

(2008) 11 GAU CK 0034
In the Gauhati High Court

Mechumla and Another

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Citation : (2009) 5 GLR 472

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Judgement

Mutum B.K. Singh, J.—By this writ petition, the petitioner prays for setting aside the Notification dated 14th April, 2007, issued by the Nagaland Public Service Commission, Kohima (Annexure-I) in respect of the recommendation of respondent No. 6 for appointment as a Medical Officer under the Health and Family Welfare Department, Nagaland and giving direction to the respondent-authorities to appoint the petitioner against the post of Medical Officer reserved for backward tribes.

2. Heard Mr. C.T. Jamir, learned Counsel appearing for the petitioner. Also heard Ms. Y. Longkumer, learned Government Advocate for the respondent Nos. 1 to 3 as well as Mr. N. Mozhui, learned Counsel for the respondent Nos. 4 and 5.

3. Facts, in short, leading to the filing of this writ petition are that pursuant to the advertisement No. 1/2006-07, dated 30th August, 2006 (Annexure-G), issued by the Nagaland Public Service Commission (NPSC), inviting applications for filling up various vacant posts including 20 posts of Medical Officer under the Health and Family Welfare Department and 1 post of Assistant Surgeon under the Home Department Police Establishment Branch, the petitioner being an eligible and qualified candidate, applied for the said post. As per the said advertisement, 80% of the vacancies were reserved for indigenous inhabitant of the State of Nagaland and 33% of the vacancies were reserved for the candidates belonging to 9(nine) backward tribes of Nagaland on Roster basis as revised vide Notification dated 16th August, 2001 and Memorandum dated 26th August, 2002. The petitioner being qualified in the written examination, faced the

personality test/interview before the Board on the appointed date in the office of the NPSC, Kohima. The petitioner belongs to the Sangtam tribe of Nagaland, which is recognized as one of the backward tribes of Nagaland. The NPSC vide Notification dated 14.4.2007 (Annexure-I), recommended 14 candidates for appointment as Medical Officers against the General quota and 6 candidates against the posts reserved for backward tribes excluding the candidate from Sangtam tribe. As per reservation roster, Sangtam tribe comes next to Pochury tribe, but the NPSC instead of recommending the candidate from Sangtam tribe, recommended the respondent No. 6 who belongs to Konyak tribe for appointment to the post of Medical Officer. Out of two candidates from Sangtam tribe, one candidate Dr. H. Tsipongchem Sangtam was recommended in the merit list against the General quota and as such the petitioner was the lone candidate from Sangtam tribe who could be recommended for appointment against the reserved quota of Sangtam tribe as per reservation roster. Being aggrieved by the said Notification, the petitioner submitted a representation dated 20.4.2007 (Annexure-J) to the Secretary, NPSC to rectify the mistake and recommend her for appointment to the post of Medical Officer as per revised reservation roster. However, the NPSC vide its letter dated 23.4.2007 (Annexure-K), informed the petitioner that the petitioner put/used the name of her maternal grand father in place of natural father and as such her case could not be considered under the backward tribes quota. By the said letter, it was also informed that she would not be barred from availing of any opportunity against the unreserved quota. Hence, the petitioner filed the present writ petition for the reliefs stated above.

4. The respondents contested the case by filing affidavit-in-oppositions. The respondents took the plea that during the selection process, the NPSC came to know that the petitioner is the daughter of a non-Naga male married to a lady from Sangtam tribe and she used the name of her maternal grand father as her father's name and the petitioner suppressed the material facts in her application. Hence, her matter for recommendation for appointment against the reserved quota could not be considered. The status of the Naga tribe has to be fixed "by birth" and not by marriage or adoption.

5. Mr. C.T. Jamir, learned Counsel appearing for the petitioner forcefully argued that the petitioner belongs to Sangtam tribe, which is admittedly one of the recognized backward tribes of Nagaland and the petitioner's natural father was Late Litingse Anar. During the course of hearing, the learned Counsel produced the certificate of birth and other documents of the petitioner in addition to the documents annexed to the writ petition. Interestingly, in all the documents including the Birth Certificate, Scheduled Caste Tribe Certificate, Indigenous Tribe Certificate and Backward Tribe Certificate of the petitioner, the petitioner's father name is found written as Litingse Anar. Besides, there is no dispute that the petitioner was selected to undergo MBBS Course by the State of Nagaland against the backward reservation quota of Sangtam tribe and the petitioner successfully completed the course. Even assuming that Late Litingse Anar was not the natural father of the petitioner and the petitioner is the daughter of a

non-tribal man as claimed by the NPSC, the Commission ought to have conducted a proper enquiry after affording reasonable opportunity of being heard to the petitioner to explain her status, but the NPSC failed to do so and abruptly rejected the claim of the petitioner whimsically, arbitrarily, the learned Counsel urged.

6. Reacting to the above submissions, Mr. N. Mozhui, learned Counsel appearing for the NPSC has contended that the petitioner is the daughter of Ms. Seyangeria Sangtam who is serving as an under secretary in the Department of Law and Justice and her father's name is Litingse Sangtam. The Department of Personal and Administrative Reforms disclosed the same vide letter dated 29.5.2007, addressed to the Secretary, NPSC. However, the learned Counsel admitted that out of the 20 advertised posts of Medical Officer, 6 posts were reserved for the backward tribes of Nagaland including the Sangtam tribe as per reservation roster maintained by the NPSC. The learned Counsel, has also submitted that due to non-availability of candidates from Sangtam tribe and others, the candidates from Chang and Konyak tribes were selected and recommended. In paragraph Nos. 2(c) and 6 of the affidavit-in-opposition of the NPSC, it has been alleged that during the course of selection process, it came to the knowledge of the NPSC that the petitioner is the daughter of a non-Naga male married to a lady from Sangtam tribe and it was also ascertained that in all official records the petitioner used the name of her maternal grand father, i.e., Litingse Anar as her father's name and this fact has not been disclosed in the petition. The petitioner is not from the Sangtam tribe and the Scheduled Caste Tribe Certificate, Backward Tribe Certificate as well as the Indigenous Tribe Certificate were wrongly issued to the petitioner. When a query was made by this Court as to how and from which source the NPSC came to know that the petitioner is the daughter of a non-Naga male married to a lady from Sangtam tribe, the learned Counsel could not answer and produce any document except a feeble reply that NPSC received the said information from a reliable source.

7. Upon hearing the submissions of both sides and on perusal of the documents annexed by both the parties, this Court is of the view that a disputed question of fact is involved in this case as to the paternity of the petitioner, which can be ascertained only after making a thorough enquiry and taking evidence from both the sides.

8. I have carefully perused the relevant Office file as produced by the learned Counsel for the NPSC, and that there is no document to establish that the petitioner is a daughter of a non-Naga male married to a lady from Sangtam Tribe, except a letter dated 29.5.2007 issued by the Under Secretary Department of Personal and Administrative Reforms, addressed to the Secretary, NPSC, informing that the official name of the Under Secretary, Law and Justice Deptt. is recorded as Senyangeria Sangtam and her father's name is Shri Litingse Sangtam. The said letter was sent to the NPSC subsequent to the filing of the present writ petition. On a closer scrutiny of the documents available before the

court and the file produced by the concerned Department, this Court is of the considered view that the NPSC abruptly took the view that the petitioner does not belong to Sangtam tribe, she is a daughter of a non-Naga male etc. without making proper enquiry and having any material on record to say so. I am unable to accept the contention of the learned Counsel appearing for the respondents that the Scheduled Caste Tribe Certificate and the Backward Tribe Certificate of the petitioner were wrongly issued as none of the said Certificates has been cancelled so far by the competent authority. It may be pointed out that, such type of Certificates were always issued after making thorough enquiry by the competent authority as per rules as such Certificates shall be presumed to be true and correct until and unless contrary is proved. By virtue of the said Certificates, the petitioner acquired the status that she belongs to Sangtam tribe, which is one of the recognized backward tribes of Nagaland. Thus, under any circumstances, the benefit to be given to the candidate belonging to the backward tribes in the matter of appointment as per revised reservation policy cannot be deprived of by the authority concerned without giving reasonable opportunity of being heard to the petitioner even in case of dispute arises. Hence, the action of the NPSC in rejecting the case of the petitioner in the manner stated above appears to be quite unjust, unfair and violative of the principle of Natural Justice.

9. Be that as it may, since a disputed question of fact is involved in the present case, this Court is of the considered view that it would meet the ends of justice in directing the State-respondents to conduct an enquiry by appointing an independent Inquiring Officer to determine the paternity dispute of the petitioner, after affording reasonable opportunity of being heard to the petitioner. The State-respondents shall complete the above exercise within a period of 4(four) months from the date of receipt of a copy of this order and in such enquiry, if the petitioner's claim is found to be true and correct, the State-respondents and the NPSC shall re-consider the matter of the petitioner for her appointment as a Medical Officer with effect from the date on which the other backward tribe candidates were appointed pursuant to the said advertisement dated 30th August, 2006, with all consequential benefits. Accordingly, I do.

10. With the above observations and directions, this writ petition is disposed of. No order as to costs.