

3.2. Further submission of Mr. Pongener is that then being aggrieved, the petitioner has approached this Court by filing the present petition, under Article 226 of the Constitution of India, challenging the impugned appointment order of the respondent No. 5, dated 26.04.2023, issued by the Principal Director, School Education, Nagaland, Kohima.

3.3. Mr. Pongener also submits that there is one Office Memorandum, (OM hereinafter) as to how appointment of the Group – D post has to be made and the said OM has admittedly not been followed in this case. In support of his submission, Mr. Pongener has also referred to a decision of a Coordinate Bench of this Court, in the case of **Smti. Imsunaro vs. State of Nagaland and 6 Others [Writ Petition (Civil) No. 132/2023]**, wherein the appointment order of respondent No. 7 of the said petition was set aside and quashed, as the said appointment violated the mandate of Articles 14 & 16 of the Constitution of India.

3.4. Mr. Pongener has referred to another decision of a Coordinate Bench of this Court, in the case of **L. Lirenthung Lotha vs. State of Nagaland and 3 Others [Writ Petition (Civil) 254/2018]**, wherein, also, it was held that the appointment order therein had been issued in violation of Articles 14 & 16 of the Constitution of India and thereby, interfered with the same.

3.5. Under the given facts and circumstances, Mr. Pongener has contended to allow this petition, by setting aside the impugned appointment order of the respondent No. 5 herein, dated 26.04.2023 and to appoint the petitioner to the post on land ownership basis.

Submission of learned Government Advocate for the respondent No. 1-4.

4. Per-contra, Mr. Phom, learned Government Advocate, referring to the affidavit of the State respondents, submits that though the petitioner has applied for being appointed on land ownership basis, her case could not be considered because she is not a real land owner and that she has been claiming the right only basing upon the No Objection Certificate issued by the land owner, which is annexed with the petition as Annexure – 2 and the same is not acceptable in the eye of law and it does not confer any legal right upon the petitioner.

4.1. Mr. Phom further submits that the respondent No. 5 was appointed not on the ground of land ownership, but her appointment was made by the State by following due process of law, vide impugned appointment order, dated 26.04.2023.

4.2. Mr. Phom also submits that the respondent authorities had received one representation from one Shri Animo Shitiri, who claimed to be the affected land owner of the School, challenging the appointment of the private respondent No. 5 and accordingly, the said representation was duly forwarded to the Government of

Nagaland, vide letter dated 13.05.2024. Thereafter, the Government of Nagaland had conveyed the same to the Principal Director, to conduct a verification through the concern District Administration and District Education Officer, Wokha. Thereafter, vide letters dated 23.07.2024; 07.02.2025; and 01.05.2025, the Principal Director had requested the Deputy Commissioner, Wokha, to conduct a verification of the land ownership, pertaining to the School and after verification, to submit a report. Thereafter, vide letter dated 06.06.2025, the Deputy Commissioner, Wokha, had forwarded a verification report to the Principal Director, submitted the ADC Sanis, wherein it was stated that Smti. L. Nyanbeni Ngullie was neither a land donor nor owner of land surrounding the School. As per the verification report, Shri C. Zimomo Ngullie is the genuine land donor of the land on which the School is situated and that the land owner had already availed employment by virtue of appointment on land ownership basis, which was granted to the land owner's daughter, i.e. Smti. Z. Mhonchumi Ngullie, vide appointment order dated 08.02.2024.

4.3. Mr. Phom also submits that it is also mentioned in the said verification report that the petitioner herein is the daughter-in-law of Shri Animo Shitiri, who is not the real land owner, on whose land the School is situated and as such, the claim of the petitioner herein is untenable.

4.4. Mr. Phom referring to the OM, dated 05.03.2018, submits that once a person is appointed on land ownership basis and thereafter,

he/she retires or vacates the post, the vacancy will be filled up by following open advertisement, with consonance with the existing policy, giving equal opportunity to all the candidates and under such circumstances, Mr. Phom has contended to dismiss this petition.

4.5. Mr. Phom, on the request of this Court, has produced three OMs issued by the respondent authorities presently occupying the field of filling up the Group 'D' posts in the State of Nagaland.

Submission of learned counsel for the respondent No.5:-

5. Per-contra, Ms. Swu, learned counsel for the private respondent No. 5, submits that the respondent No. 5 is a member of the land owner's family, who had donated the land to the School and that on account of the vacancy of MTS arisen in the School, under the establishment of District Education Officer, Wokha, the respondent No. 5 had applied for the post and the same was approved by the State Government and thereafter, she was appointed, vide impugned appointment order, dated 26.04.2023 and she joined the service on 12.05.2023.

5.1. Ms. Swu further submits that the petitioner has no locus-standi to file the present petition and the same is not maintainable and that the Memorandum, dated 27.09.2003, does not confer any right upon the petitioner to claim appointment on the basis of the land ownership, as the same has already been availed by one Smti. Ezubeni Shitire, who is from the clan of the petitioner herein and that since the claim of the petitioner for being appointed on land

ownership basis fell apart, she cannot challenge appointment of the respondent No. 5 as she has no locus to challenge the same. As such, there is no merit in this petition and accordingly, she has contended to dismiss the same.

6. It is to be noted here that during the course of hearing, a specific query was put to the State respondent Nos. 1 – 4 and also to the private respondent No. 5, as to whether any advertisement was published for filling up the post of MTS in the School or not and both the counsels in no uncertain term stated that no advertisement was published inviting application from the intending candidates and no interview was held. It is also stated that the respondent No. 5 was appointed on the basis of the application filed by her.

7. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also gone through the impugned appointment order of the respondent No. 5 and also perused the OMs referred by learned counsels for both the parties.

The issues before this court:-

8. In view of rival submission of learned counsel for both the parties the issues to be addressed by this in this petition are formulated as under:-

(i) 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?

(ii) Whether the appointment of the respondent No.5 is illegal?

(iii) Whether the petitioner has the locus-standi to challenge the appointment of respondent No.5?

Discussion and analysis:-.

9. It appears that one lady has already been appointed to a Group 'D' post of the school on land ownership basis and as such, the present petitioner again cannot avail the opportunity afforded to the land donors in view of existing OMs. Further, it appears that the name of the petitioner is recommended by the land donor, which is not permissible in view of the existing notifications, which are presently occupying the field and as such, the prayer of the petitioner cannot be allowed.

10. However, it is an admitted fact that the post of MTS in the said School is a public post and to fill up the said post, admittedly, 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 her 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.

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

11.1. 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 followings:-

(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.

11.2. 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.

12. It is to be noted here that in respect of recruitment to the Grade-IV post of the Government Departments in the District, 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.

12.1. This Court has carefully gone through the OMs presently holding the field and the same are extracted herein below for ready reference.

12.2. OM dated 26.10.2017:-

Government of Nagaland
Personnel and Administrative Reforms Department
(Administrative Reforms Branch)

No.AR-3/GEN-174/2007 Dated Kohima 26.10.2017.

OFFICE MEMORANDUM

Subject : Procedure for filling up of Non Gazetted Posts in the Departments

The existing policy and procedure for filling up of Grade-III and Grade-IV posts under the State Government, including the District Offices, has been further reviewed and it has been decided that recruitments to Non Gazetted posts shall be made as per the procedure laid down in the following paragraphs.

1. All direct recruitment vacancies arising in Non Gazetted posts, including Grade-IlI and Grade-IV posts under the establishment of Deputy Commissioners in District administration shall be filled up by the indigenous tribes of the respective District through a Selection Committee headed by the Deputy Commissioner and having three District level Heads of Offices, an Administrative Officer, the Regional Employment Officer or District Employment Officer and the Principal or Senior Lecturer of the local College to be nominated by the Deputy Commissioner.

2. Further, all direct recruitment vacancies in Non Gazetted posts in a Department except Grade-IV posts, including such vacancies in the District offices of that Department, shall be filled up by the following Departmental Recruitment Board with the approval of the Government:

(1) Director/Head of Department – Chairman

(2) Representative of

concerned Administrative Department not below the rank of Under Secretary - Member

(3) Representative of P&Ar Department not below the rank of Under Secretary - Member

(4) A senior officer concerned Directorate not below the rank of Deputy Director in-charge of administration - Member Secretary

3. The Department Recruitment Board shall meet every month.

4. All direct recruitment vacancies in Grade-IV posts in district offices of the Departments shall be filled up by the indigenous inhabitants of the respective District. In making recruitments to other Grade-IV posts in the Directorate and Secretariat level offices the reservation policy for Backward Tribes shall be adhered to. All Grade-IV appointments shall be with the approval of Government.

5. The Indigenous inhabitant Certificate (IIC) may be verified with the help of latest Census records to rule out possibility of multiple IICs in the name of the same person.

6. The above procedure shall not apply to the Non Gazetted posts of Secretariat Assistant in Nagaland Secretariat Service Cadre which will continue to be requisitioned to the Nagaland Public Service Commission (NPSC) for recruitment.

7. This issues in supersession of all earlier instructions on the matter, including this Departments Office Memorandum of even number dated 7th December, 2016 and with the approval of the Cabinet vide memorandum No. CAB-2/2013 dated 12th September, 2017 and dated 26th October, 2017.

Sd/-
PANKAJ KUMAR
Chief Secretary to the Govt. of Nagaland

12.3. OM dated 26.10.2017 read as under:-

GOVERNMENT OF NAGALAND

Personnel and Administrative Reforms Department

NO.AR-3/Gen-174/2007 (Pt) Dated Kohima 24.03.2018

OFFICE MEMORANDUM

Sub:- Procedure for filling up of Non-Gazetted Posts in the Departments.

In pursuance of the decision taken by the Cabinet in the meeting held on 28th November 2017 and in continuation to this Department's Office Memorandum of even number dated 26th October 2017, it is hereby clarified that all direct recruitment vacancies to be filled up through the Departmental Recruitment Board shall invariably be advertised.

Sd./-
TEMJEN TOY
Chief Secretary to the Govt. of Nagaland

12.4. OM dated 03.03.2022 read as under:-

GOVERNMENT OF NAGALAND
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
(ADMINISTRATIVE REFORM BRANCH)
NAGALAND:KOHIMA

NO.AR-3/GEN-174/2007(Pt) Dated Kohima 03.03.2022

OFFICE MEMORANDUM

Sub: - Filling up of Group D posts in the Departments-corrigendum issued - Reg.

The procedure of filling up Grade-IV posts in the Government has been laid down vide Office Memoranda No. AR-3/GEN-174/2007(Pt) dated 26.10.2017 and 24.03.2018. The latter memorandum lays down that applications for recruitment to the posts should be called through open advertisement.

2. Following difficulties expressed by various departments on account of the fact that in many cases, Group-D posts, such as Chowkidars, Malis and Peons are filled by landowners or on compassionate ground and locally at the district, sub-division or village level, the matter was considered by the Cabinet in its meeting held on the 9th February 2022 and 22d February 2022. In order to remove such difficulties, it is hereby directed that the condition of advertisement is dispensed with wherever such difficulties are

faced by a Department as long as a fair and transparent eligibility criteria and process is followed and in all such cases approval of the Government is obtained.

3. All requirements as laid down by Government with regard to compassionate appointment, appointment of landowners as well as reservations for Backward Tribes and Person with Disabilities (PwD) shall be adhered to while following the instructions contained in this O.M.

4. This issues with the approval of the competent authority.

Sd./-
(J.ALAM)
Chief Secretary to the Government of Nagaland.
Dated Kohima the 3rd March 2022

12.5. It appears that the clause 1 of the Office Memorandum, dated 26.10.2017, 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. 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, 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.

12.6. 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.

12.7. In that view of the matter, the issue No.(i) as formulated herein above is answered in negative.

13. Moving forward to the issue No.(ii), this Court finds that though the State Government had accorded approval for the appointment of respondent No. 5, 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. 5 is approved, fails to inspire confidence of this Court.

13.1. Thus, the State respondents have not followed its own OMs while according approval to the respondent No. 5, 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.

13.2. The issue No. (ii) is answered accordingly.

14. Moving forward to the last issue, 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 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.3 is answered accordingly.

15. 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, Sungroi, on landownership basis, is rejected.

(ii) The appointment of the respondent No.5, for 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 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.

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

JUDGE

Comparing Assistant