

(2022) 01 GAU CK 0031
In the Gauhati High Court
Case No : Writ Appeal No. 152 Of 2021

Kizukala Jamir

APPELLANT

Vs

State Of Nagaland

RESPONDENT

Date of Decision : 03-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 17

Citation : (2022) 01 GAU CK 0031

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : H.K. Das, D.J. Kapil, N. Mozhui, F. Khan

Final Decision : Allowed

Judgement

SI

No.",Name,"Roll

No.", "Marks for

Academic

records/

Higher

degree/Work

experience", "Viva-

Voce

Marks", "Total

marks",Tribe,Remarks

1.,Kizukala Jamir,34,53.36,7.50,60.86,Ao,

2.,Joshua Keppen,19,51.71,8.00,59.71,Rengma,
3.,Visenuo Aiko,29,49.98,7.25,57.23,Lotha,
4., "Dr. Toshinungla
Ao",1,50.78,5.50,56.28,Ao,
5.,Dr. Merino Visa,12,49.18,5.50,54.68,Angami,
6., "Limamanen
Phom",20,45.72,4.25,49.97,Phom,
7.,Chenole Keppen,23,40.28,8.50,48.78,Rengma,
8., "Ekonthung
Ezung",24,40.93,5.25,46.18,Lotha,
9.,Zevelou Koza,18,39.62,5.50,45.12,Chakhesang,
10.,Wetetsho Kapfo,26,36.6,7.50,44.10,Chakhesang,
11., "Moajungla
Longkumar",30,37.9,4.75,42.65,Ao,
12., "Kikrusenuo
Kiewhuo",8,34.2,7.75,41.95,Angami,
13.,Roolen Yanthan,35,34.08,6.00,40.08,Lotha,
14.,Piyongsola,27,34.54,5.00,39.54,Ao,
15.,Chiem,15,32.18,6.50,38.68,Khiamniungan,
16.,Achila T. Imchen,13,32.07,5.00,37.07,Ao,
17.,Kuchoshetalu,28,30.9,5.75,36.65,Chakhesang,
18., "Lolenmenla
Imchen",25,29.6,6.25,35.85,Ao,
19., "Epibeni N.
Humtsoe",11,29.03,6.00,35.03,Lotha,
20.,Alongba Sor,6,27.33,7.25,34.58,Ao,
21., "Lendirenla
Imchen",31,28.91,5.50,34.41,Ao,
22., "Keheibamding
Thou",7,28.91,4.75,33.66,Zeliang,

23,"Meyatsungba
Aier",16,28.91,4.25,33.16,Ao,
24,"Dzutholu
Nyekha",17,27.04,5.75,32.79,Chakhesang,
25,Rukuwe-u Kupa,22,26.93,5.75,32.68,Chakhesang,
26,Temsurenla,14,27.74,4.75,32.49,Ao,
27,"Moon Moon
Mech",9,27.44,4.50,31.94,Kachari,
28,Lulumenla Jamir,21,27.33,4.25,31.58,Ao,
29,"Nungsangmeren
Jamir",5,26.5,5.00,31.50,Ao,
30,Thonkeya Seb,4,26.67,4.75,31.42,Rengma,
31,"Sejang
Khamniungan",10,26.17,4.00,30.17,Khamniungan,
32,Akihito Chophy,2,24.38,5.50,29.88,Sema,
33,"K. Yaksokiu
Yimchunger",32,21.01,6.00,27.01,Yimchunger,

3. Dr. Merino Visa,,,,,,,,

4. Chenole Keppen. 5.Wetetsho Kaplo,,,,,,,,

6. Rukuwe-u Kupa.â??,,,,,,,,

9. By an order dated 21.12.2020, the new list of six selected candidates was approved by the Cabinet and they were given appointment letters. This",,,,,,,,

list was challenged by the present appellants before the learned Single Judge,,,,,,,,

10. The argument before the learned Single Judge was that the writ appellants had been removed from the list of candidates approved earlier as these,,,,,,,,

candidates were having no experience in human study and to appoint them would have been a disaster. Moreover, it was stated that in the present",,,,,,,,

pandemic situation, the State would have been further burdened as these candidates are required to be sent for a further training. The four candidates",,,,,,,,

who had been included in place of the present appellants are the one who had

been assisting and practically working during the last pandemic in the,,,,,,
Government laboratories and, therefore, they were better suited for the job." ,,,,,,
11. The learned Single Judge has come to the conclusion that although the writ
petitioners before him had the essential qualifications but they were not,,,,,,
having the desired qualification as they had no experience in working in a
laboratory, which studies human disease. Moreover, the learned Single" ,,,,,,
Judge also came to the conclusion that the exercise of selection and appointment
is being done keeping in mind an exigency as such services were,,,,,,
urgently required. The learned Single Judge relied upon a decision of the Apex
Court in B. Srinivasa Reddy - Vs- Karnataka Urban Water Supply & ,,,,,,
Drainage Board Employee's Association & Ors., reported in (2006) 11 SCC 731
(II) [wrongly referred in the judgment as Retired Armed Forces" ,,,,,,
Medical Association & Ors. -Vs- Union of India & Ors., reported in (2006) 11 SCC
731 (I)] where the Apex Court had held that where appointment" ,,,,,,
has to be made in exigency of administrative requirement, violation of Articles 14
and 17 cannot be brought into action." ,,,,,,
12. The operative portion of the judgment & order dated 21.05.2021 passed by
the learned Single Judge reads as under:- ,,,,,,
â??30. We have a case where eyebrow raising steps have been adopted for a
good purpose; and highly qualified candidates stepping into a wrong ,,,,,,
bus. It is a matter of regret that the service of experts were not utilized prior to
bringing out shortlisted candidates, this has caused all the chaos. It was" ,,,,,,
avoidable. We must add here as a matter of caution that in exercise of
recruitment though it may be temporary as pointed out by the learned
counsel ,,,,,,
for the respondents, the authority is to remind itself that it is exercising an
administrative function which involves fundamental rights of citizen and" ,,,,,,
careful handling of such matters should be kept in mind. Intention may be for a
good purpose but it may at times abridge the fundamental rights of ,,,,,,
citizens which is best avoided. Our society is in a situation where we have the
issue of saturation in the employment sector and little error may bring ,,,,,,
unwanted result on issue of employment. It is well advised that the posts should
be advertised through NPSC in a transparent manner on completion of ,,,,,,
the temporal period. The Court is not interfering with the impugned order as it is
found that ,,,,,,

(1) The posts are temporary in nature,,,,,,,,

(2) The recruitment have been made for exigency of service where the court's indulgence will be counterproductive for interest of the society,,,,,,,,

(3) The petitioners does not possess the desired qualification as per the advertisement though highly qualified,,,,,,,,

31. With the above findings, this court is of the view that the Order No.HFW (A) COVID-19/Appt-13/17/2020/405 dated 21-12-2020 issued by the",,,,,,,,

Principal Secretary to the Government of Nagaland, Health and Family Welfare requires no interference of this Court.",,,,,,,,

13. After hearing the learned counsels for the writ appellants and the respondents at length, we respectfully disagree with the findings of the learned",,,,,,,,

Single Judge for the reasons stated herein.,",,,,,,,,

The posts for which applications from eligible candidates were to be appointed were the post of Research Scientist. We have already seen that there,,,,,,,,

was essential qualification and desired qualification. All the thirty-three candidates, who had applied for the post were found eligible, both on the",,,,,,,,

desired as well as the essential qualifications, but the Selection Committee had given their preference as per the merit which we have already referred",,,,,,,,

above. Under these circumstances, the top six candidates in the list were to be appointed in order of merit from their respective categories, i.e.",,,,,,,,

keeping the reservation in mind, and that is exactly what was done vide order dated 05.11.2020. When the entire exercise was over, the Principal",,,,,,,,

Director, Health & Family Welfare had absolutely no authority to write a letter to the Principal Secretary saying that these appointments are bad. The",,,,,,,,

Director states that four out of the six candidates do not have experience in studying human disease! But how can this be a reason for denying,,,,,,,,

appointments to the appellants? Neither the advertisement nor the conditions therein, stipulated that a candidate must have either as an essential or",,,,,,,,

desired qualification a study in human diseases. The requirement was Life Sciences. Each of the earlier selected candidates had the essential as well,,,,,,,,

as the desired qualifications in Life Sciences!,,,,,,,,

14. Making an essential or even a desired qualification in the field of human diseases, is an afterthought. In other words, the concerned authorities",,,,,,,,

have changed the rules of the game after the game had started. This is not

permissible in law. The judgment cited by the learned Single Judge in,,,,,,
support of the State Government, wherein in a particular exigency such an
appointment can be made, may also not be applicable in the present case.",,,,,,
In the judgment cited by the learned Single Judge in the case of B. Srinivasa
Reddy, the Apex Court in Paragraph 51 had held as under:-",,,,,,
â??51. It is settled law by a catena of decisions that the court cannot sit in
judgment over the wisdom of the Government in the choice of the person,,,,,,
to be appointed so long as the person chosen possesses the prescribed
qualification and is otherwise eligible for appointment. This Court in R.K. Jain,,,,,,
v. Union of India :: (1993) 4 SCC 119 was pleased to hold that the evaluation of
the comparative merits of the candidates would not be gone into a,,,,,,
public interest litigation and only in a proceeding initiated by an aggrieved
person, may it be open to be considered. It was also held that in service",,,,,,
jurisprudence it is settled law that it is for the aggrieved person, that is, the non-
appointee to assail the legality or correctness of the action and that a",,,,,,
third party has no locus standi to canvass the legality or correctness of the
action. Further, it was declared that public law declaration would only be",,,,,,
made at the behest of a public-spirited person coming before the court as a
petitioner. Having regard to the fact that neither Respondents 1 and 2,,,,,,
were or could have been candidates for the post of Managing Director of the
Board and the High Court could not have gone beyond the limits of quo,,,,,,
warranto so very well delineated by a catena of decisions of this Court and
applied the test which could not have been applied even in a certiorari,,,,,,
proceedings brought before the Court by an aggrieved party who was a
candidate for the post.â??,,,,,
15. In the aforementioned case referred by the learned Single Judge, the facts
were entirely different. What was under challenge was whether a",,,,,,
Chief Engineer of Karnataka Urban Water Supply & Drainage Board could be
made the Managing Director of the Board. It was not a case where,,,,,,
rules were changed after the selection process had began, etc., as is the case in
hand. The other question before the Court was that this was an",,,,,,
appointment made purely on contractual basis and whether the State has the
power to make contractual appointment or not. Such is again the case not,,,,,,
before this Court. The facts of the case are entirely different.,,,,,,
16. In the present case, the candidates who were selected in order of merit had

been removed from the list of the selected candidates and four" ,,,,,,

different candidates had been included in the list on the basis of their having qualifications in human diseases. These were, however, not mentioned" ,,,,,,

either in the advertisement or in any other conditions. In other words, it was neither an essential nor a desired qualification to have had experience in" ,,,,,,

human diseases in order to be qualified as a Research Scientist. The entire exercise undertaken by the Government of Nagaland post decision dated ,,,,,,

05.11.2020 suffers from malice and the same are arbitrary, illegal and, therefore, the subsequent actions cannot be justified." ,,,,,,

17. The argument of the State that these appointments being only temporary in nature and the selection will be made finally by the State Public ,,,,,,

Service Commission in accordance with law is also not tenable. The fact of the matter is that a procedure has been adopted by the State Government ,,,,,,

in selecting and appointing the candidates, which in our view, is neither fair nor just or proper. We, therefore, do not agree with the findings of the" ,,,,,,

learned Single Judge and accordingly, the order dated 21.12.2020 is hereby quashed. We also set aside the judgment & order dated 21.05.2021. The" ,,,,,,

writ petition is allowed. ,,,,,,

18. Let the respondents appoint the present appellants as Research Scientists and give them appointment letters as earlier as possible. In other words, " ,,,,,,

only such candidates who were initially approved by the State Government in its order dated 05.11.2020 (Paragraph 6) shall be appointed. ,,,,,,