

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

**WP(C) No. 65 of 2023
(Video Conference)**

Dr. L. Ranjit Singh, aged about 64 years, S/o (L) L. Chandra Singh of Kontha Ahallup Awang Leikai, P.S., Heingang, Imphal East District.

...Petitioner

-Versus-

1. The Union of India, through the Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi- 110001.
2. The Deputy Secretary to the Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi- 110001.
3. The Regional Institute of Medical Sciences (RIMS), Imphal, through its Director (RIMS), P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.
4. The Deputy Director (Admn.), Regional Institute of Medical Sciences (RIMS), Imphal, P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.

.... Official Respondents

5. Dr. Hemam Priyosakhi Devi, aged about 63 years, W/o Sinam Rajendra Singh, resident of Chingmeirong East, P.O. Lamlong & P.S. Lamphel, District Imphal West, Manipur- 795001.

.... Private Respondent

MC(WP(C)) No. 121 of 2023*Ref:- WP(C) No. 65 of 2023*

Dr. L. Ranjit Singh, aged about 64 years, S/o (L) L. Chandra Singh of Kontha Ahallup Awang Leikai, P.S., Heingang, Imphal East District.

...Applicant

-Versus-

1. The Union of India, through the Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi- 110001.
2. The Deputy Secretary to the Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi- 110001.
3. The Regional Institute of Medical Sciences (RIMS), Imphal, through its Director (RIMS), P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.
4. The Deputy Director (Admn.), Regional Institute of Medical Sciences (RIMS), Imphal, P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.

.... Official Respondents

5. Dr. Hemam Priyosakhi Devi, aged about 63 years, W/o Sinam Rajendra Singh, resident of Chingmeirong East, P.O. Lamlong & P.S. Lamphel, District Imphal West, Manipur- 795001.

.... Private Respondent

MC(WP(C)) No. 160 of 2023*Ref:- WP(C) No. 65 of 2023*

Dr. L. Ranjit Singh, aged about 64 years, S/o (L) L. Chandra Singh of Kontha Ahallup Awang Leikai, P.S., Heingang, Imphal East District.

...Applicant

-Versus-

1. The Union of India, through the Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi- 110001.
2. The Deputy Secretary to the Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi- 110001.
3. The Regional Institute of Medical Sciences (RIMS), Imphal, through its Director (RIMS), P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.
4. The Deputy Director (Admn.), Regional Institute of Medical Sciences (RIMS), Imphal, P.O. Imphal, P.S. Lamphel, District Imphal West, Manipur- 795004.

.... Official Respondents

5. Dr. Hemam Priyosakhi Devi, aged about 63 years, W/o Sinam Rajendra Singh, resident of Chingmeirong East, P.O. Lamlong & P.S. Lamphel, District Imphal West, Manipur- 795001.

.... Private Respondent

HON'BLE THE ACTNG CHIEF JUSTICE MR. MV MURALIDARAN

For the respondents :: Mr. Kh. Samarjit, DSGI,
Mr. Y. Paikhomba, Adv.,
Dr. RK Deepak, Sr. Adv.
Mr. L. Rajesh, Adv.

Date of Hearing &
Judgment & Order :: **03.06.2023**

JUDGMENT & ORDER
(ORAL)

1. Heard Mr. HS Paonam, learned senior counsel assisted by Mr. A. Arunkumar, learned counsel for the petitioner on 26.05.2023 Heard also Mr. Kh. Samarjit, learned DSGI assisted by Mr. Y. Paikhomba, learned counsel for the respondents No. 1 to 4 and Dr. RK Deepak, learned senior counsel assisted by Mr. L. Rajesh, learned counsel for the fifth respondent today and the reply arguments advanced by Mr. HS Paonam, learned senior counsel for the petitioner for the arguments of the respondents No. 1 to 5.

2. This writ petition has been filed by the petitioner to quash the impugned order dated 16.1.2023 issued by the second respondent entrusting the additional charge of Director, Regional Institute of Medical Sciences (RIMS), Imphal to the fifth respondent and to direct the respondents to consider the case of the petitioner for conferring the

charge of Director, RIMS being the senior most Professor in RIMS pending appointment of a regular Director in RIMS.

3. Pending writ petition, the Under Secretary, Ministry of Health and Family Welfare, Government India had issued an order dated 10.4.2023 extending additional charge of the post of Director, RIMS without any financial benefits up to 11.10.2023 or till regular appointment of Director, RIMS or till further orders, whichever is earlier, the petitioner has filed MC (WP) No.121 of 2023 to quash the same coupled with a prayer to stay the said order.

4. Pending writ petition, the petitioner has filed a fresh Misc. Case in MC(WP(C)) No. 160 of 2023 seeking prayer to dispose of the above writ petition without taking into account of the order dated 01.05.2023 regarding regular appointment to the post of Director, RIMS and also seeking further prayer to direct the official respondents to allow the present applicant to function as In-charge Director, RIMS even for a few days or month for doing complete justice for the gross injustice meted out to him by quashing and setting aside the impugned order dated 16.01.2023 as prayed for by the applicant in the main writ petition and subsequent extension order for securing ends of justice.

5. The brief facts are that by an order dated 12.10.2022, the petitioner was entrusted with the charge of Director, RIMS and the said

order was challenged by the fifth respondent in W.P.(C) No.867 of 2022 claiming to be senior to the petitioner on the basis of an inter-se seniority list which has not been approved by the competent authority. The petitioner who is older in age is senior to the fifth respondent as both of them were appointed as Professor in RIMS on the same day under the Time Scale Promotion Rules without maintaining any merit. This Court, by the order dated 19.12.2022, quashed the order dated 12.10.2022 on the ground of non-consideration of senior persons at the time of conferring the charge to the petitioner with liberty to the official respondents for making fresh interim in-charge arrangement in respect of vacant post of Director, RIMS strictly in terms of Rule 12(1)(iii) of the Rules and Regulations of the RIMS. Thereafter, a seniority list in respect of 5 senior most Professors were prepared by constituting a Committee in pursuance of the direction of the Ministry of Health and Family Welfare and the same was forwarded to the Health Ministry by the officials of RIMS. However, ignoring the fresh seniority list, the fifth respondent was entrusted with the additional charge of Director, RIMS by cancelling the earlier order dated 12.10.2022, which is arbitrary exercise of power in mala fide without considering the case of other senior Professors. Hence, the writ petition.

6. Resisting the writ petition, the respondents 1 to 4 filed affidavit-in-opposition stating that Dr. A.Santa Singh has been

repatriated from the post of Director, RIMS with effect from 11.10.2022 AN and the authorities have issued an order dated 12.10.2022 entrusting the additional charge for the post of Director, RIMS to the petitioner for a period of 6 months or till regular appointment of Director, RIMS. Being aggrieved by the said order dated 12.10.2022, the fifth respondent filed W.P.(C) No.867 of 2022 on the ground that she is at Serial No.3 in the seniority list of Professors, RIMS and Serial No.1 being Dr. L.Jaichand Singh has already superannuated and Serial No.2 being Dr. Taruni Ngangbam is about to retire which is leaving the fifth respondent as the senior most Professor and her further claim that she is the senior most person in the next lower grade of Director.

7. It is stated that the inter-se seniority list of Professor of RIMS relied on by the fifth respondent was not yet approved by the Executive Council of RIMS and therefore, the plea that the fifth respondent is the senior most Professor is unfounded and without any basis. As against the order passed in W.P.(C) No.867 of 2022, the petitioner has filed W.A.No.131 of 2022 and the same was dismissed by a Division Bench of this Court on 19.1.2023. Pursuant to the letter dated 1.12.2022 of the Ministry of Health and Family Welfare, the then Director, RIMS constituted a four member Committee to examine the seniority list of the Professor and, on 9.1.2023, the then Director (the petitioner herein) has sent a letter to the Ministry for fixing of final inter-

se seniority list of 5 senior most Professors of RIMS based on the recommendation of the Committee. It is stated that the Appointment Committee of Cabinet vide DoPT dated 13.1.2023 has not approved the proposal of entrustment of additional charge of the post of Director, RIMS to the petitioner and based on the available tentative seniority list of Professors, ordered entrusting of additional charge of Director, RIMS to the fifth respondent as she is found to be the senior most which has neither been challenged by anybody nor have been interfered with by any Court of law vide the impugned order dated 16.1.2023.

8. It is stated that the additional charge given to the fifth respondent is for making up the interim vacancy caused thereon, particularly, after the Court's order dated 19.12.2022 passed in W.P.(C) No.867 of 2022 and the Contempt Case Nos.202 of 2022 and 2 of 2023. The tentative inter-se seniority list of all Professors of RIMS on roll as on 31.12.2022 has been notified vide notice dated 19.1.2023 for information and submission of objection, if any on or before 28.1.2023. As per Rule 12(1)(iii) bye-laws of RIMS and as directed by this Court in the order dated 19.12.2022 in W.P.(C) No.867 of 2022, the Ministry have decided to entrust the additional charge for the post of Director, RIMS to the fifth respondent as stop gap till a regular Director is appointed. Since the appointment of the Director, RIMS is going on full swing, the respondents 1 to 4 prayed for dismissal of the writ petition.

9. The fifth respondent filed affidavit-in-opposition stating that as per final inter-se seniority list of Associate Professors of the RIMS as on 31.1.2009 issued by the then Director, the fifth respondent has been placed at Serial No.7 and the petitioner has been placed at Serial No.11. Though both of them were promoted on the same day i.e. 1.2.2005, the fifth respondent was promoted on regular basis and the petitioner was promoted under the time scale promotion. It is stated that the fifth respondent was not aware of any seniority list wherein the petitioner is alleged to have been senior to the fifth respondent. In fact, in the final inter-se seniority list issued in the year 2015, the fifth respondent has been placed at Serial No.37 and the petitioner has been placed at Serial No.40. In the combined inter-se seniority list of Professors 2022, the fifth respondent has been placed at Serial No.37 and the petitioner has been placed at Serial No.40.

10. It is stated that there is no provision in the RIMS bye-laws and the Rules and Regulations of the RIMS which requires the Executive Council Society of the RIMS to prepare approval of seniority list of any faculty or non-teaching staff without which seniority lists can be enforced. Assuming but not admitting the necessity of finalizing a fresh seniority list of Professors, how can the Committee decide on the seniority of only five Professors without even publishing a tentative seniority list and inviting objections from interested parties. The manner

in which the said seniority lists was finalized and the hastiness shown by the then Director in submitting the seniority list to the Ministry raise questions of mala fide intention and collusion of the then Director in-charge with other vested interested persons. The ratio decidendi in *D.P.Das v. Union of India, (2011) 8 SCC 115* is not applicable to the case on hand.

11. Assailing the impugned order, Mr. HS Paonam, the learned senior counsel for the petitioner submitted that the impugned order dated 16.1.2023 pertaining to the entrustment of additional charge of the post of Director, RIMS, Imphal to the fifth respondent cannot be considered as an order issued in compliance with the order passed in W.P.(C) No.867 of 2022 dated 19.12.2022, as the condition provided for consideration have not been satisfied and, hence, it would be in the interest of justice that the order dated 16.1.2023 is liable to be quashed.

12. The learned senior counsel further submitted that when the impugned order dated 16.1.2023 was issued the seniority list prepared by the Committee in pursuance of the communication dated 1.12.2022 was already in the knowledge of the official respondents and therefore, the impugned order dated 16.1.2023 having been issued without considering many senior Professors above the fifth respondent.

13. The learned senior counsel would submit that the petitioner and the fifth respondent have been promoted to the post of Professor on the same day under the Time Scale Promotion Rules where the merit is not involved and the petitioner being older in age than the fifth respondent, she should be treated as junior in terms of the principles enunciated in the case of *D.P. Das v. Union of India, (2011) 8 SCC 115*. Similarly, it is an undeniable fact that the petitioner and the fifth respondent were promoted to the post of Associate Professor on the same day in RIMS. However, the petitioner was promoted to the post of Assistant Professor on 1.2.1997, whereas the fifth respondent was promoted to the post of Assistant Professor on 1.2.1999 i.e. two years later than the promotion of the petitioner. Thus, the petitioner shall be treated as senior to the fifth respondent on the basis of the age as well as on the basis of seniority in the grade of Assistant Professor.

14. The learned senior counsel submitted that there are more than four Professors above the fifth respondent, who were given promotion to the post of Assistant Professor earlier than the fifth respondent even though they were given promotion to the post of Associate Professor and Professor on the same day without maintaining merit. Such a pick and choose policy of the official respondents in conferring higher charge of Director, RIMS to the fifth

respondent has violated the fundamental rights of the petitioner as guaranteed under Article 14 and 16 of the Constitution of India.

15. Adding further, Mr. HS Paonam, the learned senior counsel for the petitioner submitted that pending writ petition, the second respondent issued an order dated 1.5.2023 conveying approval for appointment of Dr. Guruaribam Sunil Kumar Sharma, Director Professor (Forensic Medicine & Toxicology), Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi to the post of Director, RIMS, Imphal on deputation on foreign service basis for a period of 5 years with effect from the date of assumption of charge of the post or upto the age of superannuation in his parent cadre or until further orders, whichever is earlier. The said order stipulates Dr. Guruanbam Sunil Kumar Sharma to join the post of Director, RIMS, Imphal within one month of the issue of the said order.

16. Per contra, Mr. Kh. Samarjit, the learned DSGI appearing for the respondents 1 to 4 submitted that just to fill up the post as stop gap till such time a regular Director is appointed, the Ministry has decided to entrust the additional charge for the post of Director, RIMS to the fifth respondent on the larger interest and importance attached to such an important Medical Institute, which is not only catering to the needs of the State of Manipur, but also of the entire North-East Region and such good intention of the respondent authorities in not

letting/leaving the Institute in high and dry condition without a Director cannot be faulted with, more so, when the fifth respondent has already reported assumption of additional charge as Director vide joining letter dated 16.1.2023 and the report of the Deputy Director dated 16.1.2023.

17. Mr. Kh. Samarjit, the learned DSGI further submitted that pending writ petition, the Appointment Committee of Cabinet conveyed approval of competent authority for appointment of Dr. Guruaribam Sunil Kumar Sharma, Director Professor (Forensic Medicine & Toxicology) as Director, RIMS, Imphal on deputation on foreign service for a period of 5 years with effect from the date of assumption of charge of the post or upto the age of superannuation in his parent cadre, or until further orders, whichever is the earliest. Since the appointment Dr. Guruaribam Sunil Kumar Sharma is pursuant to the approval of the Appointment Committee of Cabinet, no fault can be attributed against the respondent authorities.

18. Mr. Kh. Samarjit, learned DSGI also submitted that the respondent authority already called for the objection from the professors for considering the final seniority list and the same is pending. He also pointed out that by letter dated 19.01.2023, the tentative seniority list is prepared based on the final seniority list of professors notified by notice No. B/2243/2005-RIMS (Pt.) dated 27.07.2015 and subsequent addition of promotees after 2015 and

against this notice dated 19.01.2023, the petitioner as well as the 5th respondent alongwith the other persons were submitted their objections and the same is pending for consideration.

19. Mr. Kh. Samarjit, learned DSGI further stated that the petitioner has prayed in the writ petition that he may be given In-Charge by quashing the In-charge order given to 5th respondent till the regular Director appointment to be made by the official respondent but in the MC(WP(C))No.160 of 2023 strengthening the prayer made in the writ petition has prayed that he may be given In-Charge even after the regular appointment given to Mr. Dr. Guruaribam Sunil Kumar Sharma. Therefore, the Misc. application cannot be taken into and as per the prayer made in the writ petition once the regular appointment of Director was appointed, the petitioner has no case at all.

20. Dr. RK Deepak, the learned senior counsel for the fifth respondent submitted that the seniority of Professors should be based on the seniority position by the incumbents while they were Associate Professors. Since the fifth respondent was senior to the petitioner while they were Associate Professors, the authorities of RIMS had rightly fixed the seniority position of Professors in the final inter-se seniority list of Professors 2015 as well as the combined final inter-se seniority list of Professors 2017. He would submit that the entrustment of additional charge of Director, RIMS to the fifth respondent was in compliance with

the order dated 19.12.2022 passed in W.P.(C) No.867 of 2022. In fact, the official respondents have exercised due diligence and have not violated any law in issuing the impugned orders. Further, the seniority list of five Professors prepared by the Committee is not a seniority list at all and it suffers from irregularity that the petitioner claims to have been associated with the tentative seniority list. That apart, the petitioner is trying to mislead this Court by reiterating wrong material facts again and again.

21. The learned senior counsel further submitted that vide order dated 1.2.2005, the fifth respondent was appointed through regular promotion to the substantive post of Associate Professor, whereas vide order dated 21.4.2005, the petitioner was appointed to the post of Associate Professor with effect from 1.2.2005 under the Time Scale Promotion Rules, 1991 and that the preference of those appointed through regular promotion over those appointed on Time Scale Promotion as regards fixing seniority is a well settled principle of law. Thus, a prayer has been made to dismiss the writ petition.

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

23. The grievance of the petitioner is that ignoring the fresh seniority list, the fifth respondent was entrusted with the additional

charge of Director, RIMS, Imphal by cancelling the earlier order dated 12.10.2022. Further grievance of the petitioner is that pending writ petition, the order dated 1.5.2023 came to be issued by the second respondent appointing Dr. Guruaribam Sunil Kumar Sharma as Director, RIMS without the leave of the Court. Therefore, both the orders are liable to be quashed.

24. As could be seen, prior to the issuance of the order dated 12.10.2022, one Dr. Ahanthem Santa Singh was appointed to the post of Director, RIMS, Imphal on deputation basis for a period of 5 years with effect from 9.11.2018 vide order dated 28.7.2021 and before completion of his tenure of 5 years, Dr. Ahanthem Santa Singh was repatriated prematurely from the post of Director to his parent cadre with effect from 12.10.2022 vide order dated 18.7.2022 issued by the Joint Secretary to the Government of India, Ministry of Health and Family Welfare. After repatriation of Dr. Ahanthem Santa Singh and pending process for appointment of Director, RIMS on regular basis, the authorities of RIMS issued the order dated 12.10.2022 entrusting the additional charge for the post of Director, RIMS to the petitioner for a period of 6 months or till regular appointment of Director, RIMS or till further orders whichever is earlier.

25. Challenging the order dated 12.10.2022, the fifth respondent herein has filed W.P.(C) No.867 of 2022 and, this Court, by

the order dated 19.12.2022, allowed the writ petition. In paragraph 14, this Court observed thus:

“[14] In so far as the contention advanced by the learned senior counsel appearing for respondent No.5 is concerned, it has to be pointed out that as the validity and correctness of the said tentative inter-se-seniority list of Professor, RIMS has not been questioned or challenged by anybody and as such issue is not before this Court in the present proceeding, this Court is of the considered view that it will not be just and proper to entertain and decide the points and contentions raised by the learned senior counsel appearing for respondent No.5 in the present proceedings. Accordingly, this Court declined to do so.

For the findings and reasons given hereinabove, the present writ petition is hereby allowed by quashing and setting aside the impugned order dated 12.10.2022. Quashing of the impugned order will not preclude the official respondents from making fresh interim in-charge arrangement in respect of the vacant post of Director, RIMS, Imphal strictly in terms of the provisions of Rule 12(1)(iii) of the Rules and Regulations of RIMS.

With the aforesaid directions, the present writ petition is disposed of without any order as to costs.”

26. Aggrieved by the order dated 19.12.2022, the petitioner has filed W.A.No.131 of 2022 and, by the judgment dated 19.1.2023, the Division Bench of this Court dismissed the writ appeal by observing as under:

“[7] Mr. HS Paonam, learned senior counsel, would contend that it would be necessary to examine whether the cases of other senior professors were considered when the decision was taken to entrust the additional charge to respondent No.1 herein. However, in our considered opinion, any grievance that the appellant may have with regard to the later order dated 16.1.2023 would constitute a fresh cause of action as the decision embodied therein was taken by the authorities independently, in compliance with the direction of the learned Judge that they should follow the relevant Rules scrupulously. As to whether there was any error on the part of the authorities in doing so would not fall for consideration in this appeal and would necessarily have to be subjected to judicial review by way of independent proceedings instituted in accordance with law.

Leaving it open to the appellant to do so, if so advised, W.A.No.131 of 2022 is dismissed.”

27. Pursuant to the leave granted by the Division Bench of this Court and aggrieved by the order dated 16.1.2023, the petitioner is before this Court. The observation of the learned Single Judge in

W.P.(C) No.867 of 2022 is quashing of the order dated 12.10.2022 will not preclude the official respondents from making fresh interim in-charge arrangement in respect of vacant post of Director, RIMS, Imphal strictly in terms of the provisions of Rule 12(1)(iii) of the Rules and Regulations of RIMS.

28. Rule 12(1)(iii) provides:

“12. Director of Institute

12(1)

(iii) Notwithstanding anything contained hereinabove, the President, RIMS may appoint a person to officiate as director either during temporary absence of the regular incumbent or where the office of Director falls vacant for any reason for a period not exceeding six months at a time within the concurrence of the Central Government. However, in respect of unanticipated vacancies (the regular appointments to which require ACC approval) the administrative ministry may, with the approval of the Minister in charge, order additional charge arrangements subject to maximum period of six months, with effect from the date of occurrence of the vacancy and also subject to the condition that the officer to whom the additional charge is assigned is the senior most officer in the next lower grade and is clear from vigilance angle.”

29. On examination of the provisions of Rule 12(1)(iii) supra, it is clear that in respect of unanticipated vacancies in the post of Director, RIMS, the administrative Ministry may, with the approval of the Minister in-charge, order additional charge arrangements subject to maximum period of 6 months, with effect from the date of occurrence of the vacancy and also subject to the condition that the officer to whom the additional charge is assigned is senior most officer in the next lower grade and is clear from the vigilance angle.

30. In the order impugned dated 16.1.2023, it has been stated as under:

“In compliance of Hon’ble High Court order dated 19.12.2022 in W.P. (C) No.867 of 2022 filed by Dr. H.Priyosakhi Devi vs UOI & others, this Ministry’s order No.U.12025/53/2022-NE dated 12.10.2022 entrusting additional charge to the post of Director, RIMS to Dr. L.Ranjit Singh, Prof. Obst & Gynae, RIMS, Imphal is hereby cancelled.

2. The additional charge to the post of Director, RIMS, Imphal is hereby entrusted to Dr. H.Priyosakhi Devi, Prof. ENT, RIMS, Imphal upto 11.04.2023 or till regular appointment of Director, RIMS, Imphal or till further orders, whichever is the earliest.

3. This issues with the approval of competent authority.”

31. The second respondent entrusted the additional charge to the post of Director, RIMS, Imphal to the fifth respondent based on the inter-se seniority list of Professors, RIMS, Imphal as on 25.7.2015. Whereas when we see the inter-se seniority list of Professors, RIMS, Imphal as on 9.1.2023, the petitioner's name found place at Serial No.1 and the fifth respondent's name found place at Serial No.5. The said seniority list states the date of birth of the petitioner as "01.09.1958" and the date of birth of the fifth respondent as "05.06.1960". As rightly argued by the learned counsel for the petitioner, ignoring the seniority list dated 9.1.2023, the second respondent issued the impugned order dated 16.1.2023 whereby entrusting the charge of the Director, RIMS to the fifth respondent.

32. As stated supra, in the earlier writ petition, the observation of this Court is to the effect that the authorities had not even considered the cases of other senior Professors while placing the petitioner herein as in-charge Director of RIMS, Imphal and the Court has also observed that it is left open to the authorities to make interim in-charge arrangements strictly as per Rule 12(1)(iii) of the Rules and Regulations of RIMS, Imphal. When such being the observation of this Court and the Rule 12(1)(iii) made it clear that an additional charge arrangement was subject to the condition that the officer to whom such additional

charge is assigned is the senior most officer in the next lower grade, ignoring the inter-se seniority which was prepared as on 9.1.2023, the second respondent has entrusted the additional charge to the fifth respondent as if she is the senior most. That apart, as pleaded by the petitioner, the tentative seniority list on the basis whereof, the fifth respondent was entrusted with the additional charge of Director, RIMS, Imphal was not approved by the Executive Council.

33. The argument of Mr. Kh. Samarjit, the learned DSGI that the Appointment Committee of Cabinet has not approved the proposal of entrustment of additional charge of the post of Director, RIMS to the petitioner and that while awaiting finalization of the seniority list of Professors, the process which has already been undertaken and going on in good pace, the authorities, based on the available tentative seniority list as on the date, have ordered entrusting of additional charge of Director, RIMS, Imphal to the fifth respondent is not well founded. Further, the statement of the official respondents that the fifth respondent is senior most in the said tentative list, which has neither been challenged by anybody nor have been interfered with by any Court of law is against the inter-se seniority list of Professors prepared as on 9.1.2023.

34. The argument of the learned senior counsel for the petitioner is that the Appointment Committee of Cabinet ought to have

approved the proposal for entrustment of additional charge of Director, RIMS being the senior most Professor in RIMS. Further, the tentative seniority list was not circulated and not approved by the Executive Council and therefore, it cannot be acted upon in any manner. The aforesaid arguments of the learned senior counsel for the petitioner cannot be brushed aside for the reason that, as stated supra, nothing has been produced by the respondents to show that the tentative seniority list on the basis whereof, the fifth respondent was entrusted additional charge Director, RIMS was approved by the Executive Council.

35. The other argument of the learned senior counsel for the petitioner that the objection of the petitioner claiming to be the senior most Professor on the ground that he is older than the fifth respondent and since they were promoted to the post of Associate Professor on the same date without merit and that the petitioner ought to be senior to the fifth respondent cannot also be brushed aside, as the petitioner claimed that he was promoted to the post of Assistant Professor earlier than the fifth respondent and, as such, the petitioner ought to be placed above the fifth respondent. In view of the flaw stated above in entrusting the additional charge of Director, RIMS to the fifth respondent, this Court is of the view that till the finalization of the seniority list, the petitioner, who is the senior most and being older and also promoted earlier to the post

of Assistant Professor than the fifth respondent ought to have been entrusted with the charge of Director, RIMS, Imphal. As stated supra, nothing has been produced to show on the basis whereof the fifth respondent can be treated as senior to the petitioner. On the other hand, *prima facie*, it has been proved by the petitioner that by taking shelter on an unapproved tentative seniority list which the respondents 1 to 4 themselves termed as unauthenticated, the impugned order dated 16.1.2023 was issued by a colourable exercise of power. In view of the findings arrived at by this Court that the impugned order dated 16.1.2023 has been issued in colourable exercise of power, the subsequent extension dated 10.4.2023 granted upto 11.10.2023 or till regular appointment of Director, RIMS, Imphal or till further orders whichever is earlier, is unsustainable in law.

36. Coming to the order dated 1.5.2023 issued by the second respondent, whereby appointing Dr. Guruaribam Sunil Kumar Sharma, Director Professor (Forensic Medicine & Toxicology), Vardhaman Mahavir Medical College and Safdarjung Hospital, New Delhi to the post of Director, RIMS, Imphal, on deputation on foreign service basis for the period of 5 years with effect from the date of assumption of charge of the post or upto the age of superannuation in his parent cadre or until further orders whichever is earlier, is without the leave of Court. When the petitioner has challenged the entrustment of additional

charge of Director, RIMS, Imphal in the writ petition and the respondent authorities and the fifth respondent are contesting the writ petition, it is the bounden duty of the authority concerned to obtain permission/leave of the Court to issue the order dated 1.5.2023. Nothing has been produced by the respondents 1 to 4 to show that the order dated 1.5.2023 has been issued with the permission of the Court.

37. It is not the case of the respondents 1 to 4 that the petitioner is not suitable to hold the additional charge to the post of Director, RIMS, Imphal. The respondents 1 to 4 contended that pursuant to the order dated 1.5.2023 Dr. Guruaribam Sunil Kumar Sharma has not joined the duty till date even though the respondent No. 2 extended the time for 2 (two) weeks i.e. upto 15.06.2023 by order dated 30.05.2023. Since the petitioner is senior most Professor and already held the additional charge to the post of Director, RIMS, Imphal and also he is likely to be superannuated in the month of September, 2023, this Court is of the view that in the interest of justice and equity, the respondents 1 to 4 are directed to consider to give in-charge post of Director, RIMS, Imphal to the petitioner till his retirement.

38. In the result,

(a) *The writ petition is allowed and the order dated 16.1.2023 and the subsequent extension dated*

10.4.2023 issued by the second respondent are set aside.

- (b) MC (WP(C)) No.121 of 2023 and MC(WP(C)) No. 160 of 2023 are disposed of.*
- (c) The respondents 1 to 4 are directed to give additional charge of Director, RIMS, Imphal to the petitioner till his retirement in the month of September, 2023.*
- (d) Since the order dated 1.5.2023 has been issued without leave of Court and Dr. Guruaribam Sunil Kumar Sharma has not joined duty, this Court directs the respondents 1 to 4 not to give effect of the order dated 1.5.2023 issued by the Deputy Secretary to the Government of India, Ministry of Health and Family Welfare (NE Section) and the same shall be kept in abeyance.*
- (e) There will be no order as to costs.*

ACTING CHIEF JUSTICE

FR/NFR
Sushil/John Kom