

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

WP(C) No. 167 of 2022

Dr. N. Surbala Devi, aged about 59 years, W/o Shri Irengbam Akendro Singh, resident of Haobam Marak Kangjam Leikai, P.O. Imphal, P.S. Singjamei and District Imphal West, Manipur - 795001.

... Petitioner

-Versus-

1. The State of Manipur represented by the Additional Chief Secretary (Health & Family Welfare), Govt. of Manipur, Manipur Secretariat, Babuapra, P.O. & P.S. Imphal, Imphal West District Manipur — 795001.
2. The Director of Health Services, Manipur, Directorate of Health Services, Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur-795004.
3. Smt. A. Ibeyaima Devi, aged about 64 years, W/o Shri Takhellambam Loken Singh, resident of Keibung Oinam Leikai, P.O. Manipur University, P.S. Singjamei and District Imphal West, Manipur - 795003.

... Respondents

WP(C) No. 173 of 2022

Smt. A. Ibeyaima, aged about 64 years, W/o Shri Takhellambam Loken Singh, resident of Keibung Oinam Leikai, P.O. Manipur University, P.S. Singjamei and District Imphal West, Manipur-795003.

..... Petitioner

-Versus-

1. The State of Manipur through the Principal Secretary/Commissioner/ Secretary (Health & Family Welfare), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal and District, Imphal West, Manipur 795001.
2. The Special Secretary, Health & Family Welfare, Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal and District, Imphal West, Manipur-795001.
3. The Director, Health & Family Welfare, Govt. of Manipur, Lamphelpat, Imphal West District, Manipur-795004.
4. Dr. N. Surbala Devi, aged about 58 years, W/o Shri Irengbam Akendro Singh, resident of Haobam Marak Kangjam Leikai, P.O. Imphal, P.S. Singjamei and District Imphal West, Manipur-795001.

.... Respondents.**WP(C) No. 528 of 2021**

Smt. A. Ibeyaima, aged about 64 years, W/o Shri Takhellambam Loken Singh, resident of Keibung Oinam Leikai, P.O. Manipur University, P.S. Singjamei and District Imphal West, Manipur-795003.

..... Petitioner**-Versus-**

1. The State of Manipur through the Principal Secretary/Commissioner/ Secretary (Health & Family Welfare), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal and District, Imphal West, Manipur 795001.

2. The Director, Health & Family Welfare, Govt. of Manipur, Lamphelpat, Imphal West District, Manipur-795004.
3. Dr. N. Surbala Devi, aged about 58 years, W/o Shri Irengbam Akendro Singh, resident of Haobam Marak Kangjam Leikai, P.O. Imphal, P.S. Singjamei and District Imphal West, Manipur-795001.
4. Smt. M. Shanti Devi, aged about 62 years, W/o Dr. W. Jatishwar Singh, resident of Sagolband Moirang Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.

.... Respondents.

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Petitioners	::	Mr. N. Zequeson, Advocate
For the Respondents	::	Mr. S. Nepolean, GA
		Mr. Kh. Tarunkumar, Sr. Adv.

Date of Hearing and
reserving Judgment & Order :: 12.01.2023.

Date of Judgment & Order :: **24.02.2023**

JUDGMENT AND ORDER
(CAV)

Challenging the impugned order/notice dated 19.4.2021 thereby publishing the seniority list of Associate Professors, College of Nursing, one Ibeyaima Devi has filed W.P.(C) No.528 of 2021.

2. Challenging the absorption/appointment of A. Ibeyaima Devi as Associate Professor in the College of Nursing, Medical Directorate, Manipur, vide impugned order 1.8.2014 along with the subsequent order dated 30.1.2015 issued by the Health Department, Government of Manipur, Dr.N.Surbala Devi has filed W.P.(C) No.167 of 2022.

3. Challenging the order dated 26.2.2022 thereby ordering Dr.N.Surbala Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur to hold the post of Principal, College of Nursing in addition to her normal duties with effect from 1.3.2022, Ibeyaima Devi has filed W.P.(C) No.173 of 2022.

4. Since all three writ petitions are interlinked with each other, they were heard together and disposed of by this common order.

5. For the sake of convenience, the parties are referred to as per their array in W.P.(C) No.167 of 2022. For clarity, Dr.N.Surbala Devi is referred as “petitioner” and Ibeyaima Devi is referred as “third respondent” hereinafter.

Facts:

6. The case of the petitioner is that she obtained her B.Sc. (Nursing) degree from the University of Calcutta in the year 1989 and was initially appointed as Nursing Sister in the Health Department, Manipur, vide order dated 12.7.1989. In the meantime, she obtained her M.Sc. (Nursing) from Tamil Nadu Dr. M.G.R. Medical University, Madras in the year 1996 and the Health Department, Government of Manipur, vide order dated 3.5.2003, utilized the services of the petitioner as Sister Tutor at GNM School of Nursing, Lamphel. On the other hand, the third respondent was initially appointed as Sister Tutor of the Female Health Worker Training School, Churachandpur on adhoc basis vide order dated 29.3.1984 and her service was regularized vide order dated 24.5.1986 and, thereafter, she was transferred to GNM School of Nursing, Lamphel vide order dated 4.8.1990.

7. In course of time, GNM School of Nursing was upgraded as College of Nursing in the year 2012 and upon upgradation, the Health Department issued an order dated 7.9.2012, by which, among others, the third respondent was utilized as Associate Professor in the College, while the petitioner was utilized as Lecturer in the College. On 19.4.2013, the Director of Health Services, submitted a proposal for post creation, framing of recruitment rules and appointment of qualified faculty members in the College of Nursing to the

Principal Secretary, Health and Family Welfare, Government of Manipur. In the meantime, the Secretary, Indian Nursing Council, vide letter dated 30.5.2013, informed the Principal of the College of Nursing the staffing pattern of INC for collegiate programme, thereby directed to follow the staffing pattern prescribed by the Council from time to time. The staffing pattern relaxed by INC till 2012 was extended upto April, 2014 i.e. 2013-2014 academic year.

8. By cancelling the utilization order dated 7.9.2012, the Directorate issued an order dated 16.7.2013 wherein the third respondent continued to be utilized as Associate Professor in the College and at the same time, after consideration of her educational qualification and other criteria, the petitioner was utilized as Associate Professor in the College with effect from 16.7.2013. Thereafter, vide order dated 1.8.2014, the substantive post of Nursing Sister held by the petitioner and the substantive post of Sister Tutor held by the third respondent were re-designated as Associate Professor, College of Nursing and they were absorbed thereto and in the order dated 1.8.2014, the name of the petitioner appeared at Serial No.3 and the name of the third respondent appeared at Serial No.5. Thereafter, the Health Department issued an order dated 30.1.2015 notifying the

concurrence of the Department of Personnel, Government of Manipur to the earlier order dated 1.8.2014.

9. According to the petitioner, the relevant staffing pattern of INC applicable at the time of issuance of the orders dated 1.8.2014 and 30.1.2015 was the staffing pattern communicated by the Secretary, INC vide letter dated 30.5.2013 and the relaxed staffing pattern of INC till 2012 was extended only upto April, 2014 and the same was no longer applicable when orders dated 1.8.2014 and 30.1.2015 were issued and also communicated the applicable staffing pattern for collegiate programme mentioning the qualifications and experience for the post of Associate Professor and Assistant Professor.

10. The third respondent obtained M.Sc. (N) degree in the year 2011 and when she was absorbed as Associate Professor, College of Nursing, vide order dated 1.8.2014, she had only three years' experience after M.Sc. (N) and, as such, she was not all eligible to be appointed as Associate Professor and she was just merely eligible for appointment to the post of Assistant Professor. Thus, the absorption/appointment of the third respondent to the post of Associate Professor in the College of Nursing, Medical Directorate, Manipur is illegal and void ab-

initio, as she did not possess the eligibility criteria prescribed by the INC.

11. The case of the third respondent is that she was initially appointed as Sister Tutor at the School of GNM under the Department of Health, Government of Manipur on 24.5.1986. In the final inter-se seniority list of Sister Tutors, Public Health Nurses and Public Health Nurse Instructor notified on 30.11.2011, her name appeared at Serial No.4 in respect of the post of Sister Tutor showing her date of appointment as 24.5.1986 and the date of birth as 1.9.1957. On 7.9.2012, the petitioner was utilized as Associate Professor in the College of Nursing which was upgraded from the School of GNM. On 1.8.2014, the service of the petitioner was absorbed as Associate Professor at the College of Nursing by re-designating her post as Associate Professor. On 3.9.2020, while publishing the tentative seniority list of the Associate Professors of the College of Nursing, her name appeared at Serial No.4. Being unsatisfied, she submitted an objection to the said tentative seniority list. However, without considering the objection properly, the tentative seniority list was finalized on 19.4.2021. Challenging the same, the third respondent filed W.P.(C) No.528 of 2021. While the said writ petition was pending, on 26.2.2022, the petitioner was given the charge of Principal of the above said

College by the Special Secretary, Health & Family Welfare, Government of Manipur. Assailing the order dated 26.2.2022, the third respondent has filed W.P.(C) No.173 of 2022.

12. Resisting the writ petitions, the respondent State and the Health and Family Welfare Department filed affidavit-in-opposition stating that as per the letter dated 30.5.2013 of the INC, the qualification and experience for the post of Associate Professor, College of Nursing, is M.Sc. (N) with 8 years' experience after M.Sc. (N) including 5 years teaching experience. The third respondent at the time of her initial date of utilization as Faculty Member in the College of Nursing on 7.9.2012, she had only 1 year experience after passing M.Sc. (N), as she passed M.Sc. (N) only in 2011. Therefore, the third respondent did not possess the requisite experience for the post of Associate Professor, College of Nursing prescribed by the INC at the time of her utilization as Faculty Member.

13. It is stated that even at the time of re-designating and absorption of the third respondent vide order dated 1.8.2014, she has not completed 8 years' experience after M.Sc. (N) as required under the guidelines/instructions of the INC. The matter relating to fixation of final seniority list of Associate Professor, College of Nursing was referred to the Department of Personnel,

Government of Manipur and the Department of Personnel recommended the petitioner for appointment to the post of Associate Professor and the inter-se-seniority of Kh. Ratna Devi, Nandarani Devi, the third respondent and Nalinibala Devi be fixed as per the Medical Directorate Memorandum dated 3.10.2021. Accordingly, the final seniority list of Associate Professors, College of Engineering, was notified vide notice dated 19.4.2021 and, as such, there is no illegality or irregularity in the seniority list dated 19.4.2021. Though the petitioner was initially appointed to a non-teaching post of Nursing Sister, she was utilized as Sister Tutor, a teaching post and, accordingly, her teaching experience after M.Sc. (N) has been counted for the purpose of appointment as Associate Professor and fixation of seniority. The petitioner being senior most Associate Professor serving in the College of Nursing, she has been allowed to hold the charge of Principal, College of Nursing, in addition to her normal duties with effect from 1.3.2022 vide order dated 26.2.2022 and, as such, there is no illegality in the order dated 26.2.2022.

Arguments:

14. Assailing the impugned orders dated 1.8.2014 and 30.1.2015, learned counsel for the petitioner submitted that the petitioner has been continuously utilized as a teaching faculty as

Sister Tutor in the GNM School of Nursing since 3.5.2003. Though the petitioner was initially utilized as Lecturer in the College of Nursing, vide order dated 7.9.2012, the same has been cancelled and superseded by the order dated 16.7.2013, wherein she has been utilized as Associate Professor after due consideration of her educational qualification, work experience and teaching experience. He would submit that there is no difference between the pay scale of the petitioner and the third respondent prior to their absorption as Associate Professor in the College vide order dated 1.8.2014.

15. The learned counsel for the petitioner further submitted that the staffing pattern relaxed by the INC till 2012 was extended upto April, 2014 and at the time of issuance of the order dated 1.8.2014, the staffing pattern communicated by the INC was in force and, therefore, the third respondent was not at all eligible for absorption as Associate Professor. Contrary to the allegations of the third respondent, the order dated 1.8.2014 was illegally issued in favour of the third respondent. Further, the absorption of the third respondent as Associate Professor, College of Nursing, vide order dated 1.8.2014 read with order dated 30.1.2015, is patently illegal and void ab-initio. As the third respondent was at most eligible for the post of Assistant Professor, a post of Assistant Professor must have been created

in the College of Nursing or her substantive post must have been upgraded as Assistant Professor instead of Associate Professor.

16. The learned counsel for the petitioner then submitted that there is no illegality in the impugned final seniority list published vide notification dated 19.4.2021. The impugned final seniority list clearly mentions that the petitioner was the only person who fulfilled the eligibility criteria prescribed by INC. The third respondent has nowhere refuted the fact that she did not fulfill the eligibility criteria laid down in the staffing pattern communicated by the INC vide letter dated 30.5.2013. Further, the third respondent was not eligible to be utilized as Associate Professor in the College of Nursing for the reason that she did not fulfill the eligibility criteria prescribed by the INC. In fact, the third respondent did not fulfill the eligibility criteria when the orders dated 1.8.2014 and 30.1.2015 were issued. On the other hand, the petitioner was eligible for utilization as Lecturer when the order dated 7.9.2012 was issued and as Associate Professor when orders dated 16.7.2013, 1.8.2014 and 30.01.2015 were issued and the INC has nothing to do with appointments in Nursing Colleges/Institutions. Therefore, there is no illegality in placing the petitioner at Serial No.1 in the impugned final seniority list, which was done after due examination of the relevant/applicable INC staffing pattern.

17. Coming to the challenge made to the order dated 1.8.2014 and 30.1.2015 as regard the absorption of the third respondent as Associate Professor, the learned counsel for the petitioner argued that the upgradation of the third respondent who was otherwise not eligible for the post of Associate Professor is illegal and not permissible in the service jurisprudence. At most, the third respondent is eligible for the post of Assistant Professor and, in fact, in the proposal submitted by the Director of Health Services vide letter dated 19.4.2013, the third respondent was proposed for absorption as Assistant Professor in consideration of her qualification and experience. However, when the impugned order dated 1.8.2014 was issued, she was illegally absorbed as Associate Professor. Therefore, the said order is liable to be set aside in respect of the third respondent.

18. Per contra, the learned counsel for the third respondent submitted that the acts of the official respondents in issuing the impugned notice dated 19.4.2021 fixing the seniority of the third respondent, petitioner as well as other faculty members of the College of Nursing by placing the name of the petitioner and one Shanti Devi above the name of the third respondent by giving reasons according to their choice, are illegal, unlawful, arbitrary and discriminatory to the extent that

they have deprived the third respondent of her fundamental rights guaranteed by the Constitution of India. The said acts are also in total violation of the law laid down by the Hon'ble Supreme Court. Therefore, the official respondents are required to be directed to rectify the seniority list by placing the name of the third respondent above the name of the petitioner and Shanti Devi to meet the ends of justice.

19. Assailing the impugned order dated 26.2.2022, the learned counsel for the third respondent submitted that pending W.P.(C) No.528 of 2021 filed by the third respondent challenging the seniority list dated 19.4.2021, the Special Secretary (Health and Family Welfare), Government of Manipur, issued an order dated 26.2.2022, whereby the petitioner, who is not eligible to hold the post of Principal, was allowed to hold the charge of the said post in addition to her normal duties with effect from 1.3.2022. The impugned in-charge appointment order dated 26.2.2022 is illegal for the reason that the said order is in total contradiction to the affidavit-in-opposition of the State Government filed in W.P.(C) No.637 of 2020, wherein the State Government has submitted clearly that the utilization period of the private respondent therein as Lecturer in the College with effect from 3.5.2003 cannot be treated as teaching experience.

20. According to the learned counsel for the third respondent, as per settled law, the Government is not permitted to take a stand which is contradictory to its own earlier conduct. He would submit that in view of the stand taken by the Government in the earlier affidavit-in-opposition, the petitioner is not at all eligible to hold the post of Principal of the College. However, by arbitrary exercise of power, the official respondents have allowed her to hold the charge of Principal of the said College without any authority of law. The action of the official respondents also violates the public trust doctrine and that the period of utilization of the service of the petitioner as Lecturer in the College shall not be counted as a teaching experience. Hence, the impugned order dated 26.2.2022 is not at all sustainable in the eyes of law and the same is liable to be quashed.

21. In reply, Mr. S. Nepolean, the learned Government Advocate appearing for the official respondents submitted that firstly the affidavit-in-opposition filed by the State respondent in W.P.(C) No.637 of 2020 was prior to the decision/recommendation of the Department of Personnel in the matter relating to fixation of final seniority list of Associate Professor, College of Nursing. Therefore, the final seniority list of Associate Professor was finalized and published only on

19.4.2021 i.e. after the decision/recommendation of the Department of Personnel. Thus, the affidavit-in-opposition filed by the State respondent in W.P.(C) No.637 of 2020 was through bona fide mistake, but not intentional. He would submit that the final seniority list of Associate Professors was notified vide impugned letter dated 19.4.2021 and, as such, there is no illegality in it.

22. The learned Government Advocate further submitted that the College of Nursing was established with effect from 7.9.2012 by upgrading the erstwhile GNM School and necessary posts for the College of Nursing were not created while establishing the College. Therefore, for the purpose of establishment of the College, the services of nursing personnel possessing M.Sc. (N) qualification with teaching experience were utilized as faculty members as per the Government Order dated 7.9.2012. Since there were no separate posts creation for the Nursing College, the posts substantively held by the incumbent concerned and other vacant posts in Health Department were re-designated as Associate Professor and the incumbents were absorbed on regular basis against the re-designated posts of Associate Professor as per the approval of the State Cabinet accorded on 7.7.2014 and with the concurrence of the Finance

Department and Department of Personnel vide orders dated 1.8.2014 and 30.1.2015 respectively.

23. Adding further, the learned Government Advocate submitted that though the third respondent, at the time of utilization and absorption as Associate Professor, did not have experience for the required number of years after passing M.Sc. (N) as prescribed by the INC, her service was absorbed as Associate Professor as per the approval of the State Cabinet accorded on 7.7.2014, whereas the petitioner who had completed her M.Sc. (N) in the year 1995 and had 9 years' experience after passing M.Sc. (N) as on the date of her initial utilization as faculty member in the College of Nursing and she fulfilled the eligibility criteria prescribed by the INC for the post of Associate Professor. Thus, the petitioner being the senior most Associate Professor serving in the College of Nursing has been allowed to hold the charge of Principal, College of Nursing, in addition to her normal duties with effect from 1.3.2022 vide impugned order dated 26.2.2022. Therefore, there is no irregularity and illegality in the said order. Thus, a prayer has been made to dismiss the writ petitions.

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

Discussion:

25. There were three challenges made in these writ petitions. The petitioner challenged the absorption of the third respondent as Associate Professor alleging that the absorption is illegal. The third respondent has challenged the seniority position of the petitioner stating that she is the senior most and she be placed above the petitioner. The third respondent also challenged the order of the respondent authorities thereby allowing the petitioner to hold the post of Principal, College of Nursing, in addition to her normal duties as Associate Professor.

26. The grievance of the petitioner is that she was initially appointed as Nursing Sister in the Health Department and thereafter, the Health Department issued an order dated 3.5.2003 whereby utilizing the service of the petitioner as Sister Tutor at GNM School of Nursing. On the other hand, the third respondent, who was initially appointed as Sister Tutor of the Female Health Worker Training School, Churachandpur, was transferred and posted at GNM School of Nursing and by the order dated 7.9.2012. She was initially utilized as Associate Professor and, subsequently, in supersession of the order dated 7.9.2012, the authorities have issued another order dated 16.7.2013 by which she continued to be utilized as Associate

Professor of the College of Nursing. At the same time, after due consideration, the petitioner also came to be utilized as Associate Professor with effect from 16.7.2013. Thereafter, vide order dated 1.8.2014, the substantive post of Sister Tutor held by the third respondent was upgraded as Associate Professor and she was permanently absorbed thereto. Similarly, the substantive post of Nursing Sister held by the petitioner was re-designated as Associate Professor and she was absorbed thereto. In the order dated 1.8.2014, the name of the petitioner appears at Serial No.3, while the third respondent's name appears at Serial No.5. Thereafter, the authorities have issued another order dated 30.1.2015 notifying the concurrence of the Department of Personnel to the earlier order dated 1.8.2014. According to the petitioner, the third respondent obtained her M.Sc. (N) degree only in the year 2011. When she was absorbed as Associate Professor, she had only three years' experience after M.Sc. (N) and, as such, the third respondent is not eligible to be appointed as Associate Professor.

27. On the other hand, it is the plea of the third respondent that the petitioner has challenged the legality of the orders dated 1.8.2014 and 30.1.2015 after the delay of 8 years and, therefore, she is not entitled to maintain W.P.(C) No.167 of 2022. Since the post of Sister Tutor is a teaching post, the

teaching experience of the third respondent has to be counted from the date of her initial appointment i.e. 24.5.1986. The third respondent possessed the requisite criteria prescribed by the INC guidelines, 2012 and, this Court has already declared one Nalinibala Devi eligible for absorption to the post of Vice Principal and Principal of the College of Nursing, Medical Directorate, Imphal and the said Nalinibala Devi passed her M.Sc. (N) degree in December, 2012 and the third respondent passed her M.Sc. (N) in the year 2011. In view of the order dated 12.5.2017 passed in W.P.(C) No.512 of 2015, the third respondent is quite eligible for absorption to the post of Associate Professor and even for higher post. There was no illegality in the absorption of the third respondent to the post of Associate Professor.

28. It is the say of the respondent State that the third respondent at the time of her initial date of utilization as Faculty Member in the College of Nursing, she had only one year experience after passing M.Sc. (N) as she passed M.Sc. (N) in the year 2011. Therefore, the third respondent did not possess the requisite experience for the post of Associate Professor prescribed by the INC at the time of her utilization as Faculty Member. Even at the time of re-designation and absorption of the third respondent vide order dated 1.8.2014, she has not completed 8 years' experience after M.Sc. (N) as required under

the guidelines issued by the INC. On the other hand, the petitioner, though was initially appointed to a non-teaching post of Nursing Sister, her service has been utilized as Sister Tutor, a teaching post since 2003 and, as such, the petitioner has the teaching experience after M.Sc. (N).

29. It is an admitted fact that while establishing the College of Nursing, the required posts were not created. Therefore, for the purpose of establishment of the College of Nursing, the services of nursing personnel possessing M.Sc. (N) qualification with teaching experience were utilized as Faculty Members. The qualification and experience for the post of Associate Professor, College of Nursing is M.Sc. (N) with 8 years' experience after M.Sc. (N), including 5 years teaching experience.

30. The contention of the third respondent that the petitioner does not have the teaching experience of 5 years at the time of utilization as Faculty Member in the College of Nursing as she was holding the post of Nursing Sister a non-teaching post has no basis. Similarly, the argument of the learned counsel for the third respondent that the stand taken by the respondent Government in favour of the petitioner by counting her utilization period as Sister Tutor is highly

condemnable and not sustainable in the eyes of law has also no basis. Further, the decision of the Hon'ble Supreme Court in the case of *Union Territory of Chandigarh v. Rajesh Kumar Basandhi*, (2003) 11 SCC 549 relied upon by the learned counsel for the third respondent is not applicable to this case in the given facts and circumstances. As rightly argued by learned counsel for the petitioner, the third respondent, who had obtained her M.Sc. (N) in the year 2011, would not be eligible for utilization as teaching Faculty Member in the College of Nursing, as she had only one year experience after passing M.Sc. (N).

31. As could be seen from the records, the petitioner was holding the post of Nursing Sister, a non-teaching post, however, she has been ordered to work as Sister Tutor, a teaching post at GNM School of Nursing, Lamphel vide order dated 3.5.2003. This fact has not been disputed by the third respondent nor any contra document has been produced by the third respondent in support her claim. Thus, it is clear from the materials produced by both sides that the petitioner was working in a teaching post since 2003 and the teaching experience obtained by her has to be counted, which the respondent authorities have rightly done in this case and after fixing seniority when the final seniority list of Associate Professor, College of

Nursing was forwarded to the Department of Personnel, it has recommended the petitioner at Serial No.1.

32. At this juncture, the learned counsel for the respondent Shanti Devi submitted that the rules, norms for fixation of seniority amongst similar cadres of the employees depends upon the nature of services and Department concerned in which the Government has fixed from time to time. The private respondents have no capacity to frame rules and regulations, but every employee has to follow for smooth functioning of the duty. This Court finds some force in the submission made by the learned counsel for the respondent Shanti Devi.

33. When the third respondent contended that due care has not been taken while finalizing the seniority, it is her duty to prove the same. On the other hand, when this Court peruses the order/notice dated 19.4.2021, it has been clearly mentioned the reasoning for placing the petitioner at Serial No.1. In other words, it has to be held that while issuing the order/notice dated 19.4.2021 sufficient reasoning was given by the concerned authority. This Court finds any fault in the order/notice dated 19.4.2021. The competent authority has considered the ground reality and has taken due note of the fact that the petitioner has been rendering service as a teaching faculty i.e. Sister Tutor with

effect from 3.5.2003 in GNM School of Nursing at the time of her utilization as well as absorption as Associate Professor.

34. It is apposite to mention that the qualification and experience for the post of Associate Professor, College of Nursing is 8 years' experience after M.Sc. (N) including 5 years teaching experience, which the third respondent does not fulfill. Therefore, there is no illegality in placing the petitioner at Serial No.1 in the impugned final seniority list dated 19.4.2021 and there is also no violation of any fundamental rights of the third respondent or any law laid down by the Hon'ble Supreme Court. The writ petition at the hands of the third respondent challenging the impugned final seniority is misconceived one. Therefore, the said writ petition is liable to be dismissed.

35. As far as the challenge made by the petitioner to the absorption of the third respondent as Associate Professor, College of Nursing, is concerned, the learned Government Advocate contended that it is not open to the respondent State to commit any illegality to appoint an ineligible and unqualified candidate as Associate Professor in the College of Nursing in blatant violation of the guidelines issued by INC. It is also the say of the learned Government Advocate that only after following

the guidelines issued by the INC, the third respondent and the petitioner have been absorbed in the post of Associate Professor.

36. The learned Government Advocate further submitted that the writ petition, being W.P.(C) No.512 of 2015, was primarily related to the post of Professor-cum-Vice Principal of the College of Nursing, wherein this Court, vide order dated 12.5.2017, quashed the appointment of one Nalini Devi as Professor-cum-Vice Principal of the College and directed the respondent State to consider the petitioner therein, namely Nalinibala Devi for appointment by absorption as Vice-Principal or any equivalent post in the cadre of the Principal. As against the order dated 12.5.2017, W.A.Nos.37 and 38 of 2017 have been preferred by the State and Nalini Devi, who is respondent in the writ petition. The position now is both Nalini Devi as well as Nalinibala Devi have retired on attaining the age of superannuation.

37. The petitioner by filing W.P.(C) No.167 of 2022 contended that the absorption/appointment of the third respondent to the post of Associate Professor in the College of Nursing is illegal and void ab-initio, as she did not possess the eligibility criteria prescribed by the INC. Further contention of the petitioner is that the upgradation of the third respondent along

with the post which she is not eligible is not permissible in service jurisprudence. Hence, the absorption of the third respondent as Associate Professor vide order dated 1.8.2014 read with the order dated 30.1.2015 is patently illegal and that at most, the third respondent is eligible for the post of Assistant Professor only.

38. On a perusal of the order dated 12.5.2017 passed in W.P.(C) No.512 of 2015, it is seen that though the third respondent and the petitioner herein were made as respondents in the aforesaid writ petition, the issue of eligibility of the third respondent for appointment by absorption as Associate Professor was not considered by this Court as the same did not arise in the said writ petition. Moreover, in the said writ petition, it was clearly recorded that the absorption of the teaching faculties to the College of Nursing was done in terms of INC guidelines, 2012 and the petitioner did not challenge the said stand of the Government which was recorded in the said order and she has already waived her rights and now after a delay of about 8 years, the petitioner cannot take a u-turn and contend that the third respondent is not eligible to be absorbed to the post of Associate Professor of the Nursing College. The reason for such a long delay of 8 years has not been properly explained by the petitioner.

39. The argument of learned counsel for the petitioner that even though the orders impugned in W.P.(C) No.167 of 2022 have been passed almost 7-8 years ago and for the reason that the grievance of the petitioner against them and the cause of action for filing the said writ petition as well as her locus standi arose only in the month of January, 2022 cannot be accepted. The said excuse pleaded by the petitioner is only for the purpose of filing the writ petition and the same is otherwise legally not sustainable.

40. At this juncture, it is to be pointed out that the law is well settled that a thing which cannot be done directly shall not be done indirectly.

41. Admittedly, the petitioner has not challenged the order dated 12.7.2015 passed in W.P.(C) No.512 of 2015 though she was made as party. Therefore, it is to be presumed that the petitioner is not aggrieved with the order/findings recorded against her in the said writ petition. After sleeping over her rights for about 8 years, the petitioner cannot challenge the legality of the order dated 1.8.2014 and 30.1.2015 by taking several grounds, which she did not raise in W.P.(C) No.512 of 2015. Therefore, on the sole ground itself, the writ petition, being W.P.(C) No.167 of 2022, filed by the petitioner challenging the

impugned orders dated 1.8.2014 and 30.1.2015 is liable to be dismissed. On merits also, the petitioner has no case. In view of the discussions held supra, W.P.(C) No.167 of 2022 filed by the petitioner challenging the order dated 1.8.2014 and 30.1.2015 is not maintainable and the respondent State has rightly considered the position of the third respondent for absorption and even for the petitioner and issued the aforesaid orders. Therefore, this Court cannot find any fault in the orders dated 1.8.2014 and 30.1.2015.

42. The third respondent, by filing W.P.(C) No.173 of 2022, has challenged the appointment of the petitioner to hold the post of Principal of the College of Nursing. She claimed that she is the only eligible person to hold such post as she is the senior most Associate Professor.

43. According to the third respondent, the Government cannot permit the petitioner to hold the charge of Principal, as it will amount to taking a contradictory stand than taken in W.P.(C) No.637 of 2020, which is not permissible in law.

44. In reply, the learned Government Advocate submitted that the stand taken through the affidavit-in-opposition filed in W.P.(C) No.637 of 2020 on 26.2.2021 was prior to the decision of the Department of Personnel in the matter relating to

fixation of final seniority list of Associate Professor, College of Nursing and the final seniority list of the Associate Professor was finalized and published only on 19.4.2021 i.e. after the decision of the Department of Personnel and, therefore, the said affidavit-in-opposition filed by the respondent State in W.P.(C) No.637 of 2020 was through a bona fide mistake, but not intentional.

45. The learned counsel for the petitioner submitted that there is no illegality in the order dated 26.2.2022, as the same has been issued on the basis of the final seniority list published vide notice dated 19.4.2021, wherein the authority concerned has recorded reasoning for placing the third respondent as well as the petitioner at appropriate places.

46. Considering the overall submissions of the learned counsel for the third respondent, petitioner as well as the learned Government Advocate, it is clear that the third respondent has neither challenged the orders dated 3.5.2003, 16.7.2003 and 7.9.2012 for utilization of service of the petitioner as teaching faculty nor the absorption orders dated 1.8.2014 and 30.1.2015. Therefore, in the absence of any challenge to the legality of the absorption/utilization orders of the petitioner, the third respondent cannot raise any issue at this stage qua counting of the utilization period of the petitioner as teaching experience in

W.P.(C) No.173 of 2022. Moreover, this Court, in the earlier paragraphs of this order, held that there is no illegality in the final seniority dated 19.4.2021 which is impugned in W.P.(C) No.528 of 2021 filed by the third respondent.

47. The impugned order dated 26.2.2022 reads thus:

“No.MED-1601/20/2021-HS-HEALTH:

Whereas Smt. N.Nalinibala Devi, Associate Professor who is holding charge of Principal, College of Nursing, Medical Directorate, Manipur is retiring on attaining the age of superannuation w.e.f. 28th February, 2022 (AN).

2. Now, therefore, the Governor of Manipur is pleased to order that Dr.N.Surbala Devi, Associate Professor, College of Nursing, Medical Directorate, Manipur shall hold the charge of Principal, College of Nursing, Medical Directorate, Manipur in addition to her normal duties w.e.f. 1st March, 2022.

3. This is subject to outcome of the ongoing Writ Petitions being W.P.(C) No.394 of 2021 and W.P.(C) No.528 of 2021 before the Hon’ble High Court of Manipur and any other connected Court cases.”

48. It is reiterated that though the third respondent at the time of utilization and absorption as Associate Professor did not have experience of the required number of years after

passing M.Sc. (N) as prescribed by the INC, her service was absorbed as Associate Professor as approved by the State Cabinet dated 7.7.2014. Whereas the petitioner, who had completed her M.Sc. (N) in the year 1995, had 9 years of experience after passing M.Sc. (N) as on the date of her initial utilization as Faculty Member in the College of Nursing and she had fulfilled the eligibility criteria prescribed by the INC for the post of Associate Professor. Further, as discussed above, though the petitioner was initially appointed to a non-teaching post of Nursing Sister, she was utilized as Sister Tutor, a teaching post and accordingly, her teaching experience after M.Sc. (N) has been counted for the purpose of appointment as Associate Professor and fixation of the seniority. Since the petitioner being a senior most Associate Professor serving in the College of Nursing, she has been allowed to hold the charge of Principal, College of Nursing, Medical Directorate, Manipur, in addition to her normal duties with effect from 1.3.2022 vide the impugned order dated 26.2.2022. This Court finds no irregularity or illegality in the impugned order dated 26.2.2022 and on the other hand, the grounds raised by the third respondent to challenge the said order are untenable. Resultantly, W.P.(C) No.173 of 2022 filed by the third respondent fails. On overall analysis, the acts done by the respondent authorities cannot be

faulted and they have acted only in accordance with law. Therefore, the challenges made by the third respondent and the petitioner in these writ proceedings are not sustainable in the eyes of law.

49. For all the reasons stated above the writ petitions filed by the third respondent and the petitioner fail. Accordingly, W.P.(C) No.528 of 2021, 173 of 2022 and 167 of 2022 are dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR
Sushil