

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 919 of 2021

1. **Luwangthem Jilla Singh**, aged about 60 years, S/o L. Birahari Singh, a resident of Nepra Company, BPO Athokpam Khunou, P.O. Thoubal and P.S. Thoubal, Imphal West, District, Manipur, Pin-795138.
2. Shri Thiyam Sudhiranjan Singh, aged about 60 years, S/o Late Th. Munindrakumar Singh, a resident of Keishamthong Moirangningthou Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.

... Petitioners

-Versus-

1. The State of Manipur through the Commissioner of Education (School), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.
2. The Director of Education (S), P.O. & P.S. Lamphel, Imphal West District, Pin – 795004.

... Respondents

With

WP(C) No. 45 of 2022

1. Luwangthem Jilla Singh, aged about 60 years, S/o L. Birahari Singh, a resident of Nepra Company, BPO Athokpam Khunou, P.O. Thoubal and P.S. Thoubal, Imphal West, District, Manipur, Pin-795138.
2. Shri Thiyam Sudhiranjan Singh, aged about 60 years, S/o Late Th. Munindrakumar Singh, a resident of Keishamthong Moirangningthou Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.

... Petitioners

-Versus-

1. The State of Manipur through the Commissioner of Education (School), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.

2. The Director of Education (S), P.O. & P.S. Lamphel, Imphal West District, Pin – 795004.
3. The Manipur Public Service Commission through its Secretary, North AOC, DM Road near Hotel Imphal – 795001.

...Official Respondents

4. Shri Kh. Sanayaima Singh
5. Shri I. Jayentakumar Singh
6. Shri Y. Surendro Singh
7. Shri Ch. Jayenta Singh
8. Smt. K. Somobala Devi
9. Shri Ch. Nilakamal Sharma
10. Shri N. Arunkumar Singh
11. Shri M. Rameshwar Singh
12. Shri W. Ibomcha Singh
13. Shri M. Ranjit Singh
14. Smt. Neera Maisnam
15. Shri P. Nipendro Singh
16. Shri R.K. Gambhirjit Singh
17. Smt. N. Bijayanti Devi
18. Smt. N. Binanda Devi
19. Smt. Th. Radhamani Devi
20. Smt. L. Reeta Devi
21. Smt. Th. Surjabala Devi
22. Smt. L. Reeta Devi
23. Shri Kh. Achouba Meitei
24. Shri M. Ramesh Singh
25. Smt. M. Sobita Devi
26. Smt. L. Kamala Devi
27. Shri O. Joy Singh
28. Shri N. Rajen Singh
29. Smt. W. Sachimala Devi
30. Smt. Vinita Devi Elangbam
31. Smt. N. Nomita Devi
32. Shri Acharya Ghanashyam
33. Shri Joseph Thienkhopao Mate

... Private Respondents

With

WP(C) No. 130 of 2022

1. Luwangthem Jilla Singh, aged about 60 years, S/o L. Birahari Singh, a resident of Nepra Company, BPO Athokpam Khunou, P.O. Thoubal and P.S. Thoubal, Imphal West, District, Manipur, Pin-795138.
2. Shri Thiyam Sudhiranjan Singh, aged about 60 years, S/o Late Th. Munindrakumar Singh, a resident of Keishamthong Moirangningthou Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.

... Petitioners

-Versus-

1. The State of Manipur through the Commissioner of Education (School), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin – 795001.
2. The Director of Education (S), P.O. & P.S. Lamphel, Imphal West District, Pin – 795004.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the Petitioners	::	Mr. N. Ibotombi, Senior Advocate asstd. by Mr. A. Rommel, Advocate
For the respondents	::	Mr. R.S. Reisang, Senior Advocate asstd. by Ms. Timmiwon Raihing & Mr. A. Vashum, Govt. Advocate
Date of Hearing	::	12-09-2023
Date of Judgment & Order	::	04-10-2023

JUDGMENT & ORDER

[1] Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel appearing for the petitioners, Mr. A. Vashum, learned GA appearing for the respondents No. 1 and 2 and Mr. R.S. Reisang, learned senior counsel assisted by Ms. Timmiwon Raihing, learned counsel appearing for the respondents No. 3. None appeared for the private respondents, despite service of notice.

As the grievances and reliefs sought for in the present three writ petitions are inter-related, all the three writ petitions were heard jointly and the same are being disposed of by this common judgment and order.

[2] The brief fact of the present cases is that both the petitioners were initially appointed as Lecturer (Geography) and Lecturer (Statistics) on regular basis in the Government Higher Secondary Schools, Education Department, Government of Manipur by an order dated 26-10-1988. After serving about thirty years as Lecturer of Higher Secondary Schools, both the petitioners were promoted to the post of Vice-Principal of Higher Secondary School on regular basis by an order dated 30-10-2018. The next promotional post from the post of Vice-Principal of Higher Secondary School is the post of Principal, Higher Secondary School. Under the recruitment rules for the post of Principal, Higher Secondary Schools, the method of recruitment is by promotion from amongst the following feeder posts:-

“Vice-Principal of Higher Secondary Schools possessing B.T./B.Ed./Equivalent Diploma from a recognized University/ Institution with 5 (five) years regular service in the grade;

Failing which

“Vice-Principal of Higher Secondary Schools possessing B.T./B.Ed./Equivalent Diploma from a recognized University/ Institution with 7 (seven) years regular service as Vice-Principal and Lecturer put together;

Failing which

Lecturer of Higher Secondary Schools possessing 2nd Class Master’s Degree and B.T./B.Ed./Equivalent Diploma from a recognized University/ Institution with 10 (ten) years regular service in the grade, provided that not more than 30% of the vacancies to be filled by promotion from Lecturers shall be from amongst the Lecturers of the erstwhile Government Aided/ Private Higher Secondary Schools who were later

absorbed in Government service and the remaining vacancies from amongst the other Lecturers”.

[3] The petitioners, having rendered more than 30 years regular service as Lecturer of Higher Secondary Schools and more than seven years regular service as Vice-Principal and Lecturer put together, became eligible for promotion to the post of Principal, Higher Secondary Schools a long time back, however, as the authorities did not hold any DPC in time, the cases of the petitioners for their promotion to the post of Principal, Higher Secondary Schools could not be considered for a long time. The process for holding DPC for appointment by promotion to 23 (twenty three) vacant post of Principal of Higher Secondary Schools was initiated by the authorities with the publication of the Final Seniority List of Vice-Principals of Government Higher Secondary Schools on 14-12-2020. In the said Final Seniority List, the name of the petitioner No. 1 is at Sl. No. 5 and the name of the petitioner No. 2 is at Sl. No. 10 and as such, both of them were within the zone of consideration for promotion against the aforesaid twenty three vacant post of Principal of Higher Secondary Schools.

[4] As the post of Principal of Higher Secondary Schools is a Class-I post, consultation with the Manipur Public Service Commission (MPSC) was required as per rules, however, at that relevant point of time, the MPSC remained non-functional. In order to facilitate promotion to various Class-I and Class-II posts under the State Government, including the post of Principals of Government Higher Secondary Schools, the Department of Personnel & Administrative Reforms (PD), Government of

Manipur, issued a Notification dated 01-02-2021 thereby according sanction to the exemption of consultation with the Manipur Public Service Commission with regard to appointment by promotion in the Offices/ Departments under the Government of Manipur during the period till the existence of the Commission of MPSC. In the said Notification, the composition of the Departmental Promotion Committee for Class-I and Class-II posts are as under:-

“Class – I DPC

- | | |
|--|-------------------|
| (i) Chief Secretary, Govt. of Manipur | - Chairman |
| (ii) Commissioner/ Secretary (DP), Govt. of Manipur | - Member |
| (iii) Commissioner/ Secretary of the Department concerned | - Member |

Class – II DPC

- | | |
|---|-------------------|
| (i) Chief Secretary/ Addl. Chief Secretary, Govt. of Manipur | - Chairman |
| (ii) Commissioner/ Secretary of the Department concerned | - Member |
| (iii) Head of the Department concerned | - Member” |

[5] After issuance of the said Notification dated 01-02-2021 exempting consultation with the MPSC, the Secretariat, Education (S) Department, Government of Manipur, issued a Notification dated 23-02-2021 notifying that a DPC meeting for appointment by promotion to the posts of Principal of Government Higher Secondary Schools will be held on 25-02-2021 at 02:00 p.m. in the office chamber of the Chief Secretary, Government of Manipur. Pursuant to the said Notification dated 23-02-2021, a DPC meeting for appointment by promotion to the posts of Principal of Government Higher Secondary Schools was held on 25-02-2021 and after carefully examining all the cases of the eligible

candidates, the DPC recommended twenty three Vice-Principals of Higher Secondary Schools of Manipur, including the present two petitioners, for their appointment by promotion to the posts of Principal of Higher Secondary Schools, Manipur. However, in the proceeding of the said DPC meeting, a rider was added at paragraph 13 of the said proceeding to the effect that **"order shall be issued by the Administrative Department after obtaining concurrence of the Manipur Public Service Commission"**.

[6] In view of the aforesaid rider, the Administrative Department could not issue any appointment order in respect of the recommended candidates and as such, on the next following day i.e., 26-02-2021, the Administrative Department forwarded the proceeding of the DPC meeting to the MPSC for obtaining concurrence of the MPSC. However, on the next following day, the MPSC returned the same by stating that the Commission was non-functional due to vacancy of the post of Chairman since 20-11-2020 and hence, the request for concurrence could not be considered by the Commission. Subsequently, when the MPSC became functional with the appointment of a new Chairperson, the authorities again re-submitted a proposal to the MPSC for obtaining concurrence of the MPSC to the recommendation made by the DPC held on 25-02-2021 under a letter dated 26-06-2021, however, the MPSC returned the same with the observation that the proposal was beyond the scope of the MPSC. In the meantime, before the Government issued any appointment order in respect of the aforesaid recommended candidates for their appointment as

Principal of Higher Secondary Schools, both the petitioners retired from service w.e.f. 28-02-2021 on attaining the age of superannuation.

Having been aggrieved, the petitioners approached this court by filing WP(C) No. 919 of 2021 with a prayer for quashing the offending rider at paragraph 13 of the proceeding of the DPC meeting held on 25-02-2021 and for directing the official respondents to issue appointment orders in respect of the recommended candidates. In the said writ petition, this court passed an interim order dated 15-12-2021 directing that the proceeding of the DPC meeting held on 25-02-2021 and the recommendation made by the said DPC for promotion of Vice-Principal/ Lecturer of Government Higher Secondary Schools, Manipur, to the post of Principal of Government Higher Secondary Schools should not be cancelled without the leave of the court.

[7] In the affidavit-in-opposition filed by the respondent No 1, it has been, inter alia, stated that the proceeding of the DPC meeting held on 25-02-2021 had been cancelled by the Government by issuing an order dated 14-12-2021 and that the State Government subsequently hold a DPC meeting on 18-12-2021 in consultation with the MPSC for promotion of thirty Vice-Principals to Principals of Government Higher Secondary Schools and on the recommendation of the said DPC meeting, the Government had issued an order dated 28-12-2021 appointing on promotion twenty nine Vice-Principals to the post of Principals of Government Higher Secondary Schools. Having been aggrieved, the petitioners filed WP(C) No. 130 of 2022 assailing the said cancellation order

dated 14-12-2021 and WP(C) No. 45 of 2022 challenging the proceeding of the DPC meeting held on 18-12-2021 and the order dated 28-12-2021 appointing twenty nine Vice-Principals to the post of Principals of Government Higher Secondary Schools, Manipur.

[8] Mr. N. Ibotombi, learned senior counsel appearing for the petitioners submitted that despite having knowledge that the MPSC was not functional at that relevant time and that exemption from consultation with the MPSC had already been sanctioned by the Government and for that matter Class-I DPC and Class-II DPC was specially constituted for appointment to various Class-I and Class-II posts under the State Government, the Class-I DPC, which held its meeting on 25-02-2021 for consideration of recommending candidates for appointment to the posts of Principal of Higher Secondary Schools, in a whimsical, capricious and arbitrary manner added the offending rider at paragraph 13 of the proceeding of the meeting for obtaining concurrence of the MPSC before issuing appointment order by the Administrative Department, thereby rendering the recommendation of the said DPC in respect of the petitioners futile and meaningless. The senior counsel vehemently submitted that the said offending rider was redundant and was not at all necessary as exemption from consultation with the MPSC had already been sanctioned by the Government and that the consequence of the said rider proved to be very costly to the petitioners as it has deprived arbitrarily the petitioners' valuable right for their promotion to the post of Principal before their retirement from service on attaining the age of superannuation.

[9] The learned senior counsel further submitted that had there been no observation for obtaining the concurrence of the MPSC while making the recommendation, order for appointment by promotion to the post of Principal of Higher Secondary Schools would have already been issued by the Department of Education (S), enabling the petitioners to enjoy the fruit of their thirty three long period of dedicated service and would have had a satisfied retired life in the post of Principal of Higher Secondary School, however, due to the aforesaid offending rider, the opportunity of promotion before their retirement had been arbitrary denied to the petitioners.

[10] The learned senior counsel also submitted that in the case of appointment by promotion in respect of the post of Under Secretary (Category-IV) of the Manipur Secretariat Service, the Class-I DPC constituted under the Notification dated 01-02-2021, while making the recommendation did not put any rider for obtaining concurrence of the MPSC before issuing appointment order and accordingly, the Department of Personnel & Administrative Reforms issued their appointment order without consulting the MPSC and the recommended candidates had already been given promotion to the next higher post. It has been strenuously submitted by the learned senior counsel that in the case of the petitioners for their appointment by promotion to the post of Principal, Higher Secondary School, the Class-I DPC put the offending rider while making its recommendation for obtaining the concurrence of the MPSC before issuing appointment order, despite having knowledge about the non-functioning of the MPSC and granting of prior sanction of the

Government exempting consultation with the MPSC. The learned counsel vehemently submitted that the Class-I DPC had acted in an arbitrary, capricious and whimsical manner and that the petitioners have not been given equal treatment and accordingly, the impugned offending rider made by the DPC at paragraph 13 of their recommendation are liable to be quash and set aside and the petitioners are entitled to get their promotion on the basis of the recommendation made by the said DPC.

[11] It has been submitted that a duly constituted Class-I DPC held its meeting on 25-02-2021 and recommended the names of the twenty three Vice-Principals, including the petitioners, for appointment by promotion to the post of Principal of Higher Secondary Schools and that this court passed an interim order on 15-12-2021 in WP(C) No. 919 of 2021 directing that the proceeding of the said DPC meeting and recommendation made by the said DPC for promotion of Vice-Principals to the posts of Principal of Government Higher Secondary Schools should not be cancelled without the leave of this court. It has also been submitted that during the subsistence of the said recommendation made by the DPC in its meeting held on 25-02-2021 and the said interim order of this court, the State Government made a fresh recommendation in respect of the same post and on the basis of the fresh recommendation, the MPSC conducted another DPC on 18-12-2021 and recommended twenty nine candidates for appointment by promotion to the posts of Principal of Higher Secondary Schools. On the basis of the said recommendation, the State Government issued the appointment order dated 28-12-2021 appointing the said

[12]

newly recommended candidates to the posts of Principal of Higher Secondary Schools. According to the learned senior counsel, the subsequent recommendation and the appointment made on the basis of the subsequent recommendation is illegal and invalid as such recommendation had been made during the subsistence of the earlier recommendation and in gross violation of the interim order passed by this court. The learned senior counsel, accordingly, submitted that the subsequent recommendation and the appointment order made pursuant to such recommendation are liable to be quash and set aside.

[12] It has also been submitted by the learned senior counsel that in view of the sequence of events that has been put up before this court, it is quite clear that records were manipulated and the impugned cancellation order dated 14-12-2021 had been issued by back dating it in order to nullify the interim order dated 15-12-2021 passed by this court in WP(C) No. 919 of 2021 and in order to deprive the petitioners of their right to promotion. It has further been submitted that the petitioners have already accrued their right for promotion to the post of Principal of Government Higher Secondary Schools before they retired from service on attaining the age of superannuation and that such right cannot be taken away by the authorities by exercising their power illegally.

[13] Mr. A. Vashum, learned GA appearing for the respondents No. 1 and 2 submitted that the present writ petitions have become infructuous as the Government had cancelled the proceeding of the DPC meeting held on 25-02-2021 by issuing an order dated 14-12-2021. It has also been

[13]

submitted that the cancellation order was issued before this court passed the interim order dated 15-12-2021 in WP(C) No. 919 of 2021. The learned GA also submitted that after cancellation of the earlier proceeding of the DPC held on 25-02-2021, the State Government had conducted a DPC on 18-12-2021 in consultation with the MPSC in pursuance of the Government letter dated 08-12-2021 for promotion of thirty Vice-Principals to Principals of Government Higher Secondary Schools and on the recommendation of the said DPC, twenty nine Vice-Principals have been promoted to the post of Principals, Government Higher Secondary Schools by issuing an order dated 28-12-2021.

[14] It has also been submitted by the learned GA that in paragraph 5.11 of the Office Memorandum dated 15-05-2014 issued by the Department of Personnel & Administrative Reforms, Government of Manipur, it is clearly laid down that promotion will have only prospective effect even in cases where vacancies relates to earlier years and that as the petitioners have retired from service w.e.f. 28-02-2021 on attaining the age of superannuation, their case for promotion to the post of Principal, Higher Secondary Schools, cannot be considered at this point of time and accordingly, the present writ petitions are liable to be dismissed as no relief can be granted to the petitioners. The learned GA cited the judgment of the Hon'ble Apex Court in the case of **“Sk. Abdul Rashid & ors. Vs. State of Jammu & Kashmir & ors.”** reported in **(2008) 1 SCC 722** wherein the Hon'ble Apex Court held as under:-

“16. In the State of Bihar V. Akhouri Sachindra Nath, this Court held:

“12. ... it is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service.”

[15] Mr. R.S. Reisang, learned senior counsel appearing for the MPSC submitted that the DPC meeting held on 25-02-2021 was held without participation of the MPSC as it remained non-functional due to post of the Chairman lying vacant. It has been submitted that the proposal letter dated 26-02-2021 submitted by the Government for obtaining concurrence of the MPSC in connection with the proceeding of the DPC meeting held on 25-02-2021 was sent by the Government while being fully aware that the MPSC was non-functional at that time and that the MPSC promptly returned the said proposal on the next day taking into consideration that the matter involves urgent and prompt handling. The learned senior counsel further submitted that the Government again re-submitted the said DPC proceeding under a letter dated 26-06-2021 to the MPSC for obtaining its concurrence and that after discussing the matter in detail, the MPSC decided that the proposal was beyond the scope of the MPSC and the decision of the MPSC was intimated to the Government under a letter dated 16-07-2021. The learned senior counsel also submitted that on receiving a requisition letter dated 08-12-2021 from the Government for appointment to thirty post of Principals of Government Higher Secondary Schools, a DPC in association with the MPSC was held on 18-12-2021 and

[15]

recommended twenty one Vice-Principals for appointment as Principals of Government Higher Secondary Schools. The learned senior counsel submitted that the MPSC has no knowledge about the pendency of the earlier writ petitions, the interim order passed therein or the cancellation order of the earlier DPC.

[16] I have heard the submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In the present case, the writ petitioners have been denied promotion to the post of Principal of Government Higher Secondary Schools even though they have been recommended for such promotion only on account of the offending rider made by the DPC in paragraph 13 of the proceeding of its meeting held on 25-02-2021. It is undisputedly on record that at the time of holding the said DPC meeting on 25-02-2021, the MPSC remained non-functional. It is also undisputed that in order to facilitate the Government with regard to appointment by promotion to Class-I and Class-II post, the State Government issued a Notification dated 01-02-2021 according sanction to the exemption from consultation with the MPSC in the matter of appointment by promotion in the Offices/ Departments under the Government of Manipur during the period till the MPSC become functional. In the said notification, the composition of the Class-I and Class-II DPC was also notified. In view of the said notification, this court is of the considered view that there was no requirement for consulting the MPSC or obtaining its concurrence in connection with the promotion of the Vice-Principal to the post of Principal of Government

[16]

Higher Secondary Schools since consultation with and obtaining concurrence of the MPSC had already been exempted by the State Government. The offending rider made by the DPC was un-warranted and absolutely un-necessary, in fact, there was no reason or justification for making such an offending rider in the proceeding of the said DPC. In the face of such factual position, this court is of the considered view that the DPC made the said offending rider whimsically, capriciously, arbitrarily and without any application of mind thereby depriving the valuable rights of the petitioners for their promotion to the post of Principal before their retirement from service. Accordingly, such offending rider cannot withstand the test of law and the same deserves to be quash and set aside.

[17] With regard to the challenge being made to the proceeding of the DPC meeting held on 18-12-2021 and the appointment order dated 28-12-2021 appointing twenty nine Vice Principal to the posts of Principal, this court is of the considered view that there is no point in interfering with the recommendation made by the said DPC and the appointment order issued on the basis of such recommendation for the simple reason that the petitioners have already retired from service on attaining the age of superannuation w.e.f. 28-02-2021 and they will gain nothing from quashing the said DPC proceeding and the impugned appointment order. Since the said DPC meeting was held after retirement of the petitioners to fill up the resultant vacancies and even if the petitioners are appointed on promotion to the posts of Principal before the date of their retirement from service, no purpose will be served by interfering with the said recommendation made

by the DPC and the said appointment order and no prejudice will be caused to the petitioners by refusing to interfere with the same.

[18] The main controversy in the present case is whether the petitioners can be given promotion retrospectively before the date of their retirement from service. The stand of the State Government is that in the consolidated guidelines for promotion issued by the Department of Personnel & Administrative Reforms, Government of Manipur under the Office Memorandum dated 15-05-2014, it is laid down at para 5.11 that promotion will have only prospective effect even in case where the vacancies relate to earlier years. Accordingly, the petitioners cannot be given promotion retrospectively before the date of their retirement from service.

It will be relevant to mention here that in paragraph 3 of the said Office Memorandum dated 15-05-2014, it is also laid down that DPC should be convened on regular annual intervals to draw panels which could be utilized for making promotion against the vacancies occurring during the course of a year and that the DPC may be convened every year if necessary on a fixed date in the month of January or April and that holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being revised/ amended.

[19] In the present case, there was gross delay on the part of the State authorities in holding DPC meetings for considering the case of the petitioners and other eligible candidates for their promotion to the posts of

[18]

Principal despite availability of a large number of vacancies and eligible candidates. Moreover, because of the offending and malicious rider made by the DPC at paragraph 13 of its proceeding, directing the Administrative Department to issue appointment orders after obtaining the concurrence of the MPSC, the petitioners have been deprived of their valuable right for their promotion to the posts of Principal before their retirement from service, even though they have been recommended for such promotion. In such a situation, this court is of the considered view that the petitioners cannot be made to suffer owing to such arbitrary, unreasonable and malicious act committed by the DPC and for no fault on their part. It is also undisputed that if the DPC did not put the offending rider while recommending the case of the petitioners and other candidates for their promotion to the posts of Principal, the petitioners could have been given promotion before the date of their retirement from service.

[20] This court must keep in mind the constitutional obligation of the State Government and State Government is to act as a model employer, which is consistent with its role in a Welfare State. It is an accepted legal position that the right of the eligible employees to be considered for promotion is virtually a part of their Fundamental Right guaranteed under Article 16 of the Constitution and the guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. It has not been disputed by the respondents that in respect of promotion to the post of Under Secretary, Manipur Secretariat Service during the same period when the MPSC

remained non-functional, no consultation was made with the MPSC or obtain its concurrence before issuing the appointment order because of the exemption sanctioned by the Government from such consultation as notified under the Notification dated 01-02-2021.

In view of the above, this court find force in the submission made on behalf of the petitioners that the petitioners have not been treated equally by the authorities in the matter of their promotion. It is, therefore, clear that the valuable right of the petitioners for their promotion to the posts of Principal had been denied or defeated by the unreasonable, arbitrary and malicious act of the DPC.

This court have also carefully perused the case law cited by the learned GA and this court is of the considered view that the principle laid down by the Hon'ble Apex Court in the said case is not applicable in the present case as the facts are totally different. In the case of “**Government of West Bengal & ors. Vs. Dr. Amal Satpathi**” reported in **2023 SCC online Cal. 489**, which is somewhat similar to the present case, a Division Bench of the Hon'ble High Court of Calcutta concurred with the view taken by the Tribunal that even if a Government servant could not be granted benefit of retrospective promotion, he should be given financial benefits of the promotional post notionally on the date of his retirement and the actual financial benefits in terms of pension and other retirement benefits.

[21] Taking into consideration the peculiar facts and circumstances of the present case and keeping in view that the petitioners have been denied

their valuable right to get promotion to the posts of Principal before the date of their retirement from service by the arbitrary, unreasonable and malicious act of the DPC, this court is of the considered view that it will be in the interest of justice to dispose of the present writ petitions with the following directions:-

- (a) The offending rider made by the DPC in paragraph 13 of the proceeding of its meeting held on 25-02-2021 as well as the impugned cancellation order dated 14-12-2021, insofar as the petitioners are concerned, are hereby quashed and set aside;
- (b) The respondents No. 1 and 2 are directed to appoint the petitioners on promotion to the post of Principal notionally w.e.f. any date between 25-02-2021 and 28-02-2021 and actual financial benefits in terms of pension and other retirement benefits should be given to them w.e.f. the date of their promotion; and
- (c) The whole process for giving such benefits should be completed within a period of two months from the date of receipt of a certified copy of this order.

With the aforesaid directions, the present writ petitions are disposed of. Parties are to bear their own cost.

.JUDGE

FR / NFR

Devananda