GAHC010096632021

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL NO.152 OF 2021

1. Smti. Kizukala Jamir,
House No.B-23, Peraciezie Colony,
Kohima, Nagaland.

2. Dr. Toshinungla Ao,
Resident of House No.328, Lane 20, Duncan Basti, Dimapur, Nagaland.

3. Shri Limamanen Phom,
Resident of House No.71, Nyengching Ward (W 2), Longleng, Nagaland.

4. Smti. Zevelou Koza,
Resident of 6th Mile Colony, Dimapur, Nagaland.

.....Appellants

-Versus-

1. The State of Nagaland, represented by the Chief Secretary to the Government of Nagaland, Kohima.

2. The Principal Secretary to the Government of Nagaland, Department of Health & Family Welfare, Nagaland, Kohima.

3. The Joint Secretary to the Government of Nagaland, Department of Health & Family Welfare, Nagaland, Kohima.

4. The Principal Director, Government of Nagaland, Directorate of Health & Family Welfare, Nagaland, Kohima.

5. Dr. Merino Visa, Research Scientist, Nagaland Science & Technology Council (NASTEC) Department of Science & Technology, Kohima, Nagaland.

6. Smti. Chenole Keppen, Research Scientist, BSL Lab, Naga Hospital Authority Kohima, Kohima, Nagaland.

7. Shri Wetetsho Kapfo, Research Scientist, BSL Lab, Naga Hospital Authority Kohima, Kohima, Nagaland.

8. Shri Rukuwe-u Kupa, Research Scientist, BSL Lab, Naga Hospital Authority Kohima, Kohima, Nagaland.

.....Respondents

– B E F O R E –
HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Writ Appellants **:** Mr. H.K. Das, Advocate.
Mr. D.J. Kapil, Advocate.

For the Respondent Nos.2 to 4 **:** Mr. N. Mozhui,
Standing Counsel, Health & Family Welfare Department.

For the Respondent Nos.5 to 8 **:** Mr. F. Khan, Advocate.

Date of Judgment & Order **:** ***3rd January, 2022***.

JUDGMENT & ORDER (ORAL)

(Sudhanshu Dhulia, CJ)

Heard Mr. H.K. Das, learned counsel for the writ appellant. Also heard Mr. N. Mozhui, learned standing counsel, Health & Family Welfare Department, Government

of Nagaland, appearing for the respondent Nos.2 to 4 and Mr. F. Khan, learned counsel, appearing for the respondent Nos.5 to 8.

2. This writ appeal is being filed by the petitioners/ writ appellants, who are aggrieved by the judgment & order dated 21.05.2021 passed by the learned Single Judge in WP(C) No.6/2021 in the Kohima Bench.

3. The Principal Director, Directorate of Health & Family Welfare, Government of Nagaland had issued an advertisement dated 04.08.2020 calling for eligible applications from amongst the "bonafide Indigenous Inhabitants of the State of Nagaland" for temporary appointment for filling up the posts of Junior Specialist; Medical Officer; Research Scientist for BSL Lab, and Lab Technician for BSL Lab. We are presently concerned only with the post of Research Scientist for the BSL Lab. The posts of Research Scientist for BSL Lab, which were to be filled were total six in numbers. Necessary qualifications for the post of Research Scientist for BSL Lab were of two categories, i.e. essential and desirable. These were as follows:-

"Research Scientist for BSL	• *Essential:* *MSc in life Sciences, NET Qualified & 5 years experience in Molecular Biology Techniques supported by publications.* • *Desirable:* *Experience of working in BSL-3 laboratory or* • *Essential:* *PhD in Life Sciences, experience*

	in Molecular Biology Techniques supported by publications • *Desirable* *NET Qualified & experience of working in BSL-3 laboratory."*

4. The advertisement further elaborated as to how the candidates will be evaluated and the evaluation procedure is given in the said advertisement, which reads as under:-

"Distribution of Marks	*Research Scientist*	*Lab Technician for BSL*
1) Marks obtained in University Examination	*38*	*38*
2) Possession of Higher Qualification	*20*	*20*
• *Graduate Degree*	*(0)*	*(10)*
• *PG Degree*	*(0)*	*(20)*
• *NET Qualification*	*(10)*	*(0)*
• *Post Doctoral degree*	*(20)*	*(0)*
3) Work Experience @ 2 points per year Served	*30*	*30*
4) Viva-Voce	*12*	*12*
Total	*100*	*100"*

5. The candidates submitted their particulars including their qualifications, along with the necessary documents. They then faced an interview. This Court has also been informed that all the thirty-three candidates, who had applied for the posts, were held qualified. The list containing the marks obtained by these candidates in order of merit has been supplied to us by Mr. N. Mozhui, learned counsel appearing for the respondent Nos.2 to 4. The same reads as under:-

Sl No.	*Name*	*Roll No.*	*Marks for Academic records/ Higher degree/Work experience*	*Viva-Voce Marks*	*Total marks*	*Tribe*	*Remarks*
1.	*Kizukala Jamir*	*34*	*53.36*	*7.50*	*60.86*	*Ao*	
2.	*Joshua Keppen*	*19*	*51.71*	*8.00*	*59.71*	*Rengma*	
3.	*Visenuo Aiko*	*29*	*49.98*	*7.25*	*57.23*	*Lotha*	
4.	*Dr. Toshinungla Ao*	*1*	*50.78*	*5.50*	*56.28*	*Ao*	
5.	*Dr. Merino Visa*	*12*	*49.18*	*5.50*	*54.68*	*Angami*	
6.	*Limamanen Phom*	*20*	*45.72*	*4.25*	*49.97*	*Phom*	
7.	*Chenole Keppen*	*23*	*40.28*	*8.50*	*48.78*	*Rengma*	
8.	*Ekonthung Ezung*	*24*	*40.93*	*5.25*	*46.18*	*Lotha*	
9.	*Zevelou Koza*	*18*	*39.62*	*5.50*	*45.12*	*Chakhesang*	
10.	*Wetetsho Kapfo*	*26*	*36.6*	*7.50*	*44.10*	*Chakhesang*	
11.	*Moajungla Longkumar*	*30*	*37.9*	*4.75*	*42.65*	*Ao*	
12.	*Kikrusenuo Kiewhuo*	*8*	*34.2*	*7.75*	*41.95*	*Angami*	
13.	*Roolen Yanthan*	*35*	*34.08*	*6.00*	*40.08*	*Lotha*	
14.	*Piyongsola*	*27*	*34.54*	*5.00*	*39.54*	*Ao*	
15.	*Chiem*	*15*	*32.18*	*6.50*	*38.68*	*Khiamniungan*	
16.	*Achila T. Imchen*	*13*	*32.07*	*5.00*	*37.07*	*Ao*	
17	*Kuchoshetalu*	*28*	*30.9*	*5.75*	*36.65*	*Chakhesang*	
18	*Lolenmenla Imchen*	*25*	*29.6*	*6.25*	*35.85*	*Ao*	
19	*Epibeni N. Humtsoe*	*11*	*29.03*	*6.00*	*35.03*	*Lotha*	
20	*Alongba Sor*	*6*	*27.33*	*7.25*	*34.58*	*Ao*	
21	*Lendirenla Imchen*	*31*	*28.91*	*5.50*	*34.41*	*Ao*	
22	*Keheibamding Thou*	*7*	*28.91*	*4.75*	*33.66*	*Zeliang*	
23	*Meyatsungba Aier*	*16*	*28.91*	*4.25*	*33.16*	*Ao*	
24	*Dzutholu Nyekha*	*17*	*27.04*	*5.75*	*32.79*	*Chakhesang*	

25	*Rukuwe-u Kupa*	*22*	*26.93*	*5.75*	*32.68*	*Chakhesang*	
26	*Temsurenla*	*14*	*27.74*	*4.75*	*32.49*	*Ao*	
27	*Moon Moon Mech*	*9*	*27.44*	*4.50*	*31.94*	*Kachari*	
28	*Lulumenla Jamir*	*21*	*27.33*	*4.25*	*31.58*	*Ao*	
29	*Nungsangmeren Jamir*	*5*	*26.5*	*5.00*	*31.50*	*Ao*	
30	*Thonkeya Seb*	*4*	*26.67*	*4.75*	*31.42*	*Rengma*	
31	*Sejang Khiamniungan*	*10*	*26.17*	*4.00*	*30.17*	*Khiamniungan*	
32	*Akihito Chophy*	*2*	*24.38*	*5.50*	*29.88*	*Sema*	
33	*K. Yaksokiu Yimchunger*	*32*	*21.01*	*6.00*	*27.01*	*Yimchunger*	

6. The admitted position is that out of the six available vacancies, two were to be filled from amongst the backward tribes. Out of the selected candidates for the posts of Research Scientist, the name of the candidates at serial Nos.1, 2, 3 & 4 were approved. Thereafter from the list of the backward candidates, who had attained the highest marks, name of the candidates at serial Nos.6 and 9 were also approved. Admittedly, these are the candidates who had obtained the highest marks in their respective categories. These candidates, who were approved vide order dated 05.11.2020, are as follows:-

> *"1. Kizukala Jamir*
> *2. Joshua Keppen.*
> *2. Visenuo Aiko.*
> *3. Dr. Toshinungla Ao*
> *4. Limamanen Phom*
> *5. Zevelou Koza"*

7. Before these candidates could be formally issued the appointment letters, the Principal Director, Health &

Family Welfare Department, Nagaland writes a letter dated 07.12.2020 to the Principal Secretary to the Government of Nagaland, Health & Family Welfare Department stating that although these candidates have done M.Sc or Ph.D in Life Sciences but they have not done it in Molecular Biology and some of the candidates whose names were approved for appointment, i.e. the present appellants, did not have the desired qualifications.

8. The Government of Nagaland thereafter reconsidered the matter and changed the list wherein out of the six candidates approved earlier, the names of four candidates were removed from the list and the names of other four candidates (out of the same list of thirty-three candidates), were included who were at serial Nos.5, 7, 10 and 25 of the merit list, which is referred to above. The new list dated 21.12.2020 retained the name of candidates who were at serial Nos.2 & 3 in the earlier list as well. The new list reads as follows:-

> *"1. Joshua Keppen.*
> *2. Visenuo Aiko.*
> *3. Dr. Merino Visa.*
> *4. Chenole Keppen.*
> *5.Wetetsho Kaplo.*
> *6. Rukuwe-u Kupa."*

9. By an order dated 21.12.2020, the new list of six selected candidates was approved by the Cabinet and they were given appointment letters. This list was challenged by the present appellants before the learned Single Judge.

10. The argument before the learned Single Judge was that the writ appellants had been removed from the list of candidates approved earlier as these candidates were having no experience in human study and to appoint them would have been a disaster. Moreover, it was stated that in the present pandemic situation, the State would have been further burdened as these candidates are required to be sent for a further training. The four candidates who had been included in place of the present appellants are the one who had been assisting and practically working during the last pandemic in the Government laboratories and, therefore, they were better suited for the job.

11. The learned Single Judge has come to the conclusion that although the writ petitioners before him had the essential qualifications but they were not having the desired qualification as they had no experience in working in a laboratory, which studies human disease. Moreover, the learned Single Judge also came to the conclusion that the exercise of selection and appointment is being done keeping in mind an exigency as such services were urgently required. The learned Single Judge relied upon a decision of the Apex Court in ***B. Srinivasa Reddy -Vs- Karnataka Urban Water Supply & Drainage Board Employee's Association & Ors.***, reported in ***(2006) 11 SCC 731 (II)*** [wrongly referred in the judgment as *Retired Armed Forces Medical Association & Ors. -Vs- Union of India & Ors.*, reported in *(2006) 11 SCC 731 (I)*] where the Apex

Court had held that where appointment has to be made in exigency of administrative requirement, violation of Articles 14 and 17 cannot be brought into action.

12. The operative portion of the judgment & order dated 21.05.2021 passed by the learned Single Judge reads as under:-

> *"30. We have a case where eyebrow raising steps have been adopted for a good purpose; and highly qualified candidates stepping into a wrong bus. It is a matter of regret that the service of experts were not utilized prior to bringing out shortlisted candidates, this has caused all the chaos. It was avoidable. We must add here as a matter of caution that in exercise of recruitment though it may be temporary as pointed out by the learned counsel for the respondents, the authority is to remind itself that it is exercising an administrative function which involves fundamental rights of citizen and careful handling of such matters should be kept in mind. Intention may be for a good purpose but it may at times abridge the fundamental rights of citizens which is best avoided. Our society is in a situation where we have the issue of saturation in the employment sector and little error may bring unwanted result on issue of employment. It is well advised that the posts should be advertised through NPSC in a transparent manner on completion of the temporal period. The Court is not interfering with the impugned order as it is found that*
>
> *(1) The posts are temporary in nature*
>
> *(2) The recruitment have been made for exigency of service where the court's indulgence will be counterproductive for interest of the society*
>
> *(3) The petitioners does not possess the desired qualification as per the advertisement though highly qualified*
>
> *31. With the above findings, this court is of the view that the Order No.HFW (A) COVID-19/Appt-13/17/2020/405 dated 21-12-2020 issued by the Principal Secretary to the Government of Nagaland, Health and Family Welfare requires no interference of this Court."*

13. After hearing the learned counsels for the writ appellants and the respondents at length, we respectfully disagree with the findings of the learned Single Judge for the reasons stated herein.

The posts for which applications from eligible candidates were to be appointed were the post of Research Scientist. We have already seen that there was essential qualification and desired qualification. All the thirty-three candidates, who had applied for the post were found eligible, both on the desired as well as the essential qualifications, but the Selection Committee had given their preference as per the merit which we have already referred above. Under these circumstances, the top six candidates in the list were to be appointed in order of merit from their respective categories, i.e. keeping the reservation in mind, and that is exactly what was done vide order dated 05.11.2020. When the entire exercise was over, the Principal Director, Health & Family Welfare had absolutely no authority to write a letter to the Principal Secretary saying that these appointments are bad. The Director states that four out of the six candidates do not have experience in studying human disease! But how can this be a reason for denying appointments to the appellants? Neither the advertisement nor the conditions therein, stipulated that a candidate must have either as an essential or desired qualification a study in human diseases. The requirement was Life Sciences. Each of the earlier selected candidates had the essential as well as the desired qualifications in Life Sciences!

14. Making an essential or even a desired qualification in the field of human diseases, is an afterthought. In other words, the concerned authorities have changed the rules of the game after the game had started. This is not permissible in law. The judgment cited by the learned Single Judge in support of the State Government, wherein in a particular exigency such an appointment can be made, may also not be applicable in the present case. In the judgment cited by the learned Single Judge in the case of ***B. Srinivasa Reddy***, the Apex Court in Paragraph 51 had held as under:-

> *"51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India :: (1993) 4 SCC 119 was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post."*

15. In the aforementioned case referred by the learned Single Judge, the facts were entirely different. What was under challenge was whether a Chief Engineer of Karnataka Urban Water Supply & Drainage Board could be made the Managing Director of the Board. It was not a case where rules were changed after the selection process had began, etc., as is the case in hand. The other question before the Court was that this was an appointment made purely on contractual basis and whether the State has the power to make contractual appointment or not. Such is again the case not before this Court. The facts of the case are entirely different.

16. In the present case, the candidates who were selected in order of merit had been removed from the list of the selected candidates and four different candidates had been included in the list on the basis of their having qualifications in human diseases. These were, however, not mentioned either in the advertisement or in any other conditions. In other words, it was neither an essential nor a desired qualification to have had experience in human diseases in order to be qualified as a Research Scientist. The entire exercise undertaken by the Government of Nagaland post decision dated 05.11.2020 suffers from malice and the same are arbitrary, illegal and, therefore, the subsequent actions cannot be justified.

17. The argument of the State that these appointments being only temporary in nature and the

selection will be made finally by the State Public Service Commission in accordance with law is also not tenable. The fact of the matter is that a procedure has been adopted by the State Government in selecting and appointing the candidates, which in our view, is neither fair nor just or proper. We, therefore, do not agree with the findings of the learned Single Judge and accordingly, the order dated 21.12.2020 is hereby quashed. We also set aside the judgment & order dated 21.05.2021. The writ petition is allowed.

18. Let the respondents appoint the present appellants as Research Scientists and give them appointment letters as earlier as possible. In other words, only such candidates who were initially approved by the State Government in its order dated 05.11.2020 (Paragraph 6) shall be appointed.

JUDGE **CHIEF JUSTICE**

Comparing Assistant