

(2011) 06 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (C) No. 188 (K) of 2007

Smti Thujovelu

APPELLANT

Vs

The State of Nagaland and Others

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Citation : (2011) 06 GAU CK 0033

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

Bench : Single Bench

Advocate : C.T. Jamir, W. Jamir and Nengsangliba, for the Appellant; Y. Longkumar, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—The Petitioner belongs to Pohokhru clan and her clan donated the land on which the present Government Middle School Ruzazho was constructed with a condition to offer Grade-IV post to the Petitioner's clan. In the year 1998 an interview for knitting Helper in the said Government Middle School was conducted but No. land owner was invited in the said interview. The Petitioner alleges that in the said interview the Respondent No. 5 submitted false land ownership certificate and on the basis of such certificate she was selected in the interview. The District Administration, in order to solve the problem, caused a verification with regard to the land ownership and after due verification the SDO(C), Chozuba on 24.4.2001 submitted a report to the Director of School Education, Nagaland stating that he physically verified and found that the school was set up on the land belonging to Petitioner's clan and her clan supports the candidature of the Petitioner and her case was recommended by the Village Council. It was stated that the Respondent No. 5 had already availed employment a decade ago on the basis of the land ownership of a football ground and as such the Respondent No. 5 should not be appointed as Knitting Helper in the said school as she is not the owner of the land on which the school stands. The appointment of Respondent No. 5 was stalled and against the same

she filed W.P(C) No. 23(K) of 2001 seeking a direction to appoint her to the post on the basis of the interview held on 24.7.1998. The aforesaid writ petition was disposed of on 10.9.2002 with a direction to the Respondent-authorities to appoint the Petitioner/ Respondent No. 5 in the present writ petition to the said post. In compliance to the aforesaid order of this Court the Respondent No. 5 was appointed to the post of Knitting Helper on 13.3.2003 and accordingly she joined her duty. The said appointment was conditional as it has been stated therein that the Respondent No. 5 would be terminated if it can be proved that she is not the real owner of the land after detailed enquiry from the Deputy Commissioner, Phek. The Deputy Commissioner was requested by the Respondent-Director to clarify whether the land in question belongs to the Petitioner or Respondent No. 5. After causing enquiry, the SDO(C), Chozuba, submitted his verification report on 20.10.2004 with comments that the Petitioner has a right to claim Grade-IV post in the school concerned as a land owner. On consideration of verification report, the Petitioner was appointed to the said post of Knitting Helper on 16.5.2005. The Petitioner's appointment was challenged by Respondent No. 5 by filing W.P(C) No. 174(K) of 2005. She obtained an interim order on 30.6.2005 suspending the operation of the impugned order dated 16.5.2005 till disposal of the writ petition. In the said writ petition the Petitioner was not made a party. Ultimately, the Petitioner's appointment was cancelled on the basis of order dated 1.7.2005 passed in the aforesaid writ petition. Then a fresh process of recruitment started. Interview call letter was issued on 13.5.2007. The Petitioner appeared in the interview on 28.5.2007 until further orders. Thereafter by an order dated 26.7.2007 but Respondent No. 5 did not appear in the said interview. The Petitioner was recommended by the District Selection Board for appointment to the said post of Knitting Helper but she was not appointed. The Respondent No. 5 again challenged the said 2nd interview by filing W.P(C) No. 84 (K)/07. In an interview order dated 29.5.2007 the Respondent-authorities were directed that No. appointment should be made on the basis of interview held on 28.5.2007 issued by the Additional Director of School Education, the Constitution of District Selection Board for selection of Knitting Helper was cancelled. The aforesaid W.P(C) No. 84(K)/07 came up for hearing on 7.8.2007 which was closed as infructuous on the submission of learned Govt. Advocate that the said interview call letter was issued through oversight and consequently the constitution of District Selection Board was cancelled. As a result, the Respondent No. 5 has been allowed to continue in the post of Knitting Helper.

2. The Respondent No. 5 in paragraph 2 of her affidavit-in-opposition, pleaded as under:

(a) That the Directorate of School Education through Advertisement vide No. ED/EL/Misc/1/97-98 dated Kohima on the 1st June 1998 invited applications from all the intending candidates to apply for the post of Peon, Chowkidar, Knitting Helper and Carpentry Helper against Govt. Middle school (GMS) Ruzazho and Thenyizu under the Deputy Inspector of School Chozuba, Dist-Phek.

(b) That the Respondent No. 5 and other candidates appeared before the interview Board held on 24.07.98. The Selection Board selected the Respondent No. 5 for the post of Knitting Helper at Govt. Middle School Ruzazho and her name appeared at serial No. 4 in the selected list. The Selection Board had recommended the names of all the successful candidates for appointment.

A copy of the interview result dated 24.07.98 is hereto Annexed and marked as Annexure -R1.

(c) That when the vacant posts were advertised and interview was conducted, the Petitioner Smti. Thujavelu neither applied for the post of Knitting Helper nor appeared the test before the Selection Board for the reasons best known to her. Now, after a gap of 10 years the Writ Petitioner cannot come with a plea that she was not invited for the interview, which was held on 24.07.98 when the posts were advertised for the open competition. She also cannot challenge the appointment of Respondent No. 5 who was selected, recommended and appointed on the strength of the 1998 selection result.

(d) That on the recommendation of the Selection Board result dated 24.07.98, the Director of School Education issued appointment orders for all the selected candidates as per merit list on 15.11.99. However, such appointment orders were never served to the selected candidates due to the interference of State politicians. Instead of serving the first appointment order, the Director of School Education had prepared another common appointment orders dated 12.9.00 without cancelling the earlier appointment order which was issued on 15.11.99. in the second common appointment order, the name of Respondent No. 5 had been deleted due to pressure from the then Minister for Wasteland.

(e) That being aggrieved by the action of the Director for issuing the second common appointment order dated 12.09.00 deleting the name of the Private Respondent No. 5 (Vepratsolu), she approached this Hon'ble High Court by filing W.P(C) No. 23(K) of 2001 assailing the impugned second common orders. In the Writ Petition, one of her contention was that why the State Respondents should not be directed to cancel the second common appointment order and accept the first common appointment order prepared by the Director on 15.11.98 where the name of the Petitioner was also included and appeared at serial No. 24. The Writ Petition was allowed by this Hon'ble High Court on 10.09.02 directing the State Respondents to appoint the Respondent No. 5/Writ Petitioner to the post of Knitting Helper within a period of two(2) months.

A copy of the judgment passed on 10.09.02 is hereto annexed and marked as Annexure-R2.

(f) That pursuance to the High Court judgment dated 10.9.02 the Director of School Education had appointed the Respondent No. 5/Writ Petitioner in W.P(C) No. 23(K) of 2001 to the post of Knitting Helper at Govt. Middle School Ruzazho on 13.03.03. Accordingly the Respondent No. 5 Smti Vapratsolu joined her duty immediately.

A copy of the appointment order dated 13.3.03 is hereto annexed and marked as Annexure-R3.

(g) That after serving for about three (3) years as Knitting Helper, the Joint Director of School Education issued another order dated 16.5.2005 cancelling the appointing order of Respondent No. 5/Writ Petitioner with immediate effect without assigning any reason.

A copy of the cancellation order dated 16.5.05 issued by the Joint Director is hereto annexed and marked as Annexure-R4.

(h) That being aggrieved by the cancellation order dated 16.5.05 issued by the Joint Director of School Education, the Respondent No. 5 Smti Vapratsolu for the second time approach this Hon''ble High Court and filed W.P(C) No. 174(K) of 2005 impugning the cancellation order dated 16.05.05. This Hon''ble High Court passed an Interim Order on 30-06-05 staying the operation of the impugned cancellation order till disposal of the writ petition.

A copy of the Interim order dated 30-06-05 is hereto annexed and marked as Annexure:R5.

(i) That while the W.P(C) No. 174(K) of 2005 was pending, the Additional Director issued an order dated 18.07.2005 stating that the appointment order dated 13.03.2003 of Smti Vapratsolu Knitting Helper will stand valid as per the Court''s Judgment. The Id. Govt. Advocate, Y. Longkumar placed the said order before the Hon''ble on 27.07.2005 and in view of the Addl. Director Order, the matter was closed by the High Court on 27.07.2005.

Copies of the order issued by the Addl.Director dated 18.07.05 & Court''s order dated 27.07.2005 are hereto annexed and marked as Annexure:R6 & R7 colly.

(j) That the present Respondent No. 5 was compelled to approach this Hon''ble High Court for the third time by filing W.P(C) No. 84(K) of 2007 challenging the Interview calling Letter dated 23.05.07 served to the Respondent No. 5 to face the interview for the second time for the same post (Knitting Helper) to be held on 28.05.07. The Deputy Inspector of School Chozuba issued the interview calling letter inspite of the fact that the Respondent No. 5 was already selected for the said post in 1998 through open competition and appointed.

A copy of the interview calling letter is hereto annexed and marked as Annexure-R8.

(k) That this Hon''ble High Court was pleased to passed an Interim Order on 29.05.2007 in W.P(C) No. 84(K) of 2007 to the extent that No. appointment is to be made to the post of Knitting Helper at Govt. Middle School, Ruzazho on the basis of the interview conducted on 28.05.07.

A copy of the court''s interim order dated 29.05.2007 is hereto annexed and marked as Annexure-R9.

(l) That during the pendency of the W.P(C)84(K) of 2007, the Addl. Director (HOD), School Education by his letter dated 26.07.07 had cancelled the constitution of District Selection Board and the interview held on 28.05.2007 for the post being held by the Respondent No. 5, stating that the said Selection Board was constituted due to over-side(sic) of the judgment and order of the Hon"ble High Court on 30-11-06 in W.P(C) No. 174(K) of 2005.

(m) That the present Respondent No. 5 was compelled to filed three (3) Writ Petitions over the same subject matter for No. fault of her's and hence the present writ petition is liable to be dismissed with cost. In the present writ petition, she has been made as Private Respondent No. 5.

3. The stand of the Government in this regard could be found in paragraph-4,6 and 10 of its affidavit-in-opposition. In paragraph-4 it has been stated that the Respondent No. 5 was appointed on the recommendation of the District Selection Board held on 24.7.1998 but the documents submitted by the Petitioner as well as by the Respondent No. 5 in support of their claim as land owner, have not yet been verified. In paragraph 6 it is stated that the department is not disputing that the Petitioner is the land owner. In the said paragraph it has been clarified that the Respondent No. 5 was appointed on condition that her service would be terminated if she cannot prove herself to be the real land owner. In paragraph 10 it is stated that the department is ready to constitute a new District Selection Board to have a fresh interview providing opportunity to all.

4. Mr. C.T.Jamir, learned senior counsel appearing for the Petitioner submits that the Village Council supported by her clan members, recommended her for appointment to the post of Knitting Helper. The resolution/decision of the Village Council along with the report of the local revenue authority regarding land ownership of the Petitioner was placed before the Respondent-authorities and on the basis of the same, any reasonable man can come to the conclusion that the Petitioner is the real owner of the land on which the school building was constructed. As per the existing policy land owner/donor for any school building is entitled to get appointment in the Grade-IV post but the Respondent-authorities failed to take firm decision in favour of the Petitioner. The Respondent-authorities have been influenced by the Respondent No. 5 who produced false and manipulated land ownership document by suppressing the facts. The Respondent-authorities have No. difficulty in taking the decision in favour of the Petitioner on the basis of the inspection report of the SDO(C), Chozuba wherein it has been certified that the Petitioner is the real owner of the land in question and she is entitled to the post of Knitting Helper.

5. Mr. A Zho, learned Counsel for the Respondent No. 5 submits that before upgradation, the school concerned was a Government Lower Primary School which was established as far back as in the year 1940. The said Primary School was established on the land donated by family members of Respondent No. 5 including other three persons namely (1) Pudunyi, (2) Puniyi @ Thupunyi and (3) Neizazo. Subsequently, the said Primary School was upgraded to Government

Middle School. The land donated by the aforesaid persons including the Respondent No. 5, was a big terrace field and the said school remained at the same location till grade-IV posts were advertised in 1998 and completed the selection process in the same year. The Petitioner or none of her family members was a land owner/donor for the said Govt. Primary School. She was, therefore, not invited/called to appear in the interview conducted by the selection Board on 24.7.98. All the land owners including the Petitioner were called for interview who accordingly appeared in the interview and were appointed to the Grade-IV posts.

6. The upgraded Govt. Middle School, Ruzazho was temporarily shifted to the land of Pohokhru clan, to which the Petitioner belongs, sometime in the year 2000 till the permanent construction was completed at Upper Khel of Ruzazho village. Since the Middle School was functioning thereat on temporary basis, there was No. question of acquiring any land and there was No. occasion to donate land by any person. Moreover, the Govt. Middle School, which was functioning at the clan's land of Pohokhru till it was shifted to the new site building in 2001 at Upper Khel of Ruzazho village after completion of permanent site of Govt. Middle School building which belonged to one Sri Mustheyi and Ors. of Ruzazho village and therefore the writ Petitioner is not a land owner neither at the old site nor at the new permanent site. The Grade-IV posts were already filled up by the Respondent No. 5 and other three land owners while the school was functioning at the old site before upgradation of the Primary School to Govt. Middle School.

7. The precise submission of Mr. Zho, learned Counsel for the Respondent No. 5 is that the land on which the Govt. Middle School had been temporarily functioning between 2000-2001, No. doubt belongs to Pohokhru clan, but since the school has been shifted to its new permanent site after construction of school building at Upper Khel of Ruzazho village, the Petitioner has No. rightful claim to demand appointment as land owner.

8. The aforesaid stand of averments of Respondent No. 5 have not been rebutted or denied by the Petitioner inasmuch as she has not filed any rejoinder to the affidavit-in-opposition filed by the Respondent No. 5. It, therefore, stands uncontroverted that the Govt. Primary School was established in the year 1940 on the lands donated by the family members of the Respondent No. 5 and three others. There is No. denial to the fact that the Primary School was upgraded to Govt. Middle School and before its upgradation the Grade-IV posts were filled up by four land owners including the Respondent No. 5. It also stands undisputed that after appointment of the aforesaid four land owners, the School was temporarily shifted to the land of Pohokhru clan sometime in the year between 2000-2001 and after construction of permanent building it was shifted to its permanent site at Upper Khel Ruzazho village.

9. It appears that the shifting of the Govt. Middle School to the aforesaid permanent site is not in dispute. What is in dispute is whether the permanent

school site falls under the land of the Pohokhru clan or it belongs to some other clans or individual person. No. enquiry has been made or caused to have been made through any local revenue or other authority to find out the actual position/status of the land on which the present Govt. Middle School situates. It also appears that in the earlier enquiries conducted by the SDO(C) Chozuba, the concerned parties, mainly the Petitioner and the Respondent No. 5 and the leaders of the respective clans, were given No. opportunity of placing their documents or hearing in person to decide the status of the land. It does not reflect as to whether at the time of local inspection, the Petitioner and the Respondent No. 5, alongwith clan leaders were present. Both the parties have registered their claims and counter claims regarding status of the land for the purpose of claiming appointment as land owners.

10. From the pleadings of the parties, it is easily discernible that both the parties are interested for appointment against the post of Knitting Helper but it is not understood as to why the present Petitioner is showing interest or making her claim against the post of Knitting Helper only without questioning the appointment of other three persons who have been appointed against other three Grade-IV posts in the similar manner for the said school. From the pleadings of the Petitioner, it is found clear that the Petitioner started claiming appointment only when the school was upgraded and shifted temporarily to a plot of land belonging to her clan. The reason is obvious because she was not in a position to establish that she was a land owner at the time when the Government Primary School was established and functioning till upgradation and temporarily shifted to land belonging to her clan. The concerned period for construction is the one during which the Govt. Primary School was functioning till its upgradation. During the aforesaid period the Petitioner was not a land owner/donor. It must be kept in mind that the appointment to Grade-IV posts were made in favour of four land owners including the Respondent No. 5 before the school was upgraded and shifted temporarily to the site belonging to Petitioner's clan. The Petitioner would have a claim for appointment as land owner if the school continued to run at the said site where it was temporarily shifted but as soon as the school has been sifted to its permanent site, No. such claim could be made by the Petitioner. It is found that the Petitioner is trying to make out a case for appointment as land owner only after school was upgraded and shifted temporarily to her clan's land which is now shifted to its permanent site. The matter regarding appointment of landowners against Grade-IV post was settled after the appointment of four land owners including the present Respondent No. 5, against the vacancies existed in the said school at the time of upgradation but before its upgradation and temporary shifting to a place allegedly belonging to Petitioner's clan. In my considered view, such a settled position should not be allowed to be disturbed at this stage by cancelling the appointment of Respondent No. 5.

11. I have come to this conclusion because the Petitioner has not rebutted or denied the material averments made by the Respondent No. 5 in her affidavit-in-

opposition as stated earlier. The legal position is that if the specific pleadings or averments of a party is not denied or rebutted by the concerned party it would amount to acceptance or admission of the same. In this regard, I would refer myself to the case of Smt. Naseem Bano Vs. State of U.P. and others, and also our High Court case in Dhairya Nath Kakati @ Dhairya Ram Kakati v. Union of India, reported in 1997 2 GLT 150 ; Rajendra Prasad Pathak Vs. Kendriya Vidyalaya Sangathan and Others, and in Rejia Khatun Vs. State of Assam and Others,

12. The result of the aforesaid discussion is that the Petitioner has not succeeded in making out a case of further enquiry in regard to the status of the land on which the Govt. Primary School was constructed in 1998 vis-?-vis the status of the Respondent No. 5 as the land owner. The Petitioner has also not been able to succeed in establishing a case for cancellation of the conditional appointment order dated 12-03-2003 made in favour of the Respondent No. 5. I refuse to set aside the said conditional appointment of Respondent No. 5. However, it is for the Respondent-authorities to take decision whether the said temporary/conditional appointment made in favour of the Respondent No. 5 is to be regularized or not by resorting to fresh recruitment process as per existing rules and procedure, but, I make it clear that in case the Respondent-authorities opt for fresh recruitment process, the said appointment of Respondent No. 5 shall not be disturbed till the process of fresh recruitment to the post of Knitting Helper is completed.

13. With the aforesaid directions and observations, the writ petition stands dismissed. No. costs.