

(1991) 07 GAU CK 0005

Gauhati High Court

Case No: Civil Rule No. 2131/88 of 1988/72(K) 89

Chozhulu Kikhi

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision: July 3, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226, 226, 309, 309
- Nagaland Social Security and Welfare Services Rules, 1982 - Rule 5, 5, 6(4), 6(4)

Citation: (1991) 2 GLJ 142

Hon'ble Judges: W.A.Shishak, J and H.K.Sema, J

Bench: Division Bench

Advocate: S.S.Goswami, N.Dutta, C.Jajo, Advocates appearing for Parties

Judgement

H. K. Sema, J.

By this application under Article 226 of the Constitution, the 4 petitioners have assailed the Notification No. DSW/ESTT17/84 dated 17.2.88 issued by the Secretary to the Govt. of Nagaland, Social Security and Welfare Department, Kohima Nagaland. whereby the respondent No. 3 was appointed to the post of DWO (District Welfare Officer) and respondents 4 and 5 were appointed to the post of CDPO (Child Development Project Officer) Class II Gazetted under the Department of Social Security and Welfare, Nagaland, on contract basis for a period of 1 year with retrospective effect. (Annexure H to the writ petition),

2. The petitioner No. 1 Smt. Chozhulu Kikhi obtained B.Sc. (Home Science) Degree from the Punjab University in the year 1980, petitioner No. 2, Michael Zaren obtained Post Graduate Degree in Sociology from the North Eastern Hill University (NEHU) in the year 1985, petitioner No. 3 Smt. K. Atoli Sema obtained B.Sc. (Home Science) degree from the University of Allahabad in the year 1983 and the petitioner No.4 Smt. A. Chubaienla Jamir obtained the Degree of Bachelor of Science (Home Sc.) from the Punjab Agricultural University in the year, 1980.

3. Pursuant to the advertisement No. 3/8788 dated Kohima the 12th May, 1987 issued by the Nagaland Public Service Commission, hereinafter referred to as "NPSC", the petitioners applied for the post enumerated in item No. 1 of the said advertisement, namely ; (i) 1 (one) post of District Welfare Officer, (ii) 3 (three) posts of Child Development Project Officer, Class II Gazetted in the Nagaland Social Security and Welfare Services Class II under the Department of Social Security and Welfare, Nagaland. The said advertisement is annexed to the writ petition as Annexure D. We shall be dealing with this advertisement at appropriate time. Mention may however, be made here, that in the said advertisement, it was stipulated that preference shall be given to those candidates who possess a postgraduate degree Diploma in Social Work or a Degree in Home Science from any University recognised by the Government. Special preference are to be given to female candidates having Degree in Home Science of a recognised University.

4. Before we advert to other points urged in this petition, we may at this stage dispose of one uncontroversial fact relating to the case at hand. The Government of Nagaland, Department of Social Security and Welfare has introduced a scheme known as Integrated Child Development Scheme (ICDS). This scheme of ICDS is 100% Central Government sponsored scheme and from time to time guidelines with regard to the function of the scheme and appointment of officers under the scheme are given by the Government of India besides the Rules framed thereunder. Under the scheme, children from 16 years, pregnant and lactating mothers are beneficiaries. Such guidelines and instructions received from the Government of India from time to time are annexed to the writ petition as Annexures B, B2, B3 and B4.

5. In pursuance to the advertisement aforesaid, altogether 561 and odd candidates applied for the post enumerated in Item No. 1 of the said advertisement. The Commission after screening the candidates, following the guidelines given by the Government of India and accepted by the Government of Nagaland by its letter dated 30th April 1987, (Annexure 2 to the affidavit in opposition filed by the (NPSC) gave special preference to the female candidates who are possessing preferential qualification. Accordingly, the Commission called 16 candidates for the interview for the posts ; namely, 1 (one) post of District Welfare Officer and 3 (three) posts of Child Development Project Officer, who were entitled to special preference in terms of the advertisement aforesaid. The petitioners No 1,3 and 4 were called for interview for the posts of CDPO and the petitioner No.2 was called for interview for the post of DWO alongwith others who were interviewed on 31.10.87.

6. Of the 16 candidates called for the interview 15 candidates appeared in the interview. The Commission thereafter prepared merit list and forwarded to the Government purportedly under the Rule 6 (5) of the Nagaland Social Security and Welfare Services Rules, 1982. The petitioners No. 1,3 and 4 were recommended for the three posts of CDPO, and the petitioner No. 2 was recommended for the post of DWO by its letter dated 24.11.87. Having not received any appointment order, the petitioners represented before

the respondent No.2 by its petition dated 12.1.88. The respondent Govt. thereafter by its order No. DSW/ESTT17/84 dated 17.2.88 appointed the respondents No.3,4 and 5 on contract basis for a period of 1 year with retrospective effect. Respondents No. 4 and 5 were appointed as CDPO w.e.f. 1.12.87 and 18.9.87 respectively and the respondent No. 3 was appointed as DWO w.e.f. 1.12.87. To mention only few, these are the broad facts which give rise to the filing of this writ petition.

7. During the pendency of this writ petition, the contract appointment of the original respondent No. 3, 4 and 5 were expired and no extension was given to them. However, by another order No. DSW/ESTT17/84 dated 15.4.91 the Govt. of Nagaland extended the contract services of Smt. Impangsangla, Research Officer, w.e.f. 31.3.91, Miss. Dukhrulu, DWO, Phek w.e.f. 14.3.91 and Smt. Martha Longkumar, CDPO, Dimapur w.e.f, 21.3.91. A petition was filed before this Court for impleading the aforesaid persons as respondents in place of original respondents No.3, 4 and 5. Accordingly, by an order dated 19.4.91 this Court allowed the petition and they are impleaded as respondents No. 6, 7 and 8. This Court also directed the petitioners to serve a notice upon the respondents No. 6, 7 and 8 and accordingly notice was duly served but none appears for the respondents No. 6, 7 and 8.

8. We have heard Miss C. Jajo, learned counsel for the petitioners as well as Mr. I. Jamir, learned Senior Govt. Advocate at length. Miss. C. Jajo submits that all the petitioners were possessing requisite qualifications and qualified for the posts falls within the category of preference and special preference as enumerated in item No. 1 of the advertisement aforesaid. The petitioners appeared before the interview for the post and they were duly recommended by the Commission by its letter dated 24.11.87 for appointment to the post and as such, it is submitted by Miss. C. Jajo, that the petitioners only are entitled to be appointed to the posts and that the respondent Govt. had no authority under the Rules to make any appointment on contract basis from outside the list during the pendency of merit list. Under the Rules, it is submitted, it was incumbent on the part of the Government to appoint the petitioners inasmuch as there is no record to show that the petitioners are not suitable in and respects for appointment to the services. She further submits that the respondents are not only from outside the list but they were also not qualified for the post and as such action of the Government are without jurisdiction, illegal, unconstitutional, and violative of rights guaranteed under Article 14,15 and 16 of the Constitution.

9. As against this Mr. Jamir, learned Senior Govt. Advocate submits that the whole procedure adopted by the Commission while conducting the interview was not in accordance with the Rules, (I) More than 500 candidates applied for the post but only 16 applicants were selected for interview, according to him there is no provision under the Rules for screening of the candidates, (II) Even otherwise under Rule 6 (5) the merit list prepared by the Commission remain valid for 6 months from the date of its approval by the Commission, according to him, the merit list prepared by the Commission in 1987 is lapsed and the petitioners cannot now claim appointment under the said list, (III) Special

preference given to the female candidates in the aforesaid advertisement was not contemplated by the Rules.

10. Let us, now examine the rival contentions in the line of Rules and guidelines from time to time received from the Government of India and background under which the said advertisement was issued by the NPSC.

11. We may, at this stage, say that on perusal of the affidavit in opposition filed by the respondent Government, some allegations were levelled against the NPSC and this Court by order dated 16.11.90, issued a notice calling upon the NPSC to explain the allegation made in the if affidavit in opposition. Accordingly, the NPSC, filed elaborate counter affidavit in opposition through its Secretary which is placed on record.

12. In exercise of the powers conferred by proviso to Article 309 of the Constitution, the Governor of Nagaland framed Rules regarding recruitment and conditions of services of the persons appointed to the Nagaland Social Security and Welfare Services, called the Nagaland Social Security and Welfare Services Rules, 1982. This Rule was further amended in 1983 by the Nagaland Social Security and Welfare Services (First Amendment) Rules, 1983. This Rule was further amended in 1988 by the Nagaland Social Security Welfare Services (Second Amendment) Rules, 1988. By this amendment Rule 8 (6) of the Rules was further amended and under the said Rules insertion was made giving preference to the lady candidates possessing Bachelor Degree in Home Science, Social Work Child Development, Nutrition and Allied Field. This second amendment may not be very relevant for disposal of the case in hand but we are referring to this amendment only to show that the guidelines received from the Government of India from time to time are accepted and acted upon and even the Rules are amended accordingly. Besides this Rules a guideline has been issued from time to time by the Government of India regarding service conditions, mode of appointment for the officers appointed to the services of Nagaland Social Security and Welfare Department. Such guideline was forwarded by letter dated 25.4.87 from the Minister of State, Ministry of Human Resources Development Department of Youth Affairs and Sports, Women and Child Development, Govt of India, to the Chief Minister, Nagaland to follow the guide line issued by the Government of India while advertising the jobs of selecting candidates under Social Security and Welfare Department. In the first guideline forwarded by the letter aforesaid, it is stated that the CDPO should preferably and as far as possible be a Lady Officer. The Supervisors (Mukhya Sevikas) should be Lady Officer. In the second guide line contained in D.O. No. 316/75CD dated New Delhi the 6.9.1976 which says that the CDPO preferably be a Graduate in Child Development, or Social Work or Home Science or Nutrition or an Allied field. The guideline further states that as far as possible, the CDPO should be a Lady Officer. Another guideline contained in letter No.611/75CD dated 1.8.1975 from the Department of Social Welfare, Government of India which states that one Child Development Project Officer should be selected for each project. The CDPO should be preferably bag graduate in Child Development or Social Work or Home Science or an Allied field.

13. It thus appears, considering the aforesaid guidelines received from time to time from the Government of India, the Director of Social Security and Welfare, Nagaland, by its letter No. SW/ESTT/ICDS/MISC4/84/5557 dated Kohima the 6th April, 87 requested the Secretary to the Govt. of Nagaland, Social Welfare Department to take up the case with the NPSC to insert the word to give special preference to Home Science graduates and women in the advertisement for recruitment to the posts of CDPO and Supervisor. In response to the aforesaid letter of the Director, Social Security and Welfare Department, the Under Secretary to the Govt of Nagaland vide his letter No. DSW/ESTT7/87 dated Kohima the 30.4.87 addressed to the Secretary NPSC with a request to make necessary entries in the requisition submitted to the Commission for recruitment to the post of CDPO/DWOs in the light of suggestion given by the Director of Social Security and Welfare Department as referred above.

14. It would thus appear, all these correspondences and guidelines were ultimately incorporated in the advertisement No. 3/8788 dated 12.5.87 issued by the NPSC. The said advertisement is annexed to the writ petition as Annexure D. In the said advertisement there are altogether 5 items. In this writ petition we are more concerned with Item No.I. Item No.I deals with 1 post of DWO (District Welfare Officer) and 3 (three) posts of CDPO (Child Development Project Officer). These are the posts which were applied for by the petitioners. Item No. 1 of the said advertisement is reproduced below :

"Item No.I (I) (one) post of District Welfare Officer, (II) 3 (three) posts of Child Development Project Officer ClassII Gazetted in the Nagaland Social Security and Welfare Service ClassII under the Department of Social Security and Welfare, Nagaland, Scale of Pay Rs. 930351070451385EB451000502000/ p.m. Qualification : Degree in Arts/Science/ Commerce/Agriculture/Engineering/Medicine/Home Science/Physical Education/Agriculture Engineering/Veterinary Sc./Divinity/Applied Geology and Applied Geophysics of a recognised University. Preference shall be given to those candidates who possess a Post Graduate Degree Diploma in Social Work or A Degree in Home Science from any university recognised by the Government, special preference will be given to female candidates having Degree in Home Science of a recognised University. Thus the aforesaid advertisement prescribed three categories of qualification. Firstly, candidates having the degree in Arts, Science and Commerce etc. secondly, candidates possessing the preferential qualification like a Post Graduate Degree/Diploma in Social Work or a Degree in Home Science from any recognised University, and thirdly, special preference are to be given to the female candidates having degree in Home Science of a recognised University. This third category of special preference is hotly contested by the respondent, Government on two grounds, namely

(i) In Rule 8 of the said Rules there is no mention of preference being given to the candidates having degree in Home Science (underline is ours) and

(ii) special preference given to the female candidates was not contemplated by the Rules.

The submission of Mr. Jamir, learned Senior Govt Advocate on this point has no substance simply because of two reasons. As earlier stated, this Rule 8 of the 1982 Rules was amended by the Nagaland Social Security and Welfare Services (First Amendment) Rules 1983. By this amendment Rule 8 of the Rules further amended and the words or a degree in

Home Science was inserted in Rule 8 of the Rules by the aforesaid amendment. Secondly, special preference to the female candidates were inserted under specific instructions by the respondent Government to the NPSC by its letter referred above. The respondent Government cannot blow hot and cold at the same time. As earlier stated the scheme, ICDS is 100% Central sponsored scheme and the Government of India issued guidelines from time to time to the Government of Nagaland with regard to the recruitment to the post and method of recruitment for the smooth and effective functions of the scheme. The guideline issued from time to time by the Government of India and accepted and acted upon by the Government of Nagaland are borne out from the record. Guidelines given from time to time by the Government of India for the elective implementation and smooth functioning of the scheme sponsored by the Government of India do not make the Rules framed under the scheme otiose. The submission of the learned Senior Govt. Advocate that the special preference given to female candidates was not contemplated by Rules and the NPSC acted contrary to the Rules therefore fails.

15. We may, at this stage, dispose of one argument of the learned Senior Govt. Advocate that the Commission did not conduct the examination of the selected candidates but only interview was conducted, which according to the learned counsel is not in accordance with Rules. To this, Miss C. Jajo, learned counsel for the petitioners has drawn our attention to the provisions of Rules 6 (4) which speaks of an examination or interview. This shows that Rule 6 (4) gives adequate discretionary power to the Commission to hold the examination or an interview depending on the exigency and expedient of service. As long as the discretionary powers exercised by the Commission are not arbitrary and not contrary to Rules, the Commission is within its domain to hold either one of them an examination or interview. In our opinion, in the present case, Commission has justly exercised discretionary powers conferred on it by the provision of Rule 6 (4).

16. The next submission of Mr. Jamir, learned Senior Government Advocate is that more than 500 candidates applied for the post but the Commission selected only 16 applicants for the interview which according to him Commission acted arbitrarily and discriminately. He further submits that under the Rules there is no provision for screening the candidate and even assuming screening is allowed, screening test is to be conducted and in the instant case since this had not been done, the selection of the petitioners by the Commission, is discriminatory and is void. We felt not inclined to entertain this submission of the learned counsel as those candidates who were not called for the interview are not aggrieved and they are not before us. Secondly, it is not even a case of the respondent that those candidates who were similarly situated with the petitioners were not called for the interview. We are, therefore, not at all impressed by the submission of the learned

counsel for the respondent.

17. It was last contended that the validity of the merit list prepared by the Commission under Rule 5 of the Rules has already been lapsed as the same shall remain valid for 6 months from the date it is approved by the Commission.

We find ourselves in extremely difficult to accept this submission of the learned counsel. This is not the intention of the Rule. What the Rule contemplated was that the merit list as approved by the Commission shall be considered within 6 months. If it is to be understood that the merit list would remain unconsidered by the concerned Government for six months and allow the merit list to have a natural death, the whole exercise of the Commission in calling for the interview of the candidates would be futile exercise of powers and existence of the Commission under the provision of the Constitution would become a mockery. On the other hand, the submission of the learned counsel for the respondent is belied by the appointment of the respondent No. 3, 4 and 5 on contract basis. In fact, those respondents are not only appointed within the validity of 6 months but the respondent No. 3 and 4 were appointed with retrospective effect from the date of 1.12.87 and the respondent No. 5 was appointed w.e.f. 18.9.87, the date on which the contract services of respondent No.5 expired by an order dated 17th February 1988 As earlier stated, petitioner's case was recommended by the Commission on 24.11.87. In a welfare State like ours, regulated by Rule of Law no reasonable man properly instructed in law could have acted in the manner it has been done. Should we say it is colourable exercise of powers ?

18. The question of appointment of candidates on adhoc basis and or contract basis from outside the merit list prepared and recommended by the Commission has often engaged the attention of judicial conscience and they are no more res integra. We do not felt it necessary to multiply the judicial pronouncement on the point. We are, however, tempted to quote a passage from paragraph 4 of a decision of this Court in Smt. Rajkumari Sanayaima Devi vs. State of Manipur, 1983 (2) SLJ 107, brother Hansaria, J, as he then was, speaking for the Court has to say this :

4. The important question is whether the petitioner can be granted any relief now after she has ceased to be in service. Before adverting to this aspect, we may state that we have noted with displeasure, that respondent No. 7 should have been appointed on a regular post, may be on adhoc basis though her name was not at all in the lists of the D. P. C. The stand taken by the State that the petitioner could not be appointed to that post as the validity of the D. P. C. recommendation had expired is belied by Annexure A/14, by which an adhoc appointee of 1974 was regularised in 1981. The learned Senior Govt. Advocate states that it is a solitary and one swallow does not make a summer. That may be so, but let it be remembered that a pitcher, may even an ocean, is filled by drops, and one seed germinates a full tree one idea ignites the whole nation. Then, an employer like the State cannot act with vengeance or shower favour on selected few. It seems this State is really plagued with adhoc appointments and it is high time for the authorities to

sort out this matter to the satisfaction of all concerned. Appointment of somebody beyond the list even on adhoc basis makes mockery of the exercise of selection. The fact that it is adhoc has no relevancy when many person from the list await their turn for appointments. To bypass the list in the guise of giving ad hoc appointment is a mala fide use of power. It smacks of favouritism at the back of which may lie corruption. In these days of large scale unemployment, such actions become almost revolting and forces people to take to streets to ventilate their grievances. The State has, therefore, to view these matters seriously and it has to put its house in order before it is too late. It has to note the writing on the wall and act with speed and sincerity to give clean administration to the people." We are in complete agreement with the observation and decision rendered in Rajkumari (supra).

We only hope that such observation and decision would be an eye opener to every executive action in future, so that unnecessary litigations and wastage of public money are avoided.

19. For the aforestated discussion and reasons, this petition is allowed. The appointment of respondents No. 6, 7 and 8 are set aside and quashed. It is stated that the petitioners No. 1, 3 and 4 are now over aged. They were within the age when their case was recommended by the NPSC for appointment on 24.11 87 and when they approached this Court with the writ petition on 22. 11. 88. These petitioners are not to suffer for no fault of theirs. The age bar of the petitioners 1,3 and 4 are accordingly waived. It must be remembered that judiciary is respected because it is capable of removing injustice. The respondents 1 and 2 are now directed to appoint the petitioners No. 1,2,3 and 4 to the post for which they were qualified and recommended by the Commission. This shall be done within a period of one month from today.

This petition is allowed with cost of Rs. 2,000/. It would be open to the Government to realise the cost of the petition from the officers of the Government responsible for the lapses.