
(2011) 06 GAU CK 0009
In the Gauhati High Court
Case No : WP (C) No. 106 (K) of 2008

Pangsangliba Imchen

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 5 GLR 622

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : C.T. Jamir, Mr. Wati Jamir, Mr. N. Lkr, Mr. Akum Jamir and Mr. Wati Walling, for the Appellant; Lucy and Mr. Azho, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. C.T. Jamir, learned senior counsel for the petitioner assisted by Mr. Wati Walling, learned counsel. Heard also Ms. Lucy, learned Government Advocate for the State respondents as well as Mr. Azho learned counsel for the respondent No.4.

2. In this writ proceeding, the petitioner has challenged the order dated 9.5.2008, issue by the Deputy Commissioner, Mokokchung, Nagaland appointing the respondent No.4 to the post of Dobashi-II ("DB-II") against the vacancy caused on the death of one Temsujongba. The aforesaid deceased was working as Dobashi-II who died in harness leaving behind the present petitioner and other legal heirs. The petitioner is the son of the aforesaid deceased (Government Servant). He applied for appointment on compassionate ground against the post of his father. Before any consideration could be made on his prayer for compassionate appointment, the impugned appointment letter was issued to the respondent No.4.

3. Mr. Jamir, learned Senior counsel for the petitioner submits that the appointment of respondent No.4 is illegal, inasmuch as, the respondent No.4 was selected and his name was placed at SI. No.1 in the waiting list prepared by the Deputy Commissioner, Mokokchung, Nagaland, after conducting interview, but

the respondent No.4 has been appointed against the post occurred due to death of the petitioner's father which was not advertised. According to him, advertised posts of DB-II were already filled up and respondent No.4 has been appointed against the post which was not advertised and as such, the appointment of the respondent No.4 is illegal and de hors the rule. In this regard Mr. Jamir, learned senior counsel has referred to case of State of U.P. and Others Vs. Rajkumar Sharma and Others, in which it has been held amongst other that - filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under articles 14 and 16 of the Constitution of India. He has further referred to case of Rakhi Ray and Others Vs. The High Court of Delhi and Others, wherein the aforesaid law has been affirmed. If the aforesaid settled position of law is to be followed, the appointing authority should go for fresh recruitment process by way of issuing new, advertisement, etc. Moreover, it is submitted that the post of DB-II is not Grade-II post in true sense inasmuch as, it carries the pay scale of Grade-III post. The petitioner has passed the HSLC Examination and as such, he is eligible for appointment to the post of DB-II. Mr. Jamir, learned Senior counsel also submits that the respondent No.4, although he belongs to the District of Mokokchung, he does not belong to the local area under Mangkolemba Sub-Division.

4. Mr. Azho, learned counsel for the respondent No.4 submits that the petitioner has no indefeasible legal right to claim appointment to the post of DB-II under the die in harness scheme, inasmuch as, he cannot choose the post and only 5% of the total vacancy could be accommodated against the quota for appointment on compassionate ground. Since the respondent No.4 has been selected and placed in the waiting list, he has accrued right for consideration for appointment to the post of DB-II and after being considered, the respondent authorities had appointed him, which cannot be challenged as being de hors the rules and illegal. As regards the eligibility, he submits that the respondent No. 4 has passed the HSLC Examination and he belongs to Mokokchung District and he is, conversant with the local customary law which is the primary requirement for being appointed as DB-II. The learned counsel further submits that this court vide judgment dated 27.2.1997 passed in Civil Rule No. 99(K)/1996 has held that the post of DB-Grade-II cannot be filled up on compassionate ground, even if, there is a vacancy in existence. A copy of the aforesaid judgment has been annexed as Annexure R-1 to this petition.

5. Ms. Lucy, learned Government Advocate for the State respondents has filed an affidavit-in-opposition on behalf of the respondent Nos. 1, 2 and 3. In para 11 of the said affidavit, it has been stated that an interview was conducted by the District Selection Board for direct recruitment of Dobashi-II in Mokokchung District on 14.1.2008. Out of the 12 candidates 4 candidates were selected and 2 persons were appointed immediately against the existing vacancies and the other 2 were kept in waiting list making it valid for 6 months and the respondent No.4 was appointed when a vacancy arose due to death of the petitioner's father. However, in para 4 it has been stated that the petitioner's case may be

considered in view of the Office Memorandum No.AR-8/8/78 dated 13.2.2002 and the direct recruitment quota is only 5% in a year. The petitioner's case can be considered as and when vacancy arises and when his turn comes.

6. From the aforesaid pleadings of the respondent authorities it has become clear that there were only 2 posts of DB-II for which advertisement was issued and a selection was made. The aforesaid 2 posts of DB-II were already filled up, but the respondent authorities appointed the respondent No.4 against the post occurred due to death of the petitioner's father in harness.

7. I have carefully gone through the decisions cited by the learned senior counsel for the petitioner. In my considered view, the aforesaid settled position of law in respect of the advertisement of posts and filling the advertised post is applicable to the present case. It is thus clear that a post of DB-II occurred after completion of recruitment process on the death of the petitioner's father and the said post was never advertised. The respondent authorities are legally bound to issue fresh advertisement for recruitment to the vacant posts after completion of the earlier recruitment process but without doing so, the respondent No.4 has been appointed on the basis of the earlier selection.

8. In view of the above, the appointment of the respondent No.4 is liable to be set aside and quashed. It is accordingly set aside and quashed. The respondent authorities, particularly, the respondent No.2, the Deputy Commissioner, Mokokchung, Nagaland, shall initiate fresh process of recruitment to the post of DB-II by way of issuing advertisement and conducting necessary interview in accordance with law and as per existing rules and established procedures. The petitioner and the respondent No.4 shall be allowed to participate in the interview as per their eligibility. The entire process shall be completed within a period of 3 (three) months from the date of receipt of a certified copy of this judgment and order. However, liberty is given to the respondent authorities to provide appointment to the petitioner under the die in harness scheme against any existing Grade III or Grade IV posts commensurate to his educational qualification. It is needless to say that the respondent No.4 shall be allowed to continue in the post of DB-II for a period of 3 months from the date of receipt of the certified copy of this judgment and order.

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