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**(2011) 08 GAU CK 0009**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 16(K) of 2011**

Abang Zeliang

APPELLANT

Vs

Bialakbo Zeliang & Ors.

RESPONDENT

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**Date of Decision :** 05-08-2011

**Acts Referred:**

**Citation :** (2011) 5 GLT 402

**Hon'ble Judges :** Madan B.Lokur, C.J. and A.K.Goswami, J

**Bench :** Division Bench

**Advocate :** Mr. C.T. Jamir, Sr .Advocate, Mr. Wati Jamir, Mr. N. Longkumer, Mr. Akum Jamir, Mr. Wati Walling & Mr. Imkong Jamir., Advocate appeared for the Respondents: Mr. L.S. Jamir, AAG, Advocates appearing for Parties

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## Judgement

A.K. Goswami, J.—This writ appeal is preferred against the judgment and order dated 09.06,2011 passed by the learned Single Judge in WP(C) No. 164(K) of 2006 allowing the writ petition and setting aside the appointment made in favour of the respondent No.5 (appellant herein) with a further direction to the State respondents to consider the case of the writ petitioner alongwith other land owners.

2. The case of the petitioner is that he belongs to Zeliang Tribe and he hails from Tening Village in the District of Peren. The land owners including the father of the petitioner had donated land in Tening Village for establishment of a Circle Officer Headquarter. Thereafter, Tening was upgraded to SubDivision sometime in the year 1985/1986. Consequent upon the creation of the SubDivision, more land was required for extension of Tening Town and responding to the request made by the Government, land owners agreed to donate land subject to certain conditions and, accordingly, an agreement was executed on 04.06.1998 between the land owners of Tening Village and the General Administration Department, represented by the S.D.O. (Civil), Tening, which was countersigned by the Additional Deputy Commissioner, Tening. Clause 3 of the said agreement provides for giving special preference to the land owners on the recommendation

of Tening Village Council in case of recruitment to any Grade III & IV staff in various departments under Tening SubDivision. Clause 4 of the agreement provides for minor contract works to be given to the land owners on the recommendation of Tening Village Council.

3. Coming to know sometime in the March, 2006 that a post of Cook at Public Health Centre, Tening would fall vacant on the superannuation of the incumbent, namely, Shri Songwibo Zeliang in the month of May, the petitioner had submitted an application to the respondent No.2 for appointment against the said post. The Tening Village Council had also issued a certificate dated 30.03.2006 certifying that the petitioner is a land owner and, therefore, recommending his case for appointment as a Cook. However, instead of appointing the petitioner, respondent No.5 In the writ petition was appointed by an order dated 24.05.2006, to be effective from 02.06.2006. Subsequently, a corrigendum was issued on 21.06.2006 correcting the name of the respondent No.5 in the order dated 24.05.2006. The writ petitioner, while praying for setting aside of the order of appointment of the respondent No.5 had prayed for a direction to appoint him as a Cook in the Public Health Centre, Tening in terms of the agreement executed on 04.06.1998. It was pleaded by the writ petitioner that respondent No.5 was appointed as a Cook at Public Health Centre, Tening at the behest of the Member of Parliament (Rajya Sabha) and it was also stated that respondent No.5 was neither a land owner nor had donated any land in Tening Village and that he hails from a place which is about 20 kms to 25 kms away from Tening Town/Village.

4. The respondent Nos. 1 to 4 had filed an affidavit in opposition questioning the legitimacy of the agreement dated 04.06.1998 contending that the SubDivision Officer (Civil) and the Additional Deputy Commissioner, Peren, were not authorised to sign any agreement on behalf of the Government. The fact that the petitioner was a land owner was not disputed in the said affidavit. While asserting that the appointment of respondent No.5 was made in public interest, it was also stated that by the time the application of the petitioner had reached the authority, the appointment order was already issued in favour of respondent No.5.

5. The respondent No.5/appellant had also filed a counter affidavit pleading that the petitioner cannot claim absolute right to the post of Cook on the strength of the agreement dated 04.06.1998 and that the agreement only speaks of special preference to be given to the land owners. It was a categorical assertion of respondent No.5/appellant that he had not applied for appointment to the post of Cook as a land owner and that there were many applicants for the post in question and as he was found most suitable, he was appointed to the post of Cook. While not controverting that his case was espoused by the Member of Parliament (Rajya Sabha), it is the stand of respondent No.5/appellant that he being a representative of the people, there is nothing wrong in his recommending any candidate for consideration for appointment.

6. The learned Single Judge, after hearing the parties on consideration of the materials on record, found that on the recommendation made by the Member of

Parliament (Rajya Sabha), the Minister of Health and Family Welfare, Excise, Nagaland, had directed the respondent No.2 to appoint respondent No.5/appellant. Taking note of the fact that the appointment of respondent No.5/appellant was made without issuing any advertisement solely on such recommendation, the learned Single Judge had set aside the said order of appointment.

7. We have heard Mr. C.T. Jamir, learned senior counsel appearing for the appellant and Mr. L.S. Jamir, learned Additional Advocate General, Nagaland for respondent No.2 to 8.

8. The learned senior counsel for the appellant has submitted that the appellant, on the strength of his order of appointment, had been working for the last five years and, therefore, at this point of time, the learned Single Judge was wrong in interfering with the appointment order made in favour of the appellant. In this connection, the learned senior counsel has placed reliance on the order dated 04.07.2011 passed in Writ Appeal No. 26(K) of 2010 wherein, according to him, this Court did not interfere with the order of appointment of a similarly situated person.

9. The materials on record in the instant case would amply demonstrate that the appellant was appointed only because he was recommended by the Minister of Health and Family Welfare, Excise, Nagaland and Member of Parliament (Rajya Sabha). The memo dated 24.05.2006 of the Minister of Health and Family Welfare, Excise, Nagaland which is annexed as (Annexure11 of the writ petition) bears testimony to the aforesaid fact. The minister had received an application from the appellant for appointment to the post of Cook in question which was recommended by the Member of Parliament (Rajya Sabha). Perusal of the letter dated 24.05.2006 would indicate that respondent No.2 had not issued the appointment order in favour of the respondent No.5/appellant and therefore, by the said memo dated 24.05.2006, the minister had impressed upon the respondent No.2 to issue the appointment order in favour of the respondent No.5/appellant as recommended by the Member of Parliament (Rajya Sabha) on 24.05.2006 itself to avoid any complication. Needless to say, appointment order was issued in favour of respondent No.5/appellant on 24.05.2006 itself.

10. Appointment in a public post in the manner as has been done in the instant case, is clearly against the scheme of public employment and cannot be approved.

11. The reliance placed by Mr. C.T. Jamir, learned senior counsel for the appellant in the order passed in W.A. No. 26(K) of 2010 is also clearly misplaced. It was not a fresh appointment but was a case of regularization of service against past service and in that factual context, this Court didnot upset the order of regularization made in favour of respondent No.4 of the said case. Moreover, there was no ministerial interference of the kind witnessed in the present case.

12. For the reasons aforesaid, we find no merit in this appeal and, accordingly,

the same is dismissed.

13. No costs.