

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC (WP(C)) No.46 of 2023

Ref:- WP(C) No. 49 of 2023

Shri Hijam Shantikumar Singh, aged about 60 years,
S/o (L) Hijam Yaima Singh, resident of Sagolband
Yengkhom Leriak, P.O. & P.S. Lamphel, District
Imphal west, Manipur- 795004.

... Applicant

-Versus-

1. N. Jasobanta Singh aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District-795001,
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh, of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur-795001.
3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of Ward No. 3 Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District Manipur.

..... Respondents

4. The State of Manipur through the Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal-795001.
5. The Principal Secretary/Commissioner /Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.

6. Ng. Subhachandra Singh, presently functioning as re-engaged MD, MSPDCL, 3rd Floor, New Directorate Building, Near 2nd M.R. Gate, Imphal Dimapur Road, Imphal, Manipur – 795001.

.....Proforma Respondents

MC (WP(C)) No.23 of 2023

Ref:- WP(C) No. 49 of 2023

Ng. Subhachandra Singh, aged about 60 years by occupation Managing Director, MSPDCL, Government of Manipur, a permanent residence of Khabam Chumbreithong, Imphal East District.

... Applicant

-Versus-

1. N. Jasobanta Singh aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District-795001.
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh, of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur-795001.
3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of Ward No. 3 Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District Manipur.
4. State of Manipur through the Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal-795001.
5. Principal Secretary/Commissioner/Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.

6. Shri Hijam Shantikumar Singh, aged about 60 years, S/o (L) Hijam Yaima Singh, resident of Sagolband Yengkhom Leirak, PO & PS Lamphel, Imphal West District, Manipur- 705001.

..... **Respondents**

MC (WP(C)) No.24 of 2023

Ref:- WP(C) No. 49 of 2023

Ng. Subhachandra Singh, aged about 60 years by occupation Managing Director, MSPDCL, Government of Manipur, a permanent residence of Khabam Chumbreithong, Imphal East District.

... **Applicant**

-Versus-

1. N. Jasobanta Singh aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District-795001.
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh, of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur-795001.
3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of Ward No. 3 Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District Manipur.
4. State of Manipur through the Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal-795001.

5. Principal Secretary/Commissioner/Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.
6. Shri Hijam Shantikumar Singh, aged about 60 years, S/o (L) Hijam Yaima Singh, resident of Sagolband Yengkhom Leirak, PO & PS Lamphel, Imphal West District, Manipur- 705001.

..... Respondents

MC (WP(C)) No.50 of 2023

Ref:- WP(C) No. 49 of 2023

1. The State of Manipur through its Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN: 795001,
2. The Principal Secretary/Commissioner /Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.

.....Applicants.

-Versus-

1. N. Jasobanta Singh aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District-795001.
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh, of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur-795001.

3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of ward no. 3 Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District Manipur.

.....Respondents.

4. Shri Hijam Shantikumar Singh aged about 60 years, S/o (L) Hijam Yaima Singh, resident of Sagolband Yengkhom Leriak, P.O. & P.S. Lamphel, District Imphal West, Manipur- 795004.
5. Ng. Subhachandra Singh, presently functioning as re-engaged MD, MSPDCL, 3rd Floor, New Directorate Building, Near 2nd M.R. Gate, Imphal, Dimapur Road, Imphal, Manipur – 795001.

.....Proforma Respondents.

MC (WP(C)) No.51 of 2023

Ref:- WP(C) No. 49 of 2023

Ng. Subhachandra Singh, presently functioning as re-engaged MD, MSPDCL, 3rd Floor, New Directorate Building, Near 2nd M.R. Gate, Imphal, Dimapur Road, Imphal, Manipur – 795001.

... Applicant

-Versus-

1. N. Jasobanta Singh aged about 58 years, S/o (L) N. Joy Singh of Keishampat Mutum Leikai, P.O. & P.S. Imphal, Imphal West District-795001.
2. S. Priyananda Singh, aged about 58 years, S/o (L) S. Ibotombi Singh, of Nagamapal Chungkham Leirak, P.O. Imphal, P.S.- Imphal, Imphal West District, Manipur-795001.

3. Th. Bimol Singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of Ward No. 3 Ningthoukhong, P.O. & P.S. Bishnupur, Bishnupur District Manipur.

..... Respondents

4. The State of Manipur through the Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal-795001.
5. The Principal Secretary/Commissioner/Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.
6. Shri Hijam Shantikumar Singh, aged about 60 years, S/o (L) Hijam Yaima Singh, resident of Sagolband Yengkhom Leirak, PO & PS Lamphel, Imphal West District, Manipur- 705001.

..... Proforma Respondents

MC (WP(C)) No.56 of 2023

Ref:- WP(C) No. 49 of 2023

1. The State of Manipur through its Chief Secretary(DP), Government of Manipur, Manipur Secretariat South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN: 795001,
2. The Principal Secretary/Commissioner /Secretary (Power), Government of Manipur, Manipur Secretariat, Babupara, Imphal West-795001.

.....Applicants.

Ms. N. Jyotsana, Adv.

For the Applicants in
MC(WP(C)) No. 51 of 2023;
MC(WP(C)) No. 23 of 2023 &
MC(WP(C)) No. 24 of 2023 :: Mr. S. Biswajit, Sr. Adv.

For the Respondents in
MC(WP(C)) No. 56 of 2023;
MC(WP(C)) No. 23 of 2023;
MC(WP(C)) No. 24 of 2023 &
MC(WP(C)) No. 46 of 2023 :: Mr. HS Paonam, Sr. Adv.,
Mr. A. Golly, Adv

For the Respondents in
MC(WP(C)) No. 51 of 2023 :: Mr. N. Kumarjit, Sr. Adv.
Mr. N. Zequeson, Adv.

For the Respondents in
MC(WP(C)) No. 50 of 2023 :: Mr. HS Paonam, Sr. Adv.,
Mr. A. Golly, Adv

Date of Hearing and
reserving Judgment & Order :: 20.03.2023

Date of Judgment & Order :: **28.03.2023**

JUDGMENT AND ORDER (CAV)

MC (WP(C)) No.46 of 2023 has been filed by the
applicant Hijam Shantikumar Singh to vacate the interim order
dated 25.1.2023 passed in W.P.(C) No.49 of 2023.

2. MC (WP(C)) No.23 of 2023 has been filed by the applicant Ng. Subhachandra Singh to permit him to challenge the maintainability of the writ petition. He has also filed MC (WP) No.24 of 2023 praying to dismiss the writ petition in *limine* with exemplary costs. The very same applicant also filed MC (WP(C)) No.51 of 2023 praying to vacate the interim order dated 25.1.2023 granted in the writ petition.

3. MC (WP(C)) No.50 of 2023 has been filed by the Chief Secretary (DP), and the Principal Secretary (Power), Government of Manipur to dismiss the writ petition, as the writ petitioners have no locus standi to file the writ petition. The aforesaid officials have also filed MC (WP(C)) No.56 of 2023 praying to vacate the interim order dated 25.1.2023 in W.P.(C) No.49 of 2023.

4. Since the prayers made in all the miscellaneous cases and the point for consideration are one and the same, they are taken up together and disposed of by this common order.

5. The applicants in MC (WP) Nos.50 and 56 of 2023 are the respondents 1 and 2; the applicant in MC (W) No.46 of 2023 is the third respondent and the applicant in MC (WP) Nos.23, 24 and 51 of 2023 is the fourth respondent in the writ petition.

6. For the sake of convenience, the parties are referred to as per their array in the writ petition.

7. Heard Mr.H.S.Paonam, learned senior counsel assisted by Mr.A.Golly, learned counsel for the writ petitioners; Mr.M.Devananda, learned Additional Advocate General for the respondents 1 and 2; Mr.N.Kumarjit, learned senior counsel for the third respondent and Mr.Biswajit, learned senior counsel for the fourth respondent.

8. The writ petition has been filed by the petitioners to quash the impugned letter No.Court-1/186/2022-DP-DP, dated 5.1.2023 addressed by the Deputy Secretary (DP), Government of Manipur to the Deputy Secretary (Power), Government of Manipur, whereby requesting to take up necessary action for extending the service of the respondents 3 and 4 after retirement and its subsequent and consequential action. In the writ petition, the petitioners have also sought an interim order staying the impugned letter and its subsequent and consequential action during the pendency of the writ petition.

9. On 20.1.2023, when the writ petition was taken up for admission, this Court passed the following order:

“[1] Heard Mr.A.Golly, learned counsel for the petitioner and Mr. N.Kumarjit, learned senior counsel for the respondents.

[2] Mr.N.Kumarjit, learned senior counsel for the respondents has filed a Caveat being Caveat No.9 of 2023 and argued the case.

[3] Mr.A.Golly, learned counsel for the petitioner argued the case in detail and sought for admission of the writ petition and for granting interim order whereas Mr. N.Kumarjit, learned senior counsel for the State respondents argued the case in detail and strongly objected in granting interim order.

[4] Therefore, post this matter for order on 25.01.2023 as first item for passing order for consideration of admission and granting of interim order.”

10. On 25.1.2023, this Court, upon hearing the learned counsel appearing for the parties, admitted the writ petition and also granted interim stay of the impugned letter dated 5.1.2023. Paragraphs 20 to 22 of the order dated 25.1.2023 are relevant and the same is quoted hereunder:

“[20] Considering the above, I am inclined to pass the following orders:

- 1) This writ petition is admitted.*
- 2) Since Mr.N.Kumarjit, learned senior counsel takes notice for respondent*

No.3 and hence, no formal notice is required. Time granted for filing counter affidavit by respondent No.3.

3) Mr.S.Niranjan, learned Government Advocate takes notice on behalf of the Respondents No.1 and 2 and Mr.M.Ibohal, learned counsel take notice for respondent No.4. Therefore, no formal notice is required for the Respondents No.1, 2 and 4. The respondents No.1, 2 and 4 are directed to file counter affidavit.

[21] Post the matter on 09.02.2023.

[22] Till such time, there shall be an order of interim stay of the impugned letter No.COURT-1/186/2022-DP-DP dated 05.01.2023 and its subsequent and consequential action till next date.”

11. Questioning the maintainability of the writ petition, the learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the writ petitioners were promoted to the post of Superintending Engineer (Elect) by promotion on 7.4.2022 after availing one-time relaxation of recruitment rules of Superintending Engineer (Elect) and in the promotion order dated 7.4.2022, it has been mentioned that they will be on probation for period of two years. Since the probation

period of the writ petitioners will be completed on 7.4.2024 and the next higher post from Superintending Engineer (Elect) in Power Department, Manipur is Additional Chief Engineer (Elect) and then to the post of Chief Engineer, they are not entitled to the claim the post of Chief Engineer.

12. The learned Additional Advocate General would submit that the writ petitioners are not eligible for promotion to the post of Additional Chief Engineer (Elect) and the Chief Engineer (Elect) in terms of the recruitment rules and, as such, they have no locus standi to challenge the appointment/re-engagement of the private respondents 3 and 4 to the post of Chief Engineer/Power & ED(Tech)/MSPDCL and MD/MSPCL and, moreover, the writ petitioners are not aggrieved parties to the re-engagement of the respondents 3 and 4.

13. The learned Additional Advocate General further submitted that the writ petitioners are yet to complete one year of service in the grade of Superintending Engineer (Elect) and as per the recruitment rules for the post of Additional Chief Engineer (Elect), a Superintending Engineer (Elect) is eligible for promotion to the post of Additional Chief Engineer (Elect) after 5 years of regular service and thereafter, the Additional Chief

Engineer (Elect) is eligible for promotion to the Chief Engineer (Elect) after 3 years of regular service.

14. The learned Additional Advocate General urged that after the decision of the State Cabinet and also finding that there was no eligible person to hold the post of the Chief Engineer (Elect) in the Department and without affecting the promotional avenue of others, more particularly the writ petitioners, the respondents 3 and 4 were re-engaged to the post of Chief Engineer/Power & ED(Tech)/MSPDCL and MD/MSPCL respectively. Since, the writ petitioners are not the aggrieved to the extension of service of the private respondents 3 and 4 to the post of Chief Engineer/Power & ED(Tech)/MSPDCL and MD/MSPCL, they have no locus to file the present writ petition challenging the impugned letter dated 5.1.2023 and the writ petition is devoid of merits. Therefore, the same is liable to be dismissed as not maintainable. In support, the learned Additional Advocate General placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Jasbhai Motibhai Desai v. Roshan Kumar, HajiBashir Ahmed and others, (1976) 1 SCC 671.***

15. Mr. N. Kumarjit, the learned senior counsel appearing for the private respondents 3 and 4 have also

questioned the maintainability of the writ petition filed by the writ petitioners contending that the writ petitioners are newly promoted Superintending Engineers (Elect) in the Electricity Department on probation for a period of 2 years and they are not at all eligible and fit for holding and manning the post of Managing Director of Manipur State Power Distribution Company Limited (MSPDCL) and, hence, the writ petitioners have no locus to file the present writ petition challenging the re-engagement of the respondents 3 and 4 by the respondents 1 and 2 as Chief Engineer/Power & ED(Tech)/MSPDCL and MD/MSPCL on contract basis under the agreement dated 16.1.2023. In support of the arguments, the learned senior counsel for the third respondent has placed on record the following decisions:

- (i) *N.C.Singhal (Dr) v. Union of India, (1980) 3 SCC 29;***
- (ii) *Rameshwar Das Mehla v. Omprakash Saini and others, (2010) 15 SCC 790;***
- (iii) *B.Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Association, (2006) 11 SCC 731(2).***

16. Adding further, the learned senior counsel for the respondents 3 and 4 submitted that agreements were executed

by the respondents 1 and 2 in exercise of their discretion conferred by Article 154 read with Article 162 of the Constitution of India for the administrative convenience and for the prevention of administrative hiatus, which is, therefore, beyond the pale of judicial interference and review.

17. The learned senior counsel for the respondents 3 and 4 urged that it is settled principle of law that no one can file a case in the Court of law for the vindication of a right, he/she is not legally entitled to. Since the writ petitioners have no legal rights to claim the post of the Chief Engineer/Power & ED(Tech)/MSPDCL and MD/MSPCL, they cannot file the writ petition and, therefore, the writ petition is liable to be dismissed in *limine*.

18. In reply, Mr. HS Paonam, the learned senior counsel for the writ petitioners submitted that the respondents 1 and 2 nowhere mentioned that the re-engagement of the respondents 3 and 4 is the mode of appointment mandated by the recruitment rules and, therefore, it is an implied admission on the part of the respondents 1 and 2 that the re-engagement of the respondents 3 and 4 by the Cabinet decision is in violation of the relevant recruitment rules of the post which has been framed in exercise of the power conferred by the proviso to Article 309

of the Constitution of India. When that being the position, a Cabinet decision cannot override a statutory rule framed under the constitutional provision which is a law for all purposes. Therefore, the impugned letter dated 5.1.2023 apart from culmination in exercise of arbitrary power illegally has also deprived of the legitimate right and expectation of the writ petitioners, more so, for the reason that by the State policy, vide Office Memorandum dated 9.3.2021 where the State Government having visualized about the likely situation of non-availability of eligible person for appointment by promotion to a post which may become vacant, policy has been made for considering the case of person holding lower post for appointment against a higher post whenever vacancy arises where situation of non-availability of eligible candidates for promotion occurs.

19. The learned senior counsel for the writ petitioners urged that the official respondents have not stated that the re-engagement of the respondents 3 and 4 is permissible as per the relevant recruitment rules, inasmuch as relevant rules provide a condition for appointment and re-engagement of retired person. Further, the respondent State seems to have taken a decision to re-engage the respondents 3 and 4 on extraneous consideration

as would be visibly substantiated by non-extension and non-re-engagement of retired Chief Engineer in other Government Engineering Department, which are equally taking up important huge projects including implementation of national flagship schemes.

20. The learned senior counsel for the petitioners next submitted that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution and that the power can be exercised not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari for enforcement of any of the fundamental rights contained in Part III of the Constitution of India, but for any other purpose.

21. According to the learned senior counsel for the petitioners, the principle of legitimate expectation gave the writ petitioners sufficient locus to seek judicial review. Arguing so, the learned senior counsel submitted that the miscellaneous cases filed by the respondents 1 and 2 as well as the fourth respondent questioning the maintainability of the writ petition are misconceived of facts as well as law and, therefore, the same are liable to be dismissed. To fortify his submissions, the learned

senior counsel for the writ petitioners placed reliance upon the following decisions:

- (i) Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1.**
- (ii) Dr. Chanchal Goyal (Mrs) v. State of Rajasthan, (2003) 3 SCC 485.**
- (iii) Ghulam Qadir v. Special Tribunal and others, (2002) 1 SCC 33.**
- (iv) Navjyoti Coop. Group Housing Society v. Union of India and others, (1992) 4 SCC 477.**
- (v) Dr. DC Wadha and others v. State of Bihar and others, (1987) 1 SCC 378.**
- (vi) Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1.**
- (vii) Joshi Technologies International Inc. v. Union of India and others, (2015) 7 SCC 728.**
- (viii) IRTC v. Indian Railways Major and Minor Caterer Association, (2011) 12 SCC 792.**
- (ix) Sanchet Bansal v. Joint Admission Board, (2012) 1 SCC 157.**
- (x) Naseem Bano (Smt) v. State of UP and others, 1993 Supp (4) SCC 46.**
- (xi) Union of India and another v. Raghubir Singh (Dead) by LRs. etc., (1980) 2 SCC 754.**

22. In regard to the miscellaneous case filed by the respondents 1 and 2 praying to vacate the interim order dated 25.1.2023 passed in the writ petition, the learned Additional Advocate General submitted that the respondents 3 and 4 were re-engaged as a contract to the post of Chief Engineer/Power & ED (Tech)/MSPDCL and MD/MSPDCL with effect from 1.4.2023 to 31.12.2023 for a period of one year as there were no eligible persons for holding the post of Managing Director/Chief Engineer (Power). He would submit that in relaxation of relevant recruitment rules and as approved by the State Cabinet in its meeting held on 2.1.2023 for efficient and effective functioning of both the companies, the respondents 3 and 4 were re-engaged. This is a purely a stop gap arrangement till the other employees are eligible enough to be given the charge of Chief Engineer/Managing Director respectively.

23. The learned Additional Advocate General then submitted that the writ petitioners have no legal right to interfere in the re-engagement of the respondents 3 and 4 for a period of one year to the post of Chief Engineer/Managing Director (Power) as a stop gap arrangement since the writ petitioners are not eligible to hold the post of Additional Chief Engineer in terms of the recruitment rules of Additional Chief Engineer (Power) and,

in fact, they are yet to complete their probation period in the post of Superintending Engineer. In the aforesaid background, the learned Additional Advocate General prayed to vacate the interim order dated 25.1.2023 passed in the writ petition as the same is causing much prejudice to the respondent State.

24. The learned senior counsel appearing for the third respondent seeks to vacate the interim order dated 25.1.2023 contending that the interim order was passed without looking into the preliminary objection dated 24.1.2023 raised by the third respondent in the writ petition. He would submit that the writ petitioners were promoted to the post of Executive Engineer (Elect) on 30.1.2018 on one-time relaxation basis and as per the recruitment rules, a degree-holder Assistant Engineer (Elect) is eligible for consideration for promotion to Executive Engineer (Elect) only after serving 6 years on regular basis. However, at the time of consideration for promotion, the writ petitioners did not have regular service of 6 years as Assistant Engineer. Hence, their promotion was made by relaxing the relevant recruitment rules for the post of Executive Engineer.

25. The learned senior counsel further submitted that as per the recruitment rules for the post of Superintending Engineer (Elect), Executive Engineer (Elect) having 6 years

regular service is eligible for promotion to the post of Superintending Engineer (Elect). However, the writ petitioners were promoted to the post of Superintending Engineer (Elect) on 7.4.2022 by making one-time relaxation of the relevant recruitment rules once again. As per the recruitment rules for the post of Additional Chief Engineer (Elect) and Chief Engineer (Power), an officer in the grade of Superintending Engineer (Elect) is eligible for promotion to Additional Chief Engineer (Elect) after 5 years of regular service. Thereafter, an officer in the grade of Additional Chief Engineer (Elect) is eligible for promotion to Chief Engineer (Power) after 3 years of regular service. Since the writ petitioners were promoted to the post of Superintending Engineer only on 7.4.2022 and they have served less than one year as Superintending Engineer (Elect) and they yet to complete the probation period of 2 years and also they have to serve more than 4 years to be eligible for promotion to the post of Additional Chief Engineer (Elect), the writ petitioners are not eligible for consideration for promotion to the post of Additional Chief Engineer (Elect) or Chief Engineer (Power) as the case may be. Since the writ petitioners have no locus standi to file the writ petition and the interim order dated 25.1.2023 granted by this Court is causing much prejudice to the private respondents, the same is liable to be vacated.

26. The learned senior counsel appearing for the fourth respondent adopted the submissions raised by the learned senior counsel for the third respondent. He also added that the writ petitioners have no locus standi to challenge the extension of service of the respondents 3 and 4 and the writ petitioners are not aggrieved in any manner by the extension of service granted to the respondents 3 and 4, as the writ petitioners are not yet even eligible for promotion to the post of Additional Chief Engineer (Elect) leaving aside the post of Chief Engineer (Elect).

27. The learned senior counsel would submit that the promotional avenue of the writ petitioners are not at all affected in any manner by the extension of the service of the respondents 3 and 4. If the interim order dated 25.1.2023 is not vacated or modified, the respondents 3 and 4 as well as the respondent State will suffer irreparable loss and legal injury. Since the writ petitioners are not the sufferers and have no legal right to question the extension given to the fourth respondent, the learned senior counsel prayed to vacate the interim order dated 25.1.2023 passed in the writ petition. In support, the learned senior counsel placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **(i) Anand Sharadchandra Oka v. University of Mumbai, (2008) 5 SCC 217** and **(ii)**

***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra,
(2013) 4 SCC 465.***

28. Supporting the interim order dated 25.1.2023 granted by this Court, the learned senior counsel for the writ petitioners submitted that the contention of the respondent State as well as the respondents 3 and 4 are misconceived on facts and law, inasmuch as protection as being sought for under FR 56(d) by the respondents 3 and 4 is wholly on the misunderstanding and misconstrued interpretation. He would submit that the post of Chief Engineer (Power) is not a specialist post, inasmuch as it is not a post dealing in scientific fields though to take shield of defence under the second proviso to FR 56(d) is highly misconceived and not acceptable and, therefore, on this count alone, the miscellaneous cases filed by the respondents are liable to be dismissed.

29. Adding further, the learned senior counsel for the writ petitioners submitted that the respondents 3 and 4 having not covered by the second proviso to FR 56(d), the impugned letter dated 5.1.2023 was issued in violation of the statutory rules as well as in violation of the State policy which was already notified and published widely by the competent authority of the State Government and, thus, the impugned order is *ex facie*

illegal. Therefore, the grounds taken by the respondents, particularly, the private respondents 3 and 4 for vacation of the interim order are not in tune with the law.

30. The learned senior counsel for the writ petitioners urged that by the past practice and precedents adopted in the Power Department as well as the other Government Engineering Department like Water Resource Department etc., it is not the requirement of law for conferring the charge of Chief Engineer to person holding the post of Superintending Engineer (Elect) without first promoted to the post of Additional Chief Engineer. Further, earlier one Ak. Shyamkishore Singh, who was given promotion to the post of Superintending Engineer (Elect) in Power Department vide order dated 30.12.1999 and to be on probation for a period of two years has been given the charge of Chief Engineer in July, 2000. Therefore, the contention of the respondents 3 and 4 qua the impermissibility of Superintending Engineer in holding the charge of Chief Engineer is without substance.

31. The learned senior counsel for the writ petitioners urged that the third respondent is the beneficiary of frequent relaxation of recruitment rules even to the extent of creating a supernumerary post specially for him and in the process, he

became the Chief Engineer within a period of 8 years from the post of Executive Engineer against the normal requisite length of 14 years of service, which is actually mandated by the recruitment rules in the Department. Therefore, the plea of the respondents 3 and 4 that by relaxing the rules the writ petitioners were given the post of Superintending Engineer is incorrect. Arguing so, the learned senior counsel for the writ petitioners submitted that there is no valid ground raised by the respondents to vacate the interim order and, in fact, the respondents have filed the miscellaneous cases with incorrect and false statements that too without disclosing and indulging into suppression of practice and precedent followed in the Department. Therefore, the miscellaneous cases to vacate the interim order filed by the respondents are liable to be dismissed.

32. This Court considered the rival submissions and also perused the materials available on record.

33. Upon consideration of the rival submissions, the following points arise for consideration:

- (1) Whether the writ petition filed by the writ petitioners is not maintainable as alleged by the respondents?

(2) Whether the writ petitioners have no locus to file the writ petition as alleged by the respondents?

(3) Whether the interim order dated 25.1.2023 is liable to be vacated as pleaded by the respondents?

34. The case of the writ petitioners is that the respondents 3 and 4 who were serving as Executive Engineer (Elect) were appointed to the post of Superintending Engineer (Elect) by promotion on 31.1.2018 by providing one-time relaxation in the qualifying years of service for promotion and were given promotion to the post of Additional Chief Engineer on 3.8.2020 after rendering about only two and half years in the grade of Superintending Engineer (Elect). The promotion of the respondents 3 and 4 effected by relaxing the minimum qualifying years of service which is 5 years of regular service in the grade of Superintending Engineer as required by the relevant recruitment rules. Thereafter, the respondents 3 and 4 were promoted to the post of Chief Engineer (Power) on 29.4.2022 and 21.2.2022 respectively by providing one-time relaxation of qualifying years of service for promotion for the third time as both

of them did not possess the essential qualification for the post of Chief Engineer (Power) as per the relevant recruitment rules.

35. Further case of the writ petitioners is that in pursuance of the decision of the State Cabinet, the service of the third respondent was extended for a period of one year from the date of his retirement with effect from 1.1.2023 to 31.12.2023 vide order dated 4.10.2022. Assailing the order dated 4.10.2022, the writ petitioners have filed W.P.(C) No.1096 of 2022 and, by the interim order dated 21.12.2022, this Court stayed the order dated 4.10.2022. However, during the pendency of W.P.(C) No.1096 of 2022, the Department of Personnel informed the Deputy Secretary (Power) vide impugned letter dated 5.1.2023 about the Cabinet decision taken on 2.1.2023 for re-engagement of the third respondent as Chief Engineer (Power) and ED/MSPDCL with effect from 1.1.2023 to 31.3.2023 and then as MD, MSPDCL with effect from 1.4.2023 till 31.12.2023 and the fourth respondent was re-engaged as MD, MSPDCL with effect from 1.3.2023 to 31.3.2023 and then as MD, MSPDCL for one year with effect from 1.4.2023.

36. The specific case of the writ petitioners is that in spite of complete ban on extension of service/re-engagement of Government servants beyond the age of superannuation in terms

of the order dated 20.4.2000 issued by the Secretary (DP), Government of Manipur as well as the State Cabinet in its meeting held on 3.4.2017 took a decision to do away with the engagement of Government servant/employees after retirement by giving one month's notice as per the terms and conditions of the contractual agreement with immediate effect and the Finance Department wrote a letter dated 11.5.2017 requesting all the Departments to comply with the aforesaid decision and to submit compliance report. Aggrieved with the illegal actions of extending the service of both the respondents 3 and 4, which is contrary to the decision of the official respondents, the writ petitioners have filed the present writ petition.

37. According to the writ petitioners, by ignoring the fact that the respondents 3 and 4 are not eligible for holding the post of Managing Director, MSPDCL as per recruitment rules and policies for the post of Chief Engineer (Power), they have been re-engaged by the respondents 1 and 2. Apart from this, when the writ petitioners were available and eligible for re-engagement as Chief Engineer for Power, ignoring the same, the respondents 1 and 2 have passed the impugned order dated 5.1.2023 thereby re-engaging the respondents 3 and 4. According to the writ petitioners, the respondent State has passed the impugned order

while ban in force of re-engagement of Government servant beyond the age of superannuation in terms of the order dated 20.4.2000 issued by the Secretary (DP), Government of Manipur. Therefore, the challenge made by the writ petitioners to the impugned order dated 5.1.2023 is very well maintainable and this Court was right in admitting the writ petition and also rightly granted the interim order.

38. On the contrary, the respondents 3 and 4 contended that the post of Chief Engineer (Power) is a highly technical post which requires a skilled scientific person to man the post and the respondents 3 and 4 are persons having requisite scientific knowledge in Electrical Engineering field. Hence, the re-engagement of the respondents 3 and 4 upto 62 years is permissible under the second proviso to FR 56(d). Since the re-engagement of the respondents 3 and 4 is a policy decision of the State, the same cannot be interfered with by the Court under writ jurisdiction. In support, the learned senior counsel for the third respondent placed reliance upon the following decisions:

**(i) *Union of India v. M.Selvakumar*,
(2017) 3 SCC 504.**

**(ii) *Parisons Agrotech (P) Ltd. V. Union
of India*, (2015) 9 SCC 657.**

39. The third respondent contended that the writ petitioners have no locus to challenge re-engagement of the third respondent to the post of Chief Engineer and subsequently, MD, MSPDCL in view of holding the post of Superintending Engineer only which is not even the feeder post for promotion to the post of Chief Engineer and, therefore, the writ petitioners cannot be considered as aggrieved persons having locus to challenge the order impugned in the writ petition.

40. In order to find the locus of the writ petitioners to file the present writ petition, it is necessary to look into the averments set out in the writ petition. The averments set out in the writ petitioner clearly indicate that it is the person holding substantive post of Superintending Engineer who has been allowed to hold the charge of Chief Engineer. Even the writ petitioners who have hardly seven months experience in the grade of Superintending Engineer are to be considered to hold the charge of Chief Engineer.

41. The learned counsel for the writ petitioners has also shown the past practice and precedent in promoting the Executive Engineer to the post of Superintending Engineer who was having only 7 months experience to hold the charge of Chief

Engineer (Power). On the other hand, the respondents highlighted that since the writ petitioners were promoted to the post of Superintending Engineer (Elect) only on 7.4.2022 and at present they have served less than one year as Superintending Engineer (Elect) and they yet to complete the probation period of two years and, hence, they are not eligible for consideration for promotion to the post of Additional Chief Engineer (Elect) or Chief Engineer (Power).

42. According to the writ petitioners, when officers holding the post of Chief Engineer are retired on attaining the age of superannuation, the service of retired persons were not engaged, but officers working in the grade of Superintending Engineer had been allowed to function as in-charge/look after the Chief Engineer. Due to the decision of the State cabinet to re-engage the service of the third respondent as Chief Engineer (Power), the chance of the petitioners for leading the Department by holding the highest post on in-charge basis or otherwise has been deprived of and the same needs to be interfered with by this Court. Similarly, the re-engagement of the fourth respondent as MD, MSPDCL, the change of the writ petitioners for leading the said post on in-charge basis has been deprived of and the same should also be interfered with.

43. For proper appreciation, it would be appropriate to extract the impugned letter of the Deputy Secretary (DP), Government of Manipur hereunder for ready reference:

"I am directed to invite a reference on the above subject and to say that the State Cabinet in its meeting held on 02.01.2023 approved the following:-

- i) For re-engagement of Shri H. Shantikumar Singh on contract basis as Chief Engineer/Power & ED(Tech)/MSPDCL w.e.f. 01.01.2023 to 31.03.2023, and then as MD.MSPDCL w.e.f. 01.04.2023 to 31.12.2023.*
- ii) Re-engagement of Shri Ng. Subhashchandra Singh on contract basis as MD.MSPDCL w.e.f. 01.03.2023 to 31.03.2023 and then as MD/MSPCL for 1 (one) year w.e.f. 01.04.2023.*

2. It is, further informed that the DP's order No.APPT-9/1/2022-DP-DP dated 04.10.2022 regarding extension of service of Shri H. Shantikumar Singh has been cancelled vide DP's order of even No.COURT-1/186/2022-DP-DP dated 05.01.2023 (copy enclosed)

3. A copy of Cabinet Memorandum and its decision taken on 02.01.2023 is also enclosed herewith for taking further necessary action.”

44. The aforesaid re-engagement of the respondents 3 and 4 has been questioned by the writ petitioners contending that to frustrate and circumvent the order passed by this Court in W.P.(C) No.1096 of 2022, dated 21.12.2022, the impugned order dated 5.1.2023 came to be issued and the said act of re-engagement is not a curative action, but intended to nullify the order of this Court. Therefore, the writ petitioners have locus to question the act of the official respondents and the writ petition is very well maintainable.

45. The maintainability of the writ petition was questioned by the learned senior counsel appearing for the respondents 3 and 4 as well as the learned Additional Advocate General even when the writ petition was taken up for hearing for admission on 25.1.2023 itself. This Court, upon hearing the submissions of the respective learned senior counsel qua the maintainability of the writ petition, observed as under:

“[12] On hearing both sides, this Court kept this writ petition for passing orders for consideration of the admission of the writ petition and for granting interim order and posted the matter today i.e. 25.01.2023.

[13] The case of the petitioners are that they are working as Superintending Engineer in the respondent department and they are challenging the reengagement of the respondents No. 3 and 4 as Chief Engineer and MD as per the order dated 05.01.2023.

[14] Though the petitioners are working as Superintending Engineer in the respondent department and the case of the petitioners are that they are eligible to appoint as in-charge Chief Engineer in the respondent department since the respondent department already passed several orders to that effect. As per order of the respondent department dated 31.05.2002, one Shri Ch. Ibopishak Singh who worked as Superintending Engineer (Elect.) was given in-charge of Chief Engineer (Power), Manipur; another order dated 22.05.2003 one Shri Ng. Tikendrajit Singh who worked as Superintending Engineer (Elect), was given to hold in-charge of Chief Engineer (Power), Manipur and another order dated 11.10.2004 one Shri H. Bihari Singh who worked as Superintending Engineer was given the charge of Chief Engineer (Power), Manipur.

[15] Therefore, Mr. Golly, learned counsel for the petitioners prayed that instead of giving reengagement to the respondents No. 3 and 4 as Chief Engineer, the petitioners may be given

to hold as Additional in-charge as Chief Engineer but without doing the same and for the purpose of giving the order in favour of the respondents No. 3 and 4 the present impugned order dated 05.01.2023 has been passed by violating their own order dated 20.04.2000 which order banning the reengagement is still in existence.

[16] When Mr. N. Kumarjit, learned senior counsel who appeared for the respondent No. 3 has made objection about the maintainability of the writ petition, this Court considers that when the writ petitioners have shown the above orders dated 31.05.2002, 22.05.2003 and 11.10.2004 which clearly shows that the Superintending Engineer is working in the respondent department are entitled for claiming the in-charge post of Chief Engineer.

[17] Apart from this, when the order dated 20.04.2000 is in existence till date, the present impugned order dated 05.01.2023 was issued in total violation of the above order.

[18] Therefore, in my absolute view, the writ petitioners have made out prima facie case for admission and for granting of interim order.

[19] On filing of the counter affidavit, this Court will consider the maintainability as well as the merits of the writ petition.

[20] Considering the above, I am inclined to pass the following orders :

- 1) this writ petition is admitted.*
- 2) Since Mr. N. Kumarjit, learned senior counsel takes notice for respondent No. 3 and hence, no formal notice is required. Time granted for filing counter affidavit by respondent No.3.*
- 3) Mr. S. Niranjan, learned Government Advocate takes notice on behalf of the Respondents No. 1 and 2 and Mr. M. Ibohal, learned counsel take notice for respondent No. 4. Therefore, no formal notice is required for the Respondents No. 1, 2 and 4. The respondents No. 1, 2 and 4 are directed to file counter affidavit.*

[21] Post the matter on 09.02.2023.

[22] Till such, time, there shall be an order of interim stay of the impugned letter No. COURT-1/186/2022-DP-DP dated 05.01.2023 and its subsequent and consequential action till next date."

46. It is pertinent to note that the said interim order has not been assailed by way of any appeal either by the official respondents or the private respondents 3 and 4. However, they have filed the instant miscellaneous cases questioning the

maintainability of the writ petition. Having raised an issue earlier qua maintainability of the writ petition and upon considering the arguments raised by the respective learned counsel for the parties, this Court admitted the writ petition. For the second time, the respondents cannot raise the maintainability issue by filing miscellaneous cases. If really, the respondents are aggrieved and/or prejudiced by the admission of the writ petition, they ought to have taken further steps in the manner known to law. However, the respondents have failed to do so. This has been recorded at this stage only to show the bona fide of the respondents in not taking care to question the interim order by way of appeal. Since the respondents questioned the locus of the writ petitioners and the maintainability of the writ petition, this Court is inclined to deal with the same in the following manner.

47. As far as the maintainability of the writ petition challenging the impugned letter dated 5.1.2023 by the writ petitioners is concerned, a thorough reading of the averments set out in the writ petition prima facie establish that the writ petition is maintainable. Certain averments set out in the writ petition are necessary to analyse the maintainability of the writ petition and the same are quoted hereunder for ready reference:

“20 That the decision for re-engagement of the Private Respondents No.3 for a period of one year which is combination of extension of service by way of re-engagement as Chief Engineer(Power) and Managing Director of MSPDCL is against the applicable rules for the post of Chief Engineer in terms of the relevant recruitment rules framed in exercise of power under proviso to Article 309 of the Constitution of India for the post of Chief Engineer and also applicable rule for the post of MD. MSPDCL framed in exercise of power conferred by the transfer scheme of 2013 and re-engagement of the Private Respondent No 4 as MD, MSPCL we.f. 01-04-2023 is against the existing recruitment rules.

Under the recruitment rules for the post of Chief Engineer, mode of appointment is by promotion neither the appointment by lateral entry or by way of re-engagement on contract basis is contemplated by the recruitment rules whereas under the rules framed by the competent authority in exercise of power conferred by transfer policy of 2013, the post of MD in MSPDCL is an IAS cadre post i.e. it is to be held by an officer belonging to IAS cadre as indicated by the applicable rule and policy as at Annexure-A/22 along with its enclosures above Therefore, private respondent who is neither a cadre officer of IAS cadre nor any other

designated officer contemplated under the rule is not qualified for appointment to the post of MD, MSPDCL inasmuch as re-engagement on contract basis to the post of Chief Engineer in EDM being against the condition of recruitment rules, the impugned order is liable to be quashed and set aside.

21. That for the Private Respondent No. 4 to work as MD, MSPCL w.e.f. the date when the post became vacant after relieving the service of the present incumbent upon expiry of term of contract appointment, the Private Respondent No. 4 is not eligible as per the rule frame for the post by the competent authority, since under the said rule, the post of MD. MSPCL is to be filled up either by way of deputation from eligible person indicated in the rule failing which by promotion from eligible person as mentioned in the rule and policy and further upon failing which both the two modes, it has to be filled up by way of lateral entry on contract basis through open advertisement. There is a qualification and eligibility provided for contract appointment by way of lateral entry whereunder the Private Respondent No. 4 is not eligible. Therefore, having regard to the condition provided in the relevant rules for the post of Chief Engineer in EDM, MD in MSPDCL and MSPCL, the Private Respondents No.3 and No. 4 being not eligible, taking a decision for engaging the service of the

Private Respondent No.3 on contract basis as Chief Engineer at the first instance for 3 months and remaining period of 9 months as MD, MSPDCL till 31 December 2023 and the Private Respondent No. 4 re-engagement as MD. MSPDCL w.e.f. 01-03-2023 to 31-03-2023 and MD, MSPCL for 1 year w.e.f. 01-04-2023 are not legally sustainable and therefore liable to be quashed and set aside.

22. That the impugned decision of re-engagement of the Private Respondent No.3 is also equally against the provision of FR 56 and the re- engagement order so issued would not come under any exception provided under FR 56 and therefore, the impugned letter is liable to be quashed and set aside.

The impugned letter having been issued in violation of standing policy decision of the State Govt. for not making re-appointment and re-engagement of persons who have retired from service by State cabinet decision taken on 02-01-2023 and communicated to the Power Department, Govt. of Manipur vide letter dated 05-01-2023 of the Deputy Secretary (DP), Govt. of Manipur for taking further necessary action is liable to be quashed and set aside. Further, the reason which might have assigned for this nature of engagement is against the practice and precedent followed in other Govt.

Department of the State Govt. as would be substantiated by undisputed policy decision of the State Govt. in allowing person working in lower substantive post to hold the higher post after retirement of the incumbent holding the higher post as happened for about two decades in the PWD, Manipur where even the person holding substantive post of AE had been allowed to hold the charge of Chief Engineer and therefore, the impugned order virtually deprived the legitimate expectation of the petitioner for allowing to discharge the duty and responsibility of higher post as being done in other Govt. Department like Water Resource Dept. Therefore, the impugned letter being against the past practice and precedent of the State Govt. is liable to be interfered with as not legally sustainable.

23. That the impugned letter has clearly given a wrong message to employees working in the Power Department as to whether authority are willing to utilize the service of retired person against whom serious corruption charges are leveled and investigation is ongoing and thereby favouring such person for likely purpose of collusive action for enabling irregular financial transaction to meet vested interest of some higher authority. This statement is being made in view of the cognizance taken by the Manipur Lokayukta vide its order dated 24-11-

2022 passed in Complaint Case No. 6 of 2022 whereby it is clearly indicated that respondent No.3 and respondent No.4 are the main accused in a huge scam of corruption in relation to implementation of SAUBHAGYA scheme by the MSPDCL involving an amount of about Rs 200 crores.

24. That the impugned decision for extension of service of the Private Respondents No.3 and 4 by way of re-engagement on contract basis has been taken even without first issuing the termination of the respondent No.3 upon attaining the age of superannuation w.e.f. 31-12-2022. It is also against the transfer policy of 2013 under which respondent No.3 who has been deputed to the MSPDCL and allowed to hold the post of Executive Director during the relevant time of retirement under which respondent No.3 is to be repatriated to the Power Department one month prior to date of superannuation as per Transfer Policy and thereafter to be allowed to retire from Govt. service in the EDM. All these flagrant violation of mandated procedures under the rules clearly demonstrates that the order impugned is the culmination of extraneous consideration and favouritism and therefore, the letter impugned in the writ petition is liable to be quashed and set aside.”

48. Highlighting the aforesaid averments, the writ petitioners contended that the decision of the respondent State for re-engagement of the third respondent as Chief Engineer (EDM) at the first instance for a period of three months and the remaining period of 9 months of one year as MD, MSPDCL and the decision of the respondent State for re-engagement of the fourth respondent as MD, MSPDCL for one month with effect from 1.3.2023 and as MD, MSPDCL for one year with effect from 1.4.2023 are against the law and therefore, the same can be questioned by way of filing writ petition by the writ petitioners, who are really aggrieved and there may not be any legal impediment in allowing the writ petitioners who are also the senior officers of the Department to hold the charge of Chief Engineer as well as MD, MSPCL/MSPDCL on in-charge basis. Prima facie, this Court finds some force in the said submission made by the writ petitioners, as the post of Chief Engineer as well as MD/MSPCL/MSPDCL are not to be manned by retired persons i.e. the respondents 3 and 4.

49. It is to be mentioned that the decision for extension of service of the respondents 3 and 4 by way of re-engagement on contract basis has been taken even without first issuing the termination of the third respondent upon attaining the age of

superannuation with effect from 31.12.2022, which is against the transfer policy of 2013 under which the third respondent who has been deputed to the MSPDCL and allowed to hold the post of Executive Director during the relevant time of retirement under which the third respondent is to be repatriated to the Power Department one month prior to the date of superannuation. This flagrant violation highlighted by the learned senior counsel for the writ petitioners has not been refuted by the private respondents. Though the said contention of the writ petitioners is merit of main writ petition, to have clarity in the order, the same is analysed and discussed by this Court. The aforesaid view is only a prima facie view of this Court in regard to deciding the maintainability issue.

50. Placing reliance upon the decisions of the Hon'ble Supreme Court in the cases of (i) *N.C.Singhal (Dr)*; (ii) *Rameshwar Das Mehla* and (iii) *B.Srinivasa Reddy*, supra, the learned senior counsel for the third respondent submitted that the writ petitioners have not yet even completed one year of service in the grade of Superintending Engineer (Elect) and they are yet to be promoted as Additional Chief Engineer (Elect) on regular basis. They have not even held the post of Additional Chief Engineer (Elect) on in-charge basis. However, quite shockingly, they have challenged the re-engagement of the third respondent

on contract basis as Chief Engineer/Power & ED (Tech), MSPDCL. Further, there is no person who is eligible to hold the post of Chief Engineer (Power) in the Department and, therefore, the State Cabinet took a policy decision to re-engage him on contract basis in its meeting held on 2.1.2023. It is further argued by the learned senior counsel for the third respondent that since the writ petitioners are not aggrieved in any manner by the re-engagement of the third respondent, they are not eligible for promotion to the post of Additional Chief Engineer (Elect) or the Chief Engineer (Power).

51. In **N.C.Singhal (Dr)**, supra, the Hon'ble Supreme Court held:

“21. Having examined the challenge to the promotion of Respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime Grade II in a speciality other than Ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them. Incidentally High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service qualification and,

therefore, the promotions could not be struck down. Once the challenge on merits fails the second string to the bow need not be examined. Having said all this, appellant is least competent to challenge their promotions. In a slightly comparable situation this Court in Chitra Ghosh v. Union of India, (1969) 2 SCC 228, 234 : (1970) 1 SCR 413, 420] observed as under:

“The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded.”

52. In **Rameshwar Das Mehla**, supra, the Hon’ble Supreme Court held:

“3. In challenging this order made by the High Court on behalf of the appellant, it is submitted that:

(1) A court could examine the legality or otherwise of a matter only at the instance of a person who is qualified and eligible and has a locus

standi and not the one who has no eligibility and drew our attention to the decisions of this Court in Subhash Chander Bajaj v. Kamal Singh Singhmar [(2010) 15 SCC 795] , A.P. Public Service Commission v. G. Sankar [(2010) 15 SCC 796 : 1999 SCC (L&S) 993] and Jit Singh v. State of Punjab [(1979) 3 SCC 37 : 1979 SCC (L&S) 220 : (1979) 1 SLR 604] ;

(2) That, appropriate approach to the case should have been by examining the qualification prescribed in the advertisement itself and if the prescription thereto is carefully read as a whole, the appellant had fulfilled the necessary qualification and when in the view of the selection authority he had fulfilled such qualification, it is not open to the Court to interfere with the same as such matters fall within the realm of academic matters and this Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491 : (1964)4SCR575], Chancellor v. Bijay ananda Kar [(1994) 1 SCC 169 : 1994 SCC (L&S) 296 : (1994) 26 ATC 570] and Tariq Islam v. Aligarh Muslim University [(2001) 8 SCC 546 : 2002 SCC (L&S) 1] has consistently taken the view that on such questions pertaining to qualifications which is an academic matter it should be left to the wisdom of university authorities;

(3) That certain notifications had been issued by the University Grants Commission explaining that insistence upon 55% marks in the case of the appellant was not necessary at all in view of the fact that he was already in the service of the University and such relaxation had been given in the case of Readers earlier and that was the

practice followed by the University throughout;

(4) That once the High Court has come to the conclusion that the writ petitioners were not eligible for the post, the High Court could not have gone further to examine the matter and at the most, could have treated the matter as one for a writ of quo warranto, although it could not be issued in a matter of this nature;

(5) The learned counsel for the appellant also raised certain pleas on the basis of certain equities arising in the case.

.....

8. Similarly, in the case of the other respondent it has been stated that the respondent concerned is not having 10 years' experience as a Deputy Librarian in a university or 15 years' experience as a College Librarian and he is not having one year specialisation in the area of Information Technology/Archives and Manuscript-keeping and this fact found favour with the High Court. The High Court categorically stated that the petitioners in both the cases were not eligible for the post. That finding has been recorded on consideration of these aspects of the matter. If that is so, other questions need not have been examined in this case at all, though raised by either of the parties."

53. In **B.Srinivasa Reddy**, supra, the Hon'ble Supreme Court held:

“78. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in Umakant Saran (Dr.) v. State of Bihar [(1973) 1 SCC 485] held that the appointment cannot be challenged by one who himself is not qualified to be appointed. In Kumari Chitra Ghosh v. Union of India [(1969) 2 SCC 228] a Constitution Bench of this Court held as under:

“12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded.”

.....

92. It was argued by Mr P.P. Rao, learned Senior Counsel, appearing for the appellant that the Division Bench while answering Point 2 in para 25 that the order of appointment passed

by the State Government is not a regular appointment. It has further been observed that Section 4(2) of the Act and Rule 3 of the Rules framed do not permit the Government to appoint the Managing Director on contractual basis. It was submitted that the finding of the Division Bench as well as the Single Judge are legally unsustainable. The Act makes clear distinction between appointments to the Board and appointment of officers and servants of the Board. All appointments of Directors are "appointments at the pleasure of the Government". He drew our attention to Section 6(1) of the Act which reads thus:

"6. (1) All directors including the Chairman and the Managing Director shall hold office during the pleasure of the Government."

The expression "contract basis" is only to indicate that the appointment was to subsist till the withdrawal of the pleasure of the Government. It could not be said that the contractual appointment is made contrary to the Rules that contemplate regular appointment.

.....

97. In the result, we hold:

(a) That the appellant was not disqualified for appointment as Managing Director w.e.f. 1-2-2004.

(b) There is no bar for appointment to the post in question on contract basis. The Government has absolute

right to appoint persons on contract basis.

(c) The writ of quo warranto does not lie if the alleged violation is not of a statutory provision.

(d) There is no violation of Section 4(2) of the Act and Rule 3 of the Rules because the appellant had experience in administration and capacity in commercial matters before he was appointed as Managing Director on contract basis by the Government.

(e) The Government has no doubt power to make contractual appointment until further orders. The power includes the power to make appointment on substantive basis, temporary, officiating basis, ad hoc basis, daily wages or contractual basis.

(f) The writ filed by Respondents 1 and 2 is motivated.

(g) The petitioners in the writ petition, Respondent 1 herein—which is an unregistered association under the Trade Unions Act cannot maintain the writ petition.

(h) The findings of legal mala fides is unsustainable and has no basis.”

54. It is to be noted that the eligibility of the writ petitioners in appointing to the post of Chief Engineer (Power) cannot be gone into at this stage and the same has to be considered while hearing the main writ petition. As stated supra, since the writ petitioners are affected and/or aggrieved persons by the impugned re-engagement of the respondents 3 and 4,

they have locus to file the writ petition exercising jurisdiction under Article 226 of the Constitution of India.

55. Writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

56. It is apposite to mention that the power of the High Court under Article 226 of the Constitution of India, although is discretionary, no limits can be placed upon its discretion. They must be exercised along the recognized lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226 of the Constitution of India makes the jurisdiction of the High Courts more extensive yet the Courts must exercise the same with certain restraints and within some parameters.

57. Since the writ petitioners have challenged the executive action/State action i.e. re-engagement of the

respondents 3 and 4, who are stated to be retired, as Chief Engineer and MD/MSPCL/MSPDCL on contract basis respectively, this Court finds no substance in the submissions raised by learned Additional Advocate General for the respondent State as well as the learned senior counsel appearing for the respondents 3 and 4 that the present writ petition is not maintainable.

58. That apart, prima facie, the appointment of a Government servant as Chief Engineer and MD/MSPCL/MSPDCL on contract basis after his retirement on attaining the age of superannuation is in contravention of FR 56 and such appointment does not come within the purview of the second proviso to FR 56(d).

59. In view of the above, the decisions in the cases of ***N.C. Singhal (Dr), Rameshwar Das Mehla and B.Srinivasa Reddy***, supra, relied upon by the learned senior counsel for the third respondent are distinguishable on the facts of the present case and, therefore, the said decisions are not helpful to the case of the third respondent.

60. On the other hand, the act of respondent State in re-engaging the respondents 3 and 4 as Chief Engineer and MD/MSPCL/MSPDCL on contract basis vide the impugned letter

dated 5.1.2023 is questionable by the aggrieved person under Article 226 of the Constitution of India, which the writ petitioners have rightly done. It is not the case of the respondent State that nobody is available for appointment by promotion to the post of Chief Engineer and MD/MSPCL/MSPDCL, except the respondents 3 and 4. Further, nothing has been produced to establish that the writ petitioners are totally prevented from appointing and/or engaging as Chief Engineer and MD/MSPCL/MSPDCL. The only ineligibility of the writ petitioners to the said posts pleaded by the respondent State is that the writ petitioners are Superintending Engineers (Elect) who have not even completed the probation and are hardly having seven months of experience as regular Superintending Engineers. The aforesaid aspect in detail cannot be gone into at this stage and the same needs to be looked into only after hearing the main writ petition.

61. The contention of the respondent State that the re-engagement of the respondents 3 and 4 has been done due to non-availability of eligible officer as a stop gap arrangement to take up the responsibility of the said high posts having regard to the important project being taken up by the Department cannot be countenanced at this stage and the same will be decided in

the main writ petition after affording reasonable opportunity to both sides. Further, the allegation of the writ petitioners that the decision of the respondent State to re-engage the respondents 3 and 4 on extraneous consideration as would be visibly substantiated by non-extension and non-re-engagement of retired Chief Engineer in other Government Engineering Department which are equally taking up important huge projects including implementation of national flagship schemes are also matter of materials/documents to be produced by the respective parties and the same is also required to be decided only in the main writ petition and not now. Therefore, in the facts and circumstances set out, the present writ petition is maintainable under Article 226 of the Constitution of India at the hands of the writ petitioners who are serving in the Department and also who are alleged to be eligible to be considered for the post of Chief Engineer and MD/MSPCL/MSPDCL on contract basis.

62. In ***Whirlpool Corporation***, supra, the Hon'ble Supreme Court held:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the

nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an

adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “unless there are good grounds therefor”, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under:

“But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

18. This proposition was considered by a Constitution Bench of this Court in A.V.

Venkateswaran, Collector of Customs v. Ramch and Sobhraj Wadhwani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:

“The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.”

19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO,

Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act.”

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

63. In **Ghulam Qadir**, supra, the Hon'ble Supreme Court held thus:

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post

or property, he cannot be non-suited on the ground of his not having the locus standi.

64. The Hon'ble Supreme Court in the case of **Dr. DC Wadha**, supra, observed that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge.

65. At this stage, it would be appropriate to extract the eligibility criteria set out in the recruitment rules. The recruitment rules for the post of Additional Chief Engineer in Power Department stipulates as under:

Promotion

“Superintending Engineer or its equivalent with 5 (five) years regular service in the grade of Departments concerned possessing Degree in Civil for Civil post; Mechanical for Mechanical and Electrical post as the case may be.”

The same was amended for the first one-time relaxation vide order dated 19.1.2016 of the Department and the same is reproduced hereunder:

“Superintending Engineer (Elect) with 16 (sixteen) years regular service in the grades of

Superintending Engineer (Elect) and Executive Engineer (Elect) taken together out of which at least 2 (two) years regular service in the grade Superintending Engineer (Elect) and possessing Degree in Electrical Engineer.”

The same was again amended for the second one-time relaxation vide order dated 20.5.2020 and the same is reproduced hereunder:

“Superintending Engineer or its equivalent with 2 (two) years regular service in the grade in Power Department possessing Degree in Civil for Civil post; Mechanical for Mechanical and Electrical post as the case may be.”

The recruitment rules for the post of Chief Engineer in Power Department stipulates as under:

Promotion

“Additional Chief Engineers having 3 (three) years regular service in the grade in the Department concerned, failing which, Additional Chief Engineer having 7 (seven) years regular service in the grades of Additional Chief Engineer and Superintending Engineer or its equivalent put together.”

The same was amended for the first one-time relaxation notified vide order dated 7.9.2019 and the same is reproduced hereunder:

“Additional Chief Engineer (Elect) with 14 years regular combined service in grades of Additional Chief Engineer (Elect), Superintending Engineer (Elect) and Executive Engineer (Elect) taken together out of which at least 2 (two) years regular service in the grade of Additional Chief Engineer (Elect) possessing Degree in Electrical Engineering.”

The same was amended for the second one-time relaxation notified vide order dated 21.10.2021 as under:

“Engineers who have completed 20 (twenty) years of regular service in Grade of Assistant Engineer (Elect), Executive Engineer (Elect), Superintending Engineer (Elect) and Additional Chief Engineer (Elect) taken together and possessing Degree in Electrical Engineering.”

66. It is no doubt true that the one-time relaxation rules are not hard and fast recruitment rules, but are amended from time to time to suit the convenience of the concerned officers, who are to get promoted. In view of the above, there is no force in the argument raised by the learned counsel for the respondents that the writ petitioners are not eligible for promotion to the higher post based on the amendable recruitment rules as per ones suitability and convenience. As stated supra, the writ petitioners are aggrieved persons and they have locus to

question the re-engagement of the respondents 3 and 4. Therefore, the decisions in the cases of **Anand Sharadchandra Oka** and **Ayaubkhan Noorkhan Pathan**, supra, relied upon by the learned senior counsel for the fourth respondent are not helpful to the case of the respondents, particularly the fourth respondent.

67. Insofar as the contention of the private respondents 3 and 4 as well as the respondent State that the re-engagement of the respondents 3 and 4 is a policy decision of the State and the same cannot be interfered with by the Courts under writ jurisdiction is concerned, generally the Courts in India will not interfere with the policy decision of the State. In this regard, it is settled law that the Court would not ordinarily interfere with the policy decision of the executive unless the same can be faulted on the grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case the policy would render itself to be declared unconstitutional. Here, prima facie, there appears to be no record to show that the re-engagement of the respondents 3 and 4 is the mode of appointment mandated by the recruitment rules and the impugned order does not indicate that re-engagement of the respondents 3 and 4 is permissible as per the relevant recruitment rules.

68. The argument of the learned senior counsel for the writ petitioners that the impugned letter being in derogation and in violation of the relevant recruitment rules and regulations of the State Government cannot be brushed aside. Nothing has been produced by the official respondents to show that the re-engagement and extension of service of the respondents 3 and 4 is an act done in public interest.

69. It is apposite to mention at this juncture that the scope of judicial review in policy matters is no longer *res integra*. The doctrine of separation of power under the Constitution is to be well respected and, therefore, any wing of the Government is not at liberty to take any action or pass an order in violation of law or rule framed under the provision of the Constitution of India.

70. It also appears that a Complaint Case No.6 of 2022 is pending against the respondents 3 and 4 before Manipur Lokayukta in a scam of corruption of Rs.200 crore in an important Government of India flagship programme implemented by the MSPDCL under the Power Department, Government of Manipur. The aforesaid would *prima facie* show that re-engaging such officials to the top post would send a wrong message to the public in general that the State Government is encouraging the corruption. On this count, the writ petition challenging the

impugned letter dated 5.1.2023 filed by the writ petitioners is very well maintainable.

71. At this juncture, placing reliance upon the decision of the Hon'ble Supreme Court in the case of **Jasbhai Motibhai Desai**, supra, the learned Additional Advocate General argued that it is demonstrably clear that the writ petitioners have not been denied or deprived of a legal right and they have not sustained injury to any legally protected interest and, therefore, the writ petition is not maintainable.

72. In **Jasbhai Motibhai Desai**, supra, the Hon'ble Supreme Court held:

“48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a “person aggrieved” and has no locus standi to challenge the grant of the no-objection certificate.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a “stranger” unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a “stranger”, and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so

essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of Respondents 1 and 2, which they have under Article 19(1)(g) of the Constitution, to carry on trade or business subject to "reasonable restrictions imposed by law".

73. The decision in **Jasbhai Motibhai Desai**, supra, is distinguishable from the facts of the present case. As stated supra, the writ petitioners have established their locus to invoke the writ jurisdiction under Article 226 of the Constitution of India. Therefore, the decision in **Jasbhai Motibhai Desai**, supra, relied upon the learned Additional Advocate General is not much helpful to the case of the respondents 1 and 2.

74. It is settled position of law that when the impugned order *ex facie* is illegal and existence of breach of mandatory statutory provision, a writ petition under Article 226 of the Constitution of India cannot be dismissed on the ground of locus. In the instant case, as stated supra, *prima facie*, the writ petitioners have established that their legitimate right has been deprived of by the impugned letter, apart from violation of rule canvassed by them.

75. In **Navjyoti Coop. Group Housing Society**, supra, the Hon'ble Supreme Court held:

“15. It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their viewpoints. Even assuming that in the absence of any explanation of the expression “first come first served” in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to ‘legitimate expectation’ of following consistent past

practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's Laws of England, 4th edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935] . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline. On the contrary, Mr Jaitley the learned counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice."

76. Thus, prima facie, it is clear that the doctrine of legitimate expectation imposes a duty on the respondents 1 and 2 to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. Within the conspectus of fair dealing in case of legitimate expectation, the right of eligible persons was affected by the policy of the State.

77. In **IRTC**, supra, the Hon'ble Supreme Court observed as under:

“2. By the impugned order, the High Court has interfered with the Catering Policy of 2005 in respect of reservations. By now it is a well-settled principle of law that policy decisions of the Government should not be interfered with in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. Nothing has been brought to our notice that the Policy is contrary to the provisions of the statutory rules or the Constitution. For this simple reason, we set aside the order of the High Court impugned herein.”

78. In **M.Selvakumar**, supra, the Hon'ble Supreme Court held:

“47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and the Delhi High Court. The horizontal reservation and relaxation for physically handicapped category candidates for Civil Services Examination, is a matter of governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the physically handicapped candidates belonging to the reserved category as well as general category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.”

79. In ***Union of India v. Dinesh Engineering Corporation, (2001) 8 SCC 491***, the Hon'ble Supreme Court held:

“12. There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to the policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and

courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record. Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.”

80. Anent the issue of the scope of judicial review in interfering with the policy decision, the law is well settled by the Hon'ble Apex Court in the case of **DDA v. Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672**, wherein, it has been held as under:

“59. An Executive order terms as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the natty grittiest of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the

impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds:-

- (a) if it is unconstitutional;*
- (b) if it is de'hors the provisions of the Act and Regulations;*
- (c) if the delegate has acted beyond its power of delegation;*
- (d) if the executive policy is contrary to the statutory or a larger policy.”*

81. The following aspects disturbed the mind of this Court in interfering with the policy decision of the respondent State:

- (i) There appears to be no record to show that the re-engagement of the respondents 3 and 4 is the mode of appointment mandated by the recruitment rules.
- (ii) The impugned order does not indicate that the re-engagement of the respondents 3 and 4 is permissible as per the relevant recruitment rules.

- (iii) Nothing has been produced by the respondents to show that in other departments this is the position of re-engaging the retired officials.
- (iv) Post of Chief Engineer is not a specialized post.
- (v) Past practice would show that the Superintending Engineers were given in-charge post of Chief Engineer.
- (vi) The third respondent is the beneficiary of frequent relaxation of recruitment rules even to the extent of creating a supernumerary post especially for him.
- (vii) The respondents 3 and 4 are the main accused in huge scam of corruption in relation to the implementation of SAUBHAGYA scheme by the MSPDCL involving an amount of Rs.200 crore, for which cognizance was taken by the Manipur Lokayukta in Complaint Case No.6 of 2022 against the respondents 3 and 4.

82. It is settled law that Article 14 and 16(1) of the Constitution of India provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be considered for promotion and that if a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be considered for promotion, which is his personal right.

83. As stated supra, the case of the writ petitioners is that they are the only officers working in the grade of Superintending Engineer in the Power Department and now discharging duties in MSPCL on deputation and have gathered considerable experience in the field for more than 30 years and, therefore, they are competent to hold and discharge the duty of any responsible key post. It is also the contention of the writ petitioners that they are in line to hold the highest post in the Power Department even on in-charge/temporary basis being the senior most officers as being done in other Government Departments instead of resorting to extension of service or re-engagement of retired employees.

84. Since the writ petitioners are working as Superintending Engineers in the Power/Electricity Department

and they have challenged the re-engagement of the respondents 3 and 4 as Chief Engineer and Managing Director and since the writ petitioners claim that they are eligible for appointment as in-charge Chief Engineer, this Court is of the prima facie view that the writ petitioners have locus standi to question the re-engagement of the respondents 3 and 4 and they have also legally entitled to maintain the writ petition.

85. At the cost of repetition, it is reiterated that vide interim order dated 25.1.2023, this Court considered the maintainability issue raised by the respondents and after considering the locus of the writ petitioners, this Court admitted the writ petition. Since the interim order dated 25.1.2023 is contested one and if really the respondents are aggrieved by the admission of the writ petition, they ought to have challenge the said order qua admission of the writ petition before the higher forum. However, the respondents have failed to do so.

86. As stated supra, FR 56(d) clearly lays down that no Government servant shall be granted extension in service beyond the age of retirement of 60 years except in few cases as enumerated therein. The writ petitioners pleaded that the respondents 3 and 4 are not entitled for extension or re-engagement. As stated supra, though the merits of the matter

cannot be gone into at this stage, prima facie, this Court finds that there is substance in the challenge made in the writ petition. Under these circumstances, this Court is of the view that the writ petition filed by the writ petitioners challenging the re-engagement of the respondents 3 and 4 vide impugned letter dated 5.1.2023 is maintainable and, resultantly, the writ petitioners have locus to file the writ petition to challenge the impugned order dated 5.1.2023. Point nos.1 and 2 are answered accordingly. Resultantly, MC (WP(C)) Nos.23, 24 and 50 of 2023 filed to dismiss the writ petition as not maintainable are liable to be dismissed.

87. Both the official and private respondents have filed miscellaneous cases seeking to vacate the interim order dated 25.1.2023 passed in the writ petition contending that the interim order amounts to grant of main relief in the writ petition and, therefore, the same is liable to be vacated. Further, the writ petitioners are not entitled to seek promotion to the post of Chief Engineer as they are working only as Superintending Engineer and they should wait for another four years for further promotion.

88. As stated supra, while considering the issue qua maintainability of the writ petition and the locus of the writ petitioners, this Court held that the writ petitioners have locus to

file the writ petition and the writ petition is very well maintainable at the hands of the writ petitioners.

89. By the interim order dated 25.1.2023 while holding that the writ petition is maintainable, this Court observed that though the writ petitioners are working as Superintending Engineer in the respondent department and the case of the petitioners is that they are eligible to appoint as in-charge Chief Engineer in the respondent department since the respondent department already passed several orders to that effect. In the interim order dated 25.1.2023, this Court also recorded that as per the order dated 31.5.2022 of the respondent department, one Ch. Ibopishak Singh who worked as Superintending Engineer (Elect) was given in-charge of Chief Engineer (Power) and as per another order dated 22.5.2003, one Ng. Tikendrajit Singh who worked as Superintending Engineer (Elect) was given to hold the in-charge of Chief Engineer (Power) and as per the order dated 11.10.2004 one H.Bihari Singh who worked as Superintending Engineer was given the charge of Chief Engineer (Power). The aforesaid orders have not been disputed by the respondents, particularly the respondents 1 and 2.

90. On a perusal of the orders dated 31.5.2002, 22.5.2003 and 11.10.2004, it is seen that the Superintending

Engineer working in the respondent department are given in-charge post of Chief Engineer. While granting interim order dated 25.1.2023, this Court also observed “*when the order dated 20.04.2000 is in existence till date, the present impugned order dated 5.1.2023 was issued in total violation of the above order*”. Finding that the writ petitioners have made out a prima facie case for grant of the interim order, this Court vide interim order dated 25.1.2023 stayed the impugned letter dated 5.1.2023 and its consequential and subsequent action till next date and the said order was subsequently extended from time to time and is in force.

91. No valid grounds have been made to vacate the interim order dated 25.1.2023 and the grounds raised by the respondents to vacate the interim order dated 25.1.2023 are baseless and unsustainable. In the earlier paragraphs, this Court held that the writ petitioners have locus to challenge the impugned letter and the writ petition is maintainable at the hands of the writ petitioners. Since the interim order dated 25.1.2023 staying the impugned letter dated 5.1.2023 is upon proving the prima facie case by the writ petitioners, this Court is of the view that the same is to be made absolute. Accordingly, the interim order dated 25.1.2023 passed in the writ petition is made

absolute. Resultantly, MC (WP(C)) Nos.46, 51 and 56 of 2023 seeking to vacate the interim order dated 25.1.2023 are liable to be dismissed. Point No.3 is answered accordingly.

92. In the result, MC (WP(C)) Nos.46, 23, 24, 50, 51 and 56 of 2023 are dismissed. No costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil