

(2016) 07 GAU CK 0061

GAUHATI HIGH COURT

Case No: Writ Appeal No.283 of 2012.

Yebemo Mozhui, Office Peon,
Office of the Sub-Divisional
Information Officer, Bhandari,
District : Wokha, Nagaland -
Appellant @HASH Mr. A. Renbi
Mozhui, S/o. Mr. Anithung
Mozhui, Resident of Bhandari
Village, District : Wokha,
Nagaland

APPELLANT

Vs

RESPONDENT

Date of Decision: July 27, 2016

Citation: (2016) 5 GauLJ 554 : (2016) 5 GauLR 614 : (2016) 4 NEJ 132

Hon'ble Judges: Hrishikesh Roy and L.S. Jamir, JJ.

Bench: Division Bench

Advocate: Mr. K. Goswami, Mr. R.R. Kaushik, Mr. R. Kaman and Mr. S. Sarma, Advocates, for the Appellant; Ms. T. Khro, Sr. Govt. Advocate, Nagaland, for the Respondent Nos. 2, 4; Mr. P. Khataniar and Ms. A. Choudhury, Advocates, for the Respondent No. 1

Final Decision: Disposed Off

Judgement

Hrishikesh Roy, J.(Oral) - Heard Mr. K. Goswami, the learned counsel appearing for the appellant. Also heard Mr. P. Khataniar, the learned counsel appearing for the respondent No.1 (writ petitioner). Ms. T. Khro, the learned senior Govt. Advocate appears for the State Authorities of Nagaland.

2. The appointment of the appellant (4th respondent) as a office peon in the Office of the Sub-Divisional Information Officer, Bhandari in Okha District of Nagaland, ordered on 5.4.2011, was the subject matter of challenge in the W.P.(C) No.192(K)/2011. The Bhandari Civil Sub-Division Office in Okha District was constructed on land donated by the writ petitioner's family and accordingly

preferential right of appointment was claimed by the family member of the land donors and on that basis, the challenge was made to the appointment order dated 5.4.2011, whereby the appellant Yebemo Mozhui was appointed to the peon's post.

3. The learned Single Judge opined that the appointment of the 4th respondent was not in accordance with the existing norms and he was appointed at the behest of the Parliamentary Secretary. Thus the impugned order of appointment dated 5.4.2011 was quashed. Consequential direction was issued to the Sub-Divisional Information Officer, Bhandari to invite application from all interested eligible persons including the candidature from the land donors' family, for the purpose of selection and appointment to the post in question by allowing the writ petition on 31.7.2012 (Annexure-5).

4. Aggrieved by cancellation of his appointment ordered by the learned Single Judge, the 4th respondent has filed this Appeal. In the counter affidavit filed in the Writ Appeal by the State respondents on 18.12.2013, it is reflected that in pursuant to the direction given by the Writ Court, the service of the appellant (4th respondent) was terminated on 25.9.2012 and on the same date, the writ petitioner A.R. Mozhui was appointed, in the resultant vacancy.

5. Mr. K. Goswami, the learned counsel reads the impugned judgment to contend that fair opportunity to all interested candidates was required to be provided and appointment was to be made through a selection exercise amongst the applicants. The appellant's lawyer projects that equal opportunity was never provided but steps were taken to facilitate filing of application only by the writ petitioner, as can be seen from the communication dated 5.9.2012, of the Director of Information and Public Relation, Nagaland.

6. Representing the respondent (writ petitioner), Mr. P. Khataniar, the learned counsel submits that the Division Bench through the order dated 16.10.2012 has stayed the appointment of the respondent (writ petitioner), made on 25.9.2012 and therefore he submits that the post of the peon is now vacant.

7. Appearing for the State authorities, Ms. T. Khro, the learned senior Govt. Advocate submits that under the judgment passed in the W.P.(C) No.192(K)/2011, the post of peon is required to be filled up by providing due opportunities to all interested persons. But in the instant case, it is apparent that fair chance was not provided to everyone but only to the writ petitioner. She submits that this was on account of the failure of the local officer at Bhandari to invite applications from all concerned and the Sub-Divisional Information Officer might have been misled by the written communication dated 5.9.2012 of the Director, Information and Public Relation.

8. We have considered the purport of the judgment dated 31.7.2011 (Annexure-5), in the W.P. (C) No.192(K)/2011, impugned before us. The submission of the rival counsel have also been taken into account. The post of peon in the office of the Sub-Divisional Information Officer, Bhandari is required to be filled up through a

competitive process, in terms of the impugned judgment but here it is apparent that fair and equal opportunity was not provided to facilitate participation of all interested applicants. Noticing the illegal process, this Court on 16.10.2012 has stayed the appointment of the respondent (writ petitioner).

9. As we find no infirmity with the conclusion and reasoning in the judgment dated 31.7.2012 (Annexure-5), in the W.P. (C) No.192(K)/2011, we affirm the said judgment. According to us the respondent (writ petitioner) A. R. Mozhu was unjustly appointed on 25.9.2012 and this was inconsistent with the judgment under Appeal and accordingly the same is quashed. Hence we direct as follows:-

The Sub-Divisional Information Officer, Bhandari shall invite applications from all eligible candidates including from the family members of the land donors families of the area concerned for the purpose of selection and appointment amongst them to the post in question. Until the selected person is appointed, the appellant (respondent No.4) shall be allowed to continue in service. It is ordered accordingly.

10. With the above order, the case stands disposed of. No Cost.