



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

Case No. : WRIT APPEAL NO.11/2024

Shri C. Ngoubangsomba, S/o H. Changlemba Chang,
Grade II DB, EAC Office, Ngoungchung, Tuensang,
Nagaland.

.....Appellant

-VERSUS-

1. The State of Nagaland Represented by the Chief Secretary to the Govt. of Nagaland, Kohima.
2. The Commissioner, Nagaland, Kohima.
3. The Assistant Commissioner, O/o The Commissioner, Nagaland, Kohima.
4. The Deputy Commissioner, Tuensang, Nagaland.
5. The Sub-Divisional Officer(C), Tuensang, Nagaland.
6. Sadar Head Dobashi, Tuensang, Nagaland.
7. Senior Dobashi, Tuensang, Nagaland.
8. Extra Assistant Commissioner, Longkhim, Tuensang, Nagaland.
9. Head Dobashi, Longkhim, Tuensang, Nagaland.
10. Senior Dobashi, Longkhim, Tuensang, Nagaland.

11. Extra Assistant Commissioner, Shamator, Shamator, Nagaland.
12. Head Dobashi Shamator, Shamator, Nagaland.
13. Senior Dobashi, Shamator, Nagaland.
14. Extra Assistant Commissioner, Noklak, Nagaland.
15. Head Dobashi, Noklak, Noklak, Nagaland.
16. Senior Dobashi, Noklak, Nagaland.
17. Shri T. Longso Khamniungan, S/o Late Thangming, R/o Tuesnsang, Nagaland.
18. M. Biri Chang, S/o Matchi Chang, R/o Taknyu Village, DB Grade II, posted at EAC Office, Chingmei, Tuensang, Nagaland.
19. T. Putsoi, S/o Tangosi, R/o Sangloi Village, DB Grade-II, posted at EAC Office, Nokhu Noklak, Tuensang, Nagaland.
20. Imsumangyang Sangtam, S/o Rongsenba of Alisopur Village, DB Grade –II, posted at ADC Office, Longkhim, Tuensang, Nagaland.
21. A. Thrimho Yimchunger, S/o M. Asokhiung Yimchunger of Longtoker Village, DB Grade-II, posted at EAC Office, Mangko, Shamator, Nagaland.
22. Shri. M Longshem, S/o Monglom of Choklangan, DB Grade II, posted at EAC Office, Nokhu, Noklak, Tuensang.
23. M. Matbou Chang, S/o Naming of Chingmei, DB Grade II, posted at EAC Office, Nokhu, Noklak, Tuensang, Nagaland.
24. Shri. A Hathrong Yimchunger, S/o M Ahoshe

Yimchunger of Kiutsukiur Village, DB Grade II, office of EAC, Sotokur, Shamator, Nagaland.

25. Shri Y. Sekyuchem Sangtam, S/o Yangtsae of Sangsomong Village, DB Grade II, posted at ADC Office, Longkhim, Tuensang, Nagaland.
26. Shri T. Tongpang Chang, S/o C. Thungti of Hakchang Village, DB Grade II, posted at EAC Office, Sangsangnyu, Tuensang, Nagaland.
27. K Thongthong, S/o P. Korakmong of Lengkonger Village, DB Grade II, posted at EAC Office, Sotokur, Shamator, Nagaland.
28. Shri Pesing, S/o Khumong of Peshu Village, DB Grade II, posted at EAC Office, Panso, Noklak, Nagaland.
29. Shri Y. Thsajungli Sangtam, S/o Yimyumong Sangtam of Longkhim Village, DB Grade II, posted at EAC ADC Office, Longkhim, Tuensang, Nagaland.
30. Shri N. Chingmak, S/o Y. Chuba of Bhumpak Village, DB Grade II, posted at EAC Office, Chingmei, Tuensang, Nagaland.
31. Shri Ngakusomba, S/o T. Mongba of Tuensang Village, Grade II, posted at Tuensang Headquarter, Tuensang, Nagaland.
32. Shri Kiukum, S/o Muzungchim of Sotokur Village, DB Grade II, posted EAC Office, Mangko, Shamator, Nagaland.
33. Shri Longsham, S/o Seko of Nokhu Village, DB Grade II, posted at DC Office, Noklak, Nagaland.
34. Shri K Chingmak, S/o Khoni of Yali Village, DB

Grade II, posted at Tuensang HQ, Tuensang, Nagaland.

35. Shri M Haku Chang, S/o Metpong of keshai village, db grade ii, Posted At Sangsangnyu, Tuensang, Nagaland.
36. Shri Mathri Yimchunger, DB Grade II posted at DC Office, Shamator, Nagaland.
37. Shri N Pehei, DB Grade II, posted at DC Office, Noklak, Nagaland.
38. Shri C. Tochi Chang, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
39. Shri Talimeren Sangtam, DB Grade II, posted at EAC Office, Chare, Tuensang, Nagaland.
40. Shri C. Khumong, DB Grade II, posted at DC Office, Noklak, Nagaland.
41. Shri Y. Imtichuba Chang, DB Grade II, posted at EAC Office, Ngoungchung, Tuensang, Nagaland.
42. Shri Hotongkyi Sangtam, DB Grade II, posted at EAC Office, Chare, Tuensang, Nagaland.
43. Shri Shitopong Yimchunger, DB Grade II, posted at EAC Office, Sotokur, Shamator, Nagaland.
44. Shri M. W. Chollen Chang, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
45. Shri T. Chettei, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
46. Shri Kiusumong, DB Grade II, posted at DC Office, Shamator, Nagaland.
47. Shri B. Sayu Chang, DB Grade II, posted at EAC

Office, Sangsangnyu, Tuensang, Nagaland.

48. Shri T. Chingmak, DB Grade II, posted at EAC Office, Ngoungchung, Tuensang, Nagaland.
49. Shri T. Palu Khiam, DB Grade II, posted at EAC Office, Nokhu, Noklak, Nagaland.
50. Shri M. Shahoto Yimchunger, DB Grade II, posted at EAC Office, Mangko, Shamator, Nagaland.
51. Shri I.Y. Somba Chang, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
52. W.M. Mullong Chang, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
53. Shri C Chuba Chang, DB Grade II, posted at Tuensang HQ, Tuensang, Nagaland.
54. Shri Khingkhase Sangtam, DB Grade II, posted at ADC Office, Longkhim, Tuensang, Nagaland.

.....Respondents

Advocates :

Appellant	: Mr. Moa Jamir, Advocate
Respondent nos. 1-16	: Mr. V. Zhimomi, Government Advocate, Nagaland.
Respondent no. 17	: Mr. Taka Kichu, Advocate.
Date of hearing	: 24.09.2025
Date of Judgment & Order	: 24.09.2025

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT & ORDER [ORAL]

24.09.2025

[M. Choudhury, J]

1. This intra-court appeal is preferred to assail a Judgment and Order dated 21.09.2023 passed by a learned Single Judge in a writ petition, W.P. [C] no. 171[K]/2018. In the writ petition, the writ appellant was arraigned as respondent no. 35. The respondent no. 17 herein was the writ petitioner in the writ petition, W.P.[C] no. 171[K]/2018.

2. The genesis of the lis is traceable to an advertisement, Advertisement no. 1 dated 11.07.2016 published by the Deputy Commissioner, Tuensang, Nagaland [the respondent no. 4], whereby, applications were invited from indigenous inhabitants of Tuensang district for filling up of nos. of vacancies in different categories of posts under his establishment. The Advertisement was made for filling up of a total 88 nos. of vacancies. Out of 88 nos. of vacancies, 37 nos. of vacancies were meant for the post of Dobashi Grade-II. The issue involved in the writ petition as well as in this writ appeal was/is the process of recruitment initiated by the said Advertisement for filling up 37 nos. of vacancies in the post of Dobashi Grade-II. As per the Advertisement, the candidates for the post of Dobashi Grade-II should be conversant with Naga customary laws and practices. The age-limit criteria was also mentioned

in the Advertisement. The Advertisement further mentioned that all vacancies would be filled up on 50:50 basis between in-service candidates i.e. Contingent/Ad hoc/Contract/Fixed pay employees, etc. on one hand and fresh candidates on the other hand.

3. In response to the Advertisement, the writ appellant, the respondent no. 17-writ petitioner and other candidates submitted their candidatures. On 30.09.2016, the respondent no. 4 issued an Order, pursuant to approval of the Government, constituting Screening Committees to conduct screening of the applications. The Screening Committees were constituted as District Level Recruitment Board for conducting the screening for all the categories of posts advertised vide the Advertisement under reference. By the Order dated 30.09.2016, the respondent no. 4 constituted four nos. of Screening Committees, one for the District Headquarter and other three for three different sub-divisions of Tuensang district, for the post of Dobashi Grade-II. The composition of the Screening Committees were also notified by the Order dated 30.09.2016. The Order further mentioned that the Screening Committee would screen out the candidates in the ratio 1:7 for final interview.

4. After scrutiny of the applications, the candidates whose applications were accepted, were called for final interview. In the final interview, the writ appellant, respondent no. 17 and the other eligible candidates participated. The respondent no. 4 after completion of the interview process, forwarded the names of the recommended candidates prepared on the basis of results, to the Commissioner, Nagaland [the respondent

no. 2] for approval on 01.02.2017. The Commissioner, Nagaland [the respondent no. 2] vide an Office Letter dated 15.06.2017 conveyed his approval to the respondent no. 2's proposal dated 01.02.2017. By the Office Letter dated 15.06.2017, addressed to the respondent no. 4, the respondent no. 2 informed that the list of candidates forwarded therewith had been recommended for appointment as Dobashi Grade-II on the basis of the results published by the District Level Recruitment Board [DLRB], 2016. In the list of candidates recommended for appointment, the names of 38 nos. of candidates figured for appointment. A waiting list containing 10 nos. of names was also forwarded on 15.06.2017.

5. On receipt of the approval from the Commissioner, Nagaland [the respondent no. 2], the respondent no. 4 issued two Orders, both dated 03.07.2017. Maintaining the ratio of 50:50, the respondent no. 4 issued two common Orders for appointments as Dobashi Grade-II to 19 nos. of fresh candidates and 19 nos. of in-service candidates respectively.

6. The bone of contention in the present lis is the offer of appointment made for the fresh candidates as both the writ appellant and the respondent no. 17-writ petitioner participated in the recruitment process submitting their candidatures as fresh candidates.

7. In the recruitment process, the writ appellant was recommended for appointment by the Commissioner, Nagaland in his approval accorded on 15.06.2017. It was pursuant to such approval, the respondent no. 4 issued the Appointment Order in favour of the writ appellant vide Order

dated 03.07.2017, which was a common Appointment Order for 19 nos. of successful fresh candidates. The respondent no. 17-writ petitioner's name did not figure among those 38 nos. of candidates recommended for appointment and consequently, his name did not also figure in the Order dated 03.07.2017, whereby, the respondent no. 4 offered appointments to 19 nos. of successful fresh candidates.

8. Aggrieved by his non-selection and also by the selection and appointment of the writ appellant, the respondent no. 17 as the writ petitioner, preferred the writ petition, W.P.[C] no. 171/2018.

9. Before the learned Single Judge, it was urged on behalf of the respondent no. 17-writ petitioner that the Advertisement was published for filling up 37 nos. of vacancies in the post of Dobashi Grade-II. But, at the end of the recruitment process, appointments were offered to 38 nos. of candidates who participated in the recruitment process. It was contended that when a recruitment process was undertaken specifically for 37 nos. of vacancies, it was not open for the appointing authority to make any appointment in excess of the advertised vacancies. It was contended that the person who had been selected at serial no. 38, in order of merit, was appointed in excess of 37 nos. of vacancies advertised. Therefore, the candidate whose name figured at serial no. 38, in order of merit, could not have been appointed. It was contended that since it was a vacancy beyond the advertised vacancies, a fresh recruitment process ought to have been undertaken to fill up the said vacancy. The learned Single Judge after hearing the parties and after

going through the materials on record, reached a finding that since the Advertisement was published for filling up of 37 nos. of vacancies in the post of Dobashi Grade-II, there could not have been any appointment at the end of the recruitment process beyond 37 nos. of vacancies. As the appointments were offered to 38 nos. of candidates, the appointment of the candidate whose name figured at serial no. 38, in order of merit, was found to be impermissible in law. The learned Single Judge had found that it was the writ appellant, who was impleaded as respondent no. 35 in the writ petition, whose appointment was beyond the 37 nos. of vacancies advertised. The writ petition was disposed of by setting aside and quashing the appointment made in favour of the respondent no. 35 therein, that is, the writ appellant herein. The State Respondents were granted liberty to fill up the vacancy in accordance with law.

10. We have heard Mr. Moa Jamir, learned counsel for the appellant; Mr. V. Zhimomi, learned State Counsel for the respondent nos. 1 – 16; and Mr. Taka Kichu, learned counsel for the respondent no. 17-writ petitioner.

11. Mr. Jamir, learned counsel appearing for the appellant has submitted that the official respondents are found to have taken two divergent stands. In the affidavit-in-opposition filed on behalf of the respondent nos. 1-16 in the writ proceeding, a stand was taken to the effect that 37 nos. of posts of Dobashi Grade-II was advertised as one post was kept aside for compassionate appointment. It was further mentioned that on perusal of records, it was found that one post which was not advertised, had also been utilised due to oversight. The post was the resultant

vacancy created due to retirement of an incumbent on 30.06.2016 and it was against that vacancy, one Shri Y. Thsajungli Sangtam was appointed vide Order dated 03.07.2017. In the common Appointment Order dated 03.07.2017 of 19 nos. of fresh candidates, the name of Shri Y. Thsajungli Sangtam figured at serial no. 12. It is the contention of Mr. Jamir that if Shri Y. Thsajungli Sangtam was appointed on appointed on compassionate ground in a vacancy not advertised then the writ appellant would come in a position for appointment on merit. Then, the appointment of the writ appellant who had joined immediately after the Appointment Order dated 03.07.2017, could not have been set aside and quashed. Mr. Jamir has pointed out that in an additional affidavit filed subsequently, the State respondents have taken a stand that Shri Y. Thsajungli Sangtam had participated in the recruitment process. Mr. Jamir, learned counsel for the appellant has also raised the issue of locus of the writ petitioner, which was also raised during the course of the writ proceeding.

12. Mr. Kichu, learned counsel for the respondent no. 17-writ petitioner has submitted that since the appointments were to be made in 37 nos. of vacancies existing in the post of Dobashi Grade-II as per the Advertisement, any appointment made beyond 37 nos. of vacancies was liable to be set aside and quashed and the learned Single Judge had rightly reached the finding that the appointment beyond 37 nos. of vacancies was illegal. He has submitted that such a direction was called for in terms of the constitutional principles embedded in Article 14 and Article 16 of the Constitution of India. He has further supported the

observation made by learned Single Judge to the effect that for filling up the vacancy a fresh recruitment process had to be initiated. He has further pointed out that during the writ proceeding, the Court, by an Order dated 13.03.2023, directed the respondent no. 4 to apprise the Court that in what manner the appointment of Shri Y. Thsajungli Sangtam was made. The respondent no. 4 was asked to apprise whether the appointment of Shri Y. Thsajungli Sangtam was an appointment on compassionate ground. It was clarified by the respondent no. 4 during the course of the writ proceeding by stating in an additional affidavit that Shri Y. Thsajungli Sangtam participated in the recruitment process initiated by the Advertisement dated 11.07.2016, meaning thereby, he was not an appointee on compassionate ground.

13. Mr. Zhimomi, learned Government Advocate appearing for the State respondents has submitted that the learned Single judge has not interfered with the entire selection process. He has submitted that the learned Single judge has only interfered with the selection and appointment made in excess of 37 nos. of vacancies.

14. We have considered the submissions of the learned counsel for the parties and have also gone through the materials on record.

15. The law is well settled that if an advertisement is published for filling up a specific nos. of vacancies in a particular post, then it is not open for the Appointing Authority at the end of the recruitment process to offer appointment to candidates more than the nos. of vacancies advertised.

The learned Single Judge had observed, on the basis of the authorities cited in the Judgment, to the effect that the filling up of vacancies over and above the nos. of vacancies advertised would be violative of the fundamental rights guaranteed under Article 14 and Article 16 of the Constitution. The learned Single judge had further observed that since there was excess appointment in one post over and above the vacancies advertised for 37 nos. of Dobashis Grade-II, the excess appointee cannot be allowed to continue as it would be against the law and would be infringement of the fundamental rights guaranteed under Article 14 and Article 16 of the Constitution. Admittedly, the Advertisement dated 11.07.2016 was published for filling up 37 nos. of vacancies then existing in the post of Dobashi Grade-II. The State respondents had clarified that one more vacancy which was kept aside for appointment on compassionate ground, was filled up due to oversight. Therefore, at the end of the recruitment process, the Appointing Authority could have appointed only 37 nos. of candidates selected for appointment, in order of merit, by maintaining a ratio of 50:50. Appointment of any candidate beyond 37, in order of merit, had to be declared as illegal from the standpoint of Article 14 and Article 16 of the Constitution. Thus, we find ourselves in agreement with the finding reached by the learned Single Judge on the said issue.

16. It is too settled a law that any vacancy existing under the State Government can only be filled up by issuance of a public advertisement and by undertaking a selection process extending opportunity to all the eligible candidates to participate. The respondent no. 17-writ petitioner

was not successful in the recruitment process initiated by the Advertisement dated 11.07.2016 as his name neither appeared in the list of 38 nos. of candidates approved for appointment nor in the waiting list containing the names of 10 nos. of candidates. Once a recruitment process is undertaken for filling up the specific nos. of vacancies, the recruitment process comes to an end when the vacancies are filled up. If any vacancy/vacancies is/are left after the recruitment process, a fresh recruitment process is to be initiated in conformity with the principles contained in Article 14 and Article 16 of the Constitution of India. The respondent no. 17-writ petitioner participated in the recruitment process which was undertaken specifically for filling up of 37 nos. of vacancies for the post of Dobashi Grade-II. If any vacancy beyond 37 nos. is to be filled up then the State Respondents has to undertake a fresh recruitment process. Since in the recruitment process initiated by the Advertisement dated 11.07.2016, the State Respondents made appointments of 38 nos. of persons including the writ appellant, the respondent no. 17-writ petitioner, in our considered view, had the locus to institute the writ petition. In absence of any challenge, there would not have been any public advertisement for filling up the vacancy where the writ appellant was appointed as the selected candidate in 38th position in order of merit. The said vacancy in the post of Dobashi Grade-II came to be occupied by the writ appellant pursuant to his appointment on 03.07.2017. If such position was allowed to continue, the respondent no. 17-writ petitioner would have been deprived from the benefit of participation in any recruitment process for the said post as there would not be any fresh recruitment because of the writ appellant's appointment in the said post

in an illegal manner and such a position would clearly be an anti-thesis to Article 14 and Article 16 of the Constitution.

17. In so far as the appointment of Shri Y. Thsajungli Sangtam is concerned, when a confusion arose as regards his nature of appointment, this Court directed the respondent no. 4 to submit an affidavit clarifying the nature of his appointment. In the affidavit filed by the respondent no. 4 subsequent to the Order dated 13.03.2023, the position qua the earlier affidavit filed by the State respondents had been clarified. The State respondents had clarified that the vacancy kept aside for appointment on compassionate ground had been filled up due to oversight. We are persuaded to accept the stand taken by the respondent no. 4 in the subsequent affidavit in the absence of any rebuttal. On perusal of the Order dated 03.07.2017, whereby, appointments were offered to 19 nos. of fresh candidates, there was no indication that Shri Y. Thsajungli Sangtam was appointed to the post of Dobashi Grade-II on compassionate ground. The writ appellant has not brought anything on record to substantiate that Shri Y. Thsajungli Sangtam did not participate in the recruitment process initiated by the Advertisement dated 11.07.2016. The writ appellant has not also brought anything on record to take a view that the position of any of the other 18 nos. of candidates including Shri Y. Thsajungli Sangtam, figuring in the common Appointment Order dated 03.07.2017 or in the Approval accorded to the results by the respondent no. 2 in the Office Letter dated 15.06.2017 was below him in order of merit. The position which emerges is that the writ appellant secured the position at serial no. 38, in order of merit, among

the candidates appointed pursuant to Orders dated 03.07.2017. As a result, the appointment of the writ appellant was beyond 37 nos. of vacancies advertised to be filled up by the Advertisement dated 11.07.2016.

18. In the light of the discussion made above and for the reasons assigned, we find no reason, much less good and sufficient reason, to interfere with the Judgment and Order dated 21.09.2023 passed by the learned Single Judge in the writ petition, W.P.[C] no. 171[K]/2018. Consequently, the instant writ appeal is found to be bereft of any merit. Resultantly, the writ appeal is dismissed. There shall, however, be no order as to costs.

Sd/-

JUDGE

Sd/-

JUDGE

Comparing Assistant