
(2011) 06 GAU CK 0079

In the Gauhati High Court

Case No : Writ Petition (C) No. 207 (K) of 2009

Smti N. Losa

APPELLANT

Vs

The State of Nagaland

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 GAU CK 0079

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

Bench : Single Bench

Advocate : T. Koza, A. Zho, A. Kikon, Azo, Mego, Hormi, M.S. Kichu and Cheliam, for the Appellant; Y. Longkumer, Additional Sr. Government Advocate for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. A. Zho, learned Counsel for the Petitioner. Also heard Mrs. Y. Longkumer, learned Additional Senior Government Advocate for Respondent Nos. 1, 2 & 3. Respondent No. 4 was impleaded later on and it was directed that notice be served upon him. Accordingly, the notice was sent to Respondent No. 4 by Regd. Post with A/D Card on 01-02-2011 but the return service has not been received till date. Due to elapse of about 4(four) months, the service sent to Respondent No. 4 is treated as compete. There is No representation for him. No counter affidavit has also been filed in response to the Writ Petition.

2. The Petitioner hails from Mao Song Song Village of Senapati District in the State of Manipur. She is seeking appointment as Dark Room Assistant (Grade-IV) at the T.B. Hospital, Khuzama in the State of Nagaland. She claims the appointment as one of the real land owners who donated land for construction of the aforesaid Hospital. It may be noted that the Government of Nagaland in the year 1964 sent delegates to meet the land owners of Song Song Village and Sapranmai Khel of Punanami Village for opening the said Hospital and a verbal agreement was arrived at to the effect that the land owners would donate their

lands free of cost for construction of the Hospital and in return the Government of Nagaland would provide them job in grade- III and IV posts or allot contract works.

3. The present Petitioner, as one of the land owners, submitted an application dated 11-08-2009 for appointment to the post of Dark Room Assistant (Grade-IV) before the Principal Director, Health and Family Welfare, Nagaland, Kohima and her case was duly recommended by the Secretary of Mao Song Song Village. In spite of such recommendation, Petitioner's case was not considered by the Respondent-authorities and in her place the Respondent No. 4 was appointed to the post of Dark Room Assistant (Grade-IV) vide order dated 17-03-2010 issued by the Principal Director, Health & Family Welfare, Nagaland, Kohima without any selection process. This appointment letter is under challenge in the present Writ Petition.

4. Mr. A. Zho, learned Counsel for the Petitioner submits that the Respondent No. 4 is not a land owner and his appointment order was issued on the basis of the so called resolution dated 13-10-2001 adopted by the Development Committee of T.B. Hospital, Khuzama consisting of 3(three) villages which is not at all correct. According to him the said resolution was manufactured by the Chairman for some vested interest which was subsequently withdrawn on 20-09-2010. He further submits that in a similar case in W.P.(C) No. 201 (K) of 2001, this Court had passed an order on 31-07-2002 to consider the Petitioner's application along with other land owners. The Petitioner in the said case got her appointment after being considered along with other land owner candidates by the authority. He further submits that the present petition may also be disposed of by giving similar directions to the Respondent-authorities.

5. Mrs. Y. Longkumer, learned Additional Senior Government Advocate on the basis of the statements made in paragraph Nos. 4 & 6 of the affidavit-in-opposition submits that the Sapranmai Khel of Punanami Village, Song Song Village and Khuzama Village constituted a Development Committee for the T.B. Hospital, Khuzama and the said Committee jointly passed a resolution on 13-10-2001 to the effect that in case any vacancy arises out of retirement or death, only the candidates from the concerned villages would replace his/her own villagers. The post of one Dark Room Assistant (Grade-IV) fell vacant on retirement of Shri Kevipozu Hibo who belongs to Khuzama village and against the said post the Respondent No. 4 has been appointed as he belongs to Khuzama village. She further submits that the withdrawal of the aforesaid resolution took place only on 20-09-2010 and the Respondent-authorities were kept in darkness about the aforesaid fact. According to her there is No infirmity or illegality in the appointment of Respondent No. 4.

6. In reply to that aforesaid submission, the learned Counsel for the Petitioner has drawn the attention of this Court to the averment made in paragraph No. 3 of the affidavit-in-reply filed by the Petitioner which reads as follows:

That with regards to the statements made in para 4,9,11,12,13 & 14 of the affidavit-in-opposition, it is denied that Khuzama Village has also donated land for construction of T.B. Hospital, Khuzama. It is stated that although the present T.B. Hospital, Khuzama is a Government Hospital under the State of Nagaland, the land was donated by the Petitioners villagers as they are the rightful land owners. The alleged development Committee, T.B. Hospital, Khuzama was initially set up to ensure that the functions of the hospital is not disturbed by the neighboring villagers. However, the Chairman and Secretary of the said Committee had misused the Committee and wrongly passed a resolution on 13-10-2011 to the effect that in the case of appointments against any vacancy arising out of retirement or dead, only a candidate from the concerned three villages namely, Song Song, Sapranamai Khel of Punanamai Village and Khuzama Village will replace his or her own villager. On the other hand, any resultant vacancy shall be shared between Khuzama, Song Song and Supranamai Khel of Punanamai Village though Khuzama are not the rightful owners.

It is stated that on 20-09-2010, the said 2(two) Chairman & Secretary of the Development Committee, T.B. Hospital Khuzama have withdrawn their letter No. TBH/DC/2001-02 dated 13-10-2001 and thereafter, dissolved the T.B. Hospital, Development Committee as they have realized their mistake in passing such resolution. Hence, there is No more such Development Committee.

7. I have given my anxious consideration to the submissions made by the learned Counsel for the parties. It must be noted that the Respondent No. 4 has not filed any response denying the allegation particularly, that he is not a land owner. His case has been supported by the Respondent-authorities only on the basis of resolution dated 13-10-2001 allegedly adopted by the Development Committee which was not adopted in presence of other members. The resolution has been signed only by the Chairman and Secretary of the so called Committee without any signature of the members concerned or counter signature of any local officer. The validity of the aforesaid resolution can hardly be accepted without verification. It is an admitted position that No selection process amongst the land owners was taken up before the appointment order was issued in favour of Respondent No. 4. In all fairness, it is necessary that the other land owners in the area should be informed about the occurrence of vacancy and applications should be called from the interested land owners, amongst whom the selection should be made. It is also an admitted position that other land owners like the Petitioner who are interested in securing employment in Grade-III & IV posts were not informed and asked to apply for the post. In my considered view the procedure adopted by the Respondent-authorities in considering the case of the Respondent No. 4 alone in exclusion of all other land owners who are also interested in securing employment, is quite arbitrary, illegal and against the established procedure. That being the position, the appointment of Respondent No. 4 cannot be sustained and accordingly, the impugned appointment order dated 17-03-2010 is liable to be set aside and quashed. It is accordingly set aside and quashed. This petition is disposed of with a direction to the

Respondent-authorities particularly, the Principal Director, Health & Family Welfare, Nagaland, Kohima to inform the land owners concerned who donated land for construction of T.B. Hospital, Khuzama and make selection amongst them as per their eligibility and entitlement. The entire process and exercise should be completed within a period of 3(three) months from the date of receipt of a certified copy of this order from the Petitioner. Till such selection is made within 3(three) months, the Respondent No. 4 shall be allowed to continue as Dark Room Assistant (Grade-IV) at T.B. Hospital, Khuzama. The Respondent No. 4 shall not be allowed to work in the said post beyond 3(three) months.