GAHC020001532026

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

Linked Case : WA/9/2026

SMTI. A. TENMEI PHOM
D/O SHRI A. ANGAI PHOM
R/O AGRI COLONY
LONGLENG TOWN
LONGLENG
NAGALAND.

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGLAND, KOHIMA

3:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
NAGALAND, KOHIMA

4:SHRI LUNDANKHIUNG YIM
S/O SHRI YONGLIMKIU YIMCHUNGER
PERMANENT RESIDENT OF PUNGRO TOWN
P.O. PS. PUNGRO
KIPHIRE, NAGALAND

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Advocate for : MOA JAMIR
Advocate for : GOVT ADV NL appearing for
THE STATE OF NAGALAND AND 3 ORS

**BEFORE**
**HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**
**HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

**ORDER**

**Date : 07-10-2026**
[N. Unni Krishnan Nair, J]

Heard Mr. Moa Jamir, learned counsel for the appellant. Also heard Ms. Inaholi, learned Government Advocate appearing for the State respondents.

**2.** At the outset, this Court notices that the respondent No.4 is not represented, in the present proceedings as on date. However, considering the nature of the order being passed today, the presence of the respondent No. 4 is not deemed to be necessary.

**3.** The present appeal was taken up for final consideration with the consent of the learned counsel for the appellant and the learned Government Advocate appearing for the respondents No. 1, 2 and 3.

**4.** The appellant has instituted the present writ appeal assailing the judgment and order dated 02/12/2025, passed by the learned Single Judge in W.P.(C) No. 116/2023, interfering with his appointment as Surveillance Worker, effected vide an order dated 18/01/2023.

**5.** The writ petitioner had approached the Writ Court assailing the selection and appointment of the appellant, herein, as a Surveillance Worker, by way of instituting a writ petition, being W.P.(C) No. 116/2023. The appellant, herein, was appointed as a Surveillance Worker vide order dated 18/01/2023.

**6.** The facts in brief requisite for adjudication of the issue arising in the present writ appeal is noticed as under:

The respondent No. 4 herein, had submitted an application on 09/09/2022 praying for his appointment against a vacant post of Surveillance Worker (Grade-IV) existing in the establishment of the Chief Medical Officer, Kiphire, in pursuance to the incumbent, therein proceeding on superannuation. The said post, however, was filled up by appointing the appellant herein vide the order 18/01/2023.

**7.** The petitioner alleging that the appellant, herein, not being an indigenous inhabitant of Kiphire district, he was not entitled to be considered for the appointment against a post arising in the said district in terms of Office Memorandum dated 26.10.2017.

**8.** The further ground urged for assailing the selection and appointment of the appellant, herein, was that he was not appointed in pursuance to a recruitment process, wherein, all eligible candidates were given a fair and equal opportunity to compete.

**9.** The learned Single Judge on considering the issues arising in the said writ petition, with regard to the first ground of challenge, proceeded to not consider the same and had kept it open to be so considered in an appropriate case, in view of the explanations advanced by the learned Government Advocate appearing for the State respondents.

**10.** With regard to the second ground of challenge, the learned Single Judge, noticed that it was not disputed by the respondents that there was no process of recruitment carried out, prior to the

appointment of the respondent No. 4 being so effected vide issuance of the order dated 18/01/2023.

**11.** Accordingly, noticing that the appointment of the petitioner was not so effected in accordance with the procedure mandated, the learned Single Judge proceeded to interfere with the selection and with the appointment of the respondent No. 4.

**12.** Being aggrieved, the appellant has instituted the present writ petition.

**13.** We have heard the learned counsel for the parties and perused the materials brought on record.

**14.** Having noticed the grounds of challenge made in the writ petition, it would be required to notice the conclusions drawn thereon by the learned Single Judge. The conclusions drawn by the learned Single Judge with regard to the grounds of challenge presented by the respondent No. 4, herein, in the connected writ petition, being relevant, the same is extracted herein below:

> "*8. As noted above, the challenge is structured on two broad grounds. Firstly, it is urged that the respondent no. 4 is not an indigenous inhabitant of the district of Kiphire and his appointment to the said post is accordingly violates the mandate of the aforesaid OM dated 26.10.2017. The second ground, as noted above, is that such appointment was not preceded by any valid and recognised selection process. The first aspect that the respondent no. 4 not being an indigenous inhabitant of the concerned district is, however, not disputed. However, the explanation is that the post in question is not covered by the OM dated 26.10.2017 as the same involves technical aspect and is also transferable in nature. The second ground is the aspect of not having a recruitment process before filing up the aforesaid post.*

*9. Before going to the first aspect where there is also an explanation, this Court is of the view that the ground that the post in question was filled up without any selection process is a valid ground which has been demonstrated by the petitioner. The said ground is also not disputed by the learned counsel for the respondents and the records also do not show that any process of recruitment was done wherein all eligible persons were given a fair chance. It is trite that all public employments are to be preceded by a duly held recruitment process whereby all eligible persons are to be given a fair and equal opportunity to compete. The same requirement is not only in consonance with the right to equality enshrined in the Constitution of India but also gives the authorities the best amongst the lot.*

*10. This Court is of the opinion that without even requiring to answer the first ground of challenge, the instant writ petition deserves to be allowed on the second ground of challenge, namely, appointment of the respondent no. 4 was not done by following a duly recruitment process.*

*11. In view of the above, the writ petition stands allowed and the impugned order dated 18.01.2023 appointing the respondent no. 4 stands set aside. It is, however, made clear that the first ground of challenge would be answered in an appropriate case inasmuch as, certain explanations were given by the learned State Counsel as well as the counsel for the respondent no. 4.*

*12. Consequently, it is directed that if the vacancy which has arisen on the retirement of the earlier incumbent is sought to be filled up, the same should be filled up strictly in accordance with law and by having a duly prescribed recruitment process."*

**15.** On a perusal of the materials brought on record, we are of the considered view that the conclusions drawn by the learned Single Judge with regard to the second ground of challenge, i.e., the appointment of the appellant, herein, as Surveillance Worker vide

order dated 18/01/2023, to have been so effected without there being a process of selection preceding, to mandate no interference, inasmuch as in the present appeal also the appellant has not brought on record any material to demonstrate that his appointment as Surveillance Worker, vide order dated 18/01/2023, was so effected in pursuance of a due process of selection, wherein, all eligible candidates were given a fair and equal opportunity to compete.

**16.** With regard to the non-consideration by the learned Single Judge of the first ground of challenge urged in the writ petition, we are of the considered view that no prejudice was caused to the appellant, herein, on the said account and in the present appeal also we are of the considered view that the said ground could not mandate a consideration. It is clarified that even it is held that the appellant was eligible for being considered for being appointed as Surveillance Worker in Kiphire district, the appointment effected in his case being in clear violation of the procedure mandated, would not mandate to be validated.

**17.** In view of the above discussions, we are of the considered view that there exists no reason to interfere with the impugned judgment and order dated 02/12/2025, passed by the learned Single Judge in W.P.(C) No. 116/2023. Hence, no case for interference being made out, the present appeal stands dismissed. However, there would be no order as to costs.

Sd/-
**JUDGE**

Sd/-
**JUDGE**

**Comparing Assistant**