

GAHC010051772023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WA/79/2023

THE STATE OF NAGALAND AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
KOHIMA

2: THE PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
GOVT OF NAGALAND
KOHIMA

3: THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIM

VERSUS

SHRI ATOBO AND ANR.
S/O LATE NIKHETO,
ACHIKUCHU VILLAGE, AGUNATO SUB DIVISION, ZONHEBOTO ,
NAGALAND

2:SHRI SHITOVI AWOMI
S/O LATE KIKHETO
KOIBOTI VILLAGE
ZUNHEBOTO
NAGALAN

Advocate for the Petitioner : MR. V SUOKHRIE

Advocate for the Respondent : MS. Z ZHINOMI

Linked Case : WA/80/2023

THE STATE OF NAGALAND AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY

GOVERNMENT OF NAGALAND
KOHIMA.

2: THE PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
GOVT OF NAGALAND
KOHIMA

3: THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA
VERSUS

T. NASET CHINGMAK CHANG
S/O THONGJANGMONG

R/O YIMRUP VILLAGE
TUENSANG
NAGALAND.

2:SHRI SHITOVI AWOMI
S/O LATE KIKHETO
KOIBOTI VILLAGE
ZUNHEBOTO
NAGALAND

Advocate for : MR. V SUOKHRIE
Advocate for : MS. Z ZHINOMI appearing for T. NASET CHINGMAK CHANG

Linked Case : WA/81/2023

THE STATE OF NAGALAND AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND KOHIMA

2: THE PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
GOVT OF NAGALAND
KOHIMA

3: THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA

VERSUS

IHOSHE SWU AND 2 ORS.
S/O SRI AKHEVI SWU

RESIDENT OF DOYAPUR VILLAGE
DHANSIRI PAR SUB DIVISION
DIMAPUR NAGALAND

2:SHRI KIYEVI SWU
S/O LATE LUHEZU OF PHILIMI VILLAGE

RESIDENT OF PURANA BAZAR
DIMAPUR
NAGALAND

3:SMTI. YEKHELI WOTSA
D/O VIKUTO WOTSA

RESIDENT OF PURANA BAZAR
DIMAPUR NAGALAND.

— B E F O R E —

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE SUMAN SHYAM

For the appellants : Mr. K.N. Balgopal, Advocate General, Nagaland.

Ms. M. Kechii,

Addl. Advocate General, Nagaland

Ms. V. Soukhrie,

Addl. Advocate General, Nagaland

For the respondents : Ms. Z. Zhimomi, Advocate

Date of Hearing : 04.03.2024

Date of Judgment : 12.03.2024

JUDGMENT & ORDER

(Vijay Bishnoi, C.J.)

1. These intra-Court appeals are filed by the State of Nagaland being aggrieved with the judgment dated 06.08.2019 passed by the learned Single Judge in writ petitions, being, WP(C) Nos.131/2016, 139/2016 and 140/2016 whereby the learned Single Judge while disposing of the said writ petitions filed by the respondents herein, has directed the respondent State to take steps to publish the result of the selection held for Grade-IV posts in terms of the Advertisement dated 07.07.2003 as expeditiously as possible but not later than two months from the date of receipt of the certified copy of this order. The appellants have also challenged the order dated 24.02.2021 passed by the learned Single Judge in Review Pet. Nos.7/2020, 2/2020 and 6/2020 whereby the review petitions filed by the State of Nagaland against the judgment dated 06.08.2019 have been dismissed.

2. The brief facts of the case are that the Directorate of School Education, Government of Nagaland issued an Advertisement No.1/2003-04 dated 07.07.2003 inviting applications for the Class-III and Class-IV posts under the Department of School Education. Pursuant to the said advertisement, the respondents had applied for the Grade-IV post. It is the case of the respondents that despite having been selected by the District Selection Board, Dimapur, the authorities did not declare the result of the selection process. Being aggrieved with the non-declaration of the result, the respondents filed the aforesaid writ petitions and the learned Single

Judge vide the impugned judgment dated 06.08.2019 allowed the said writ petitions by directing the respondent State authorities to declare the result of the said selection within two months. The appellant State filed interlocutory application seeking extension of time for declaration of result, which was granted by the Single Bench twice and the time for declaration of result was extended for further 45 days vide order dated 30.01.2020 passed in I.A.(Civil)8/2020. After that the appellant State authorities have preferred review petitions before the learned Single Judge. However, the said review petitions came to be dismissed on 24.02.2021. Hence, the present appeals.

3. Mr. K.N. Balgopal, learned Advocate General for the State of Nagaland has submitted that the learned Single Judge has grossly erred in directing the State authorities to declare the result of the selection process, which took place way back in the year 2004, vide judgment dated 06.08.2019 without taking into consideration the fact that the respondents had approached the Court with inordinate delay of more than 12 years. It is contended that the selection took place in the year 2004 and the respondent approached the High Court in the year 2016 for the first time with the prayer for declaration of the result of the selection process which took place way back in the year 2004.

Learned Advocate General of the State has placed reliance on the decisions of the Hon'ble Supreme Court rendered in ***Rup Diamonds and others vs. Union of India and others***, reported in **(1989) 2 SCC 356**, ***Baljeet Singh (Dead) through legal representatives and others vs. State of Uttar Pradesh and others*** reported in **(2019) 15 SCC 33** and ***Bharat Sanchar Nigam Limited vs. Ghanshyam Dass and others*** reported in **(2011) 4 SCC 374** and has argued that the Hon'ble Supreme Court in the above referred judgments has clearly held that if a litigant is not vigilant about his or her right and chose to sit on the fence

till somebody else's case came to be decided, then such litigant is not entitled for any relief. It is contended that while giving directions for declaration of result of the selection pertaining to the year 2004, the learned Single Judge has not taken into consideration this aspect of the matter and therefore, the impugned judgment is not sustainable.

It is further argued that though the State of Nagaland made sincere efforts to comply with the direction given by the learned Single Judge vide judgment dated 06.08.2019 but during the process, it is found that the record pertaining to the selection which took place in the year 2004, is missing and therefore, the direction given by this Court could not be complied with. It is submitted that this plea was raised by the State before the learned Single Judge by way of filing review petitions but the learned Single Judge without seriously considering the said request has proceeded to dismiss the review petitions while holding that the State has failed to supply sufficient reason requiring review of the judgment dated 06.08.2019.

Learned Advocate General has further submitted that as per the Office Memorandum dated 19.03.2004 issued by Department of Personnel & Administrative Reforms (Record Cell), Government of Nagaland, the records are classified into three categories, namely, Class 'A', Class 'B' and Class 'C' and the records pertaining to the said classes are required to be preserved for a certain period. It is submitted that the documents pertaining to the selection of Grade-IV employees are categorised under Class 'C' and as per the Office Memorandum dated 19.03.2004, the documents classified as Class 'C' are required to be preserved for a minimum of five years and not more than 10 years and in this situation there is all possibilities that the records pertaining to the selection in question is no more preserved. Hence, in such circumstances, the State of

Nagaland is not in a position to declare the result as directed by the learned Single Judge. Learned Advocate General has, therefore, prayed that the writ appeal may kindly be allowed and the impugned judgment dated 06.08.2019 passed by the learned Single Judge in the writ petitions filed by the respondents and the order dated 24.02.2021 passed by the learned Single Judge in the review petitions may kindly be set aside.

4. Ms. Z. Zhimomi, learned counsel for the respondents has vehemently opposed the appeal and has argued that the learned Single Judge has not committed any illegality in issuing directions to the respondents to declare the result of the selection of the Grade-IV candidates who appeared pursuant to the advertisement issued by the Government of Nagaland in the year 2003. It is submitted that the learned Single Judge has passed the directions to declare the result vide judgment dated 06.08.2019 taking into consideration that in the year 2015, i.e. on 29.04.2015, a Single Bench of this Court while disposing of the writ petitions filed by the similarly situated persons has already ordered for declaration of their result. It is submitted that vide order dated 29.04.2015 passed in five writ petitions, the Single Bench of this Court has passed similar directions. It is submitted that the said directions passed by the learned Single Bench are not confined only to the petitioners of that writ petitions but are in rem. It is contended that the directions are to the effect that the result of different categories of posts be published and thereafter to give appointment to the selected candidates.

Learned counsel for the respondents has placed reliance on the decisions of the Hon'ble Supreme Court rendered in ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others***, reported in **(2015) 1 SCC 347** and has argued that the Hon'ble Supreme Court has held that if some of the aggrieved persons approach the Court and directions are issued to grant them relief, the

same equally applies for other similarly situated candidates and they are not required to approach the Court for the same relief.

It is further submitted by the learned counsel for the respondents that the plea now taken by the State of Nagaland that the record pertaining to the selection process is missing, is only an afterthought. It is contended that the record pertaining to the selection of the petitioners is very much available with the respondents.

Learned counsel for the respondents has referred to the letter dated 20.03.2004 issued by the office of the Deputy Commissioner, Government of Nagaland, Dimapur, Nagaland, to the Director of School Education, Government of Nagaland, and has submitted that the said document clearly reveals that the Selection Board had selected the respondents for the posts of Carpenter Helper, Knitting Helper and Peon (Grade-IV), respectively and had recommended for appointment. It is contended that in view of the said letter dated 20.03.2004 [Annexure-C to WP(C) 131(K)/2016], it cannot be said that the record of selection proceeding is not available with the respondent State.

Learned counsel for the respondents has further argued that the respondents are poor persons and are deprived of their valuable right without any fault of them. In such circumstances, the appeals preferred by the State having no force are liable to be dismissed.

5. In the rejoinder, learned Advocate General has submitted that from a bare perusal of the Advertisement dated 07.07.2003, it is clear that for the posts mentioned in item Nos.8, 9, 10, 11, 12 and 13, preference was to be given to the land owners and it is the admitted case that the respondents are not the land owners and, in such circumstances, otherwise also the respondents cannot claim

appointment on the posts as a matter of right, for which they have applied.

6. Learned Advocate General, Nagaland, appearing for the appellants has further argued that it is settled that even if the name of a person figures in the select list, he/she cannot claim appointment as a matter of right unless relevant service rules provides otherwise. It is also submitted that the State Government has already taken a policy decision to fill up the Grade-IV posts amongst the land owners and not from any other category of persons. It is also submitted that at present no post of Grade-IV is lying vacant with the State and therefore, appointment cannot be provided to the respondents.

The said arguments of the learned Advocate General raised in the rejoinder have been controverted by the learned counsel for the respondents.

7. Heard learned counsel for the parties and perused the material available on record.

8. After careful scrutiny of the material placed on record by the parties concerned, we found that the facts of the present case are quite confusing and complicated. The respondents have placed heavy reliance on the letter dated 20.03.2004 written by the Deputy Commissioner, Government of Nagaland, Dimapur to the Director of School Education, Government of Nagaland and are claiming that the respondents were selected for the Grade-IV posts. At the same time, Annexure-D, annexed with WP(C) 131(K)/2016, discloses that the respondents were asked to remain present in a Screening Test for regularisation of service on 21.07.2006 at the office chamber of District Education Officer, Dimapur, Nagaland. As per the respondents, they participated in the screening test. However, the letter dated 21.07.2006, Annexure-F to WP(C) 131(K)/2016, reveals that the Office of Deputy Commissioner, Dimapur, Nagaland has communicated the

result of screening test for regularisation of *ad hoc* appointees of Grade-IV employees to the Director of School Education, Nagaland, Kohima. Admittedly, the respondents were not *ad hoc* appointees of Grade-IV employees and therefore, there is no question of any screening test for regularisation of their services in terms of the interview held on 21.07.2006. Interestingly, the Deputy Commissioner, Dimapur, Nagaland has written a letter to the Director of School Education on 28.09.2006, copy of which has been annexed as Annexure-G to WP(C) 131(K)/2016, whereby he has issued a direction to give appointment to three of the respondents herein. The letter dated 28.09.2006 is reproduced hereunder;

“NO.1/DC/RECTT/2005-06/635 Dated Dimapur the 28th Sept 2006

To

*The Director
School Education
Nagaland, Kohima*

Sub: Issue of appointment for the grade IV employees

Sir,

With reference to our letter NO.I/DC/RECTT/2005-06/- Dt. Dimapur 21st July 06, The interview was conducted following all procedures and norms as prescribed. But it was reported by the candidates, that the authority is insisting to submit the appointment order which they have not yet receive.

The following 3 (Three) Candidates namely:-

1. *Shri Kiyevi C/H G.M.S. Sovima*
2. *Shri Ihoshe Sema Peon G.H.S. Aqahuto*
3. *Smti. V. Yekheli Sumi K/H G.M.S. Khushibil*

They were duly interviewed and selected by the District Selection Board held on 09/03/04 but it was reported that some district had complained about the interview in their district. Unfortunately the said interview was cancelled for whole state, and they have been denied the appointment with no fault of them.

Then as per direction of authority the interview was held on 21st July 06, and selected them for appointment.

Therefore, to avoid the litigation in the court by the candidates, the appointment should be made immediately, early action on the matter is awaited.”

It is to be noticed that in the said letter, it is specifically mentioned that the selection by the District Selection Board held on 09.03.2004 pursuant to the Advertisement dated 07.07.2003, had been cancelled. If that is true then the respondents cannot claim any relief on the basis of the selection proceedings conducted pursuant to the Advertisement dated 07.07.2003.

9. It is also important to note that when some of the candidates, who have applied for Grade-III and Grade-IV post, have not been given appointment, they preferred separate writ petitions before the learned Single Bench of this Court at Kohima Bench and those writ petitions were disposed of vide order dated 29.04.2015 wherein directions were issued to the respondents to forthwith take steps to publish the result of different categories of posts to which the candidates had applied and thereafter make appointments to the selected candidates within a period of two months.

Pursuant to the said directions, the State of Nagaland has declared the result of the successful candidates of Grade-III and other categories of teachers only through publication in a newspaper. However, in the said publication, it is clearly mentioned that in accordance with the Department Notification dated 05.08.1991 Grade-IV posts were being directly appointed amongst the land owners and no appointment to the said post will be made based on the interview result. The said publication, annexed to WP(C) 131 (K)/2016 as Annexure-K 1, is reproduced hereunder;

"Declaration of Grade III and other categories of Teachers Interview Result 2003

In compliance to the Hon'ble High Court order dt. 29/04/15, it is hereby notified that the Advertised No.1/2003-04 dated 7/7/03 Interview Result of successful candidates of Grade III and other categories of teacher has been declared in the Directorate of School Education Notice Board. The successful candidates are directed to produce their Admit Card before the Legal and Confidential section for necessary actions on or before 30/09/15.

It is further notified that in accordance with the Department Notification order NO.EDS/E/16/0 dt. 05/08/91, the Grade IV posts were been directly appointed from among the land owners. Hence appointments will not made based on the Interview result."

Interestingly, the respondents have not challenged the said decision of the State Government of filling the vacancies by directly appointing the land owners on Grade-IV posts and not on the basis of interview result.

10. It appears that this fact has not been brought to the notice of the learned Single Judge either by the counsel for the State of Nagaland or by the counsel for the respondent at the time of passing of the impugned order 06.08.2019 wherein the learned Single Judge has decided the writ petitions in view of the order of this Court dated 29.04.2015 in other writ petitions.

11. Apart from the above, it is not in dispute that the respondents have approached this Court for the first time by way of filing separate writ petitions in the year 2016 only. The Hon'ble Supreme Court in **Baljeet Singh (supra)** has held as under;

"7. The matter requires examination from another aspect viz. laches and delay. It is a very recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay. In those cases, where the period of limitation is prescribed within which the action is to be brought before the court, if the

action is not brought within that prescribed period, the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over, however, subject to the prayer for condonation of delay and if there is a justifiable explanation for bringing the action after the prescribed period of limitation is over and sufficient cause is shown, the court may condone the delay. Therefore, in a case where the period of limitation is prescribed and the action is not brought within the period of limitation and subsequently proceedings are initiated after the period of limitation along with the prayer for condonation of delay, in that case, the applicant has to make out a sufficient cause and justify the cause for delay with a proper explanation. It is not that in each and every case despite the sufficient cause is not shown and the delay is not properly explained, the court may condone the delay. To make out a case for condonation of delay, the applicant has to make out a sufficient cause/reason which prevented him in initiating the proceedings within the period of limitation. Otherwise, he will be accused of gross negligence. If the aggrieved party does not initiate the proceedings within the period of limitation without any sufficient cause, he can be denied the relief on the ground of unexplained laches and delay and on the presumption that such person has waived his right or acquiesced with the order. These principles are based on the principles relatable to sound public policy that if a person does not exercise his right for a long time then such right is non-existent.”

12. Learned counsel for the respondents has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava (supra)***. However, in the said case also the Hon'ble Supreme Court has observed as under;

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

13. It is also to be noticed that the State of Nagaland has taken a policy decision not to fill the Grade-IV post on the basis of the interview result but to fill the same amongst the land owners and the said decision has never been questioned by the

respondents.

It is settled that a candidate cannot claim appointment as a matter of right until and unless the service rules governing the field specifically provides that.

14. A Constitution Bench of the Hon'ble Supreme Court in the case of ***Shankarsan Dash vs. Union of India***, reported in **(1991) 3 SCC 47** has held as under;

“7. is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165, Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268, or Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899.”

15. Thereafter, three Judges Bench of the Hon'ble Supreme Court in the case of ***Union Territory of Chandigarh vs. Dilbagh Singh and others***, reported in **(1993) 1 SCC 154**, has held as under;

10. In *Shankarasan Dash v. Union of India*, reported in **(1991) 3 SCC 47**, a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the question in the negative by enunciating the correct legal position thus (Para 7 of AIR):

“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the

successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant Recruitment Rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165; Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268 or Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899.”

11. *If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily.”*

The above judgments of the Hon'ble Supreme Court are being consistently followed till date. Learned counsel for the respondents have failed to point out any provision under the relevant service rules which mandates that a candidate selected through a selection process is bound to be appointed against the post for which he/she applied.

In such circumstances, we have no hesitation in holding that the respondents cannot claim appointment as a matter of right pursuant to their participation in the selection process conducted in terms of the Advertisement dated 07.07.2003.

16. The State of Nagaland has specifically come with the plea that since the

record pertaining to the selection of the respondents is missing, the orders passed by the learned Single Judge vide judgment dated 06.08.2019 could not be complied with. The respondent authorities have also claimed that they tried to implement the directions issued passed by the learned Single Judge but in absence of the records, the same could not be complied with.

17. We are of the view that when the record pertaining to selection process of the respondents is missing and the situation is quite hazy, as noted by us in the earlier part of this order, no mandamus can be issued to the appellants to give appointment to the respondents against the post for which they participated in the selection process.

18. In view of the overall facts and circumstances of the case, we are of the view that the impugned judgment dated 06.08.2019 passed by the learned Single Judge in the writ petitions filed by the respondents herein cannot be sustained and the same is, therefore, set aside. Resultantly, the impugned order dated 24.02.2021 passed by the learned Single Judge in the review petitions preferred on behalf of the State of Nagaland is also set aside.

19. The appeals are accordingly allowed.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant