

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

1. **WP(C) No. 634 of 2023**

With

2. **WP(C) No. 613 of 2023**

With

3. **MC(WP(C)) No. 236 of 2023**

[Ref: WP(C) No. 613 of 2023]

Mr. Phurailatpam Vivekananda Sharma, aged about 54 years, S/o
(L) Ph. Tomba Sharma of Keishamthong Top Leirak, P.O. & P.S.
Imphal, Imphal West District Manipur.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Chief Secretary (DP), Government of Manipur, Old Secretariat Building, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001;
2. The Special Secretary (DP/Cabinet), Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Manipur;
3. The Deputy Secretary (DP), Govt. of Manipur, Old Secretariat Building, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001;
4. The Addl. Chief Secretary/Commissioner/Secretary (Forest, Environment & CC), Government of Manipur, Old Secretariat Building, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001;
5. Mr. Tourangbam Brajakumar Singh, aged about 56 years, S/o (Late) Tourangbam Brajamani Singh of Uripok Tourangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur.

.....**Respondent/s**

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner :: Mr. HS. Paonam, Sr. Adv. assisted by
Mr. NG. Jotindra Luwang, Adv.

For the respondents :: Mr. M. Rarry, Special State Counsel; Mr. M. Hemchandra, Sr. Adv. assisted by Mr. L. Sevananda, Adv. for R-5

Date of hearing :: 12,13,14,15,18,19&20 of September, 2023

Date of Judgment and Order :: **15.12.2023**

JUDGMENT & ORDER (CAV)

[1] The present writ petitions have been filed by the petitioner under Article 226 of the Constitution of India for quashing the impugned orders dated 28.09.2023 [WP(C) No. 613 of 2023] and 29.08.2023 [WP(C) No. 634 of 2023] issued by the Deputy Secretary (DP), Government of Manipur as arbitrary, malafide and unconstitutional. The second impugned order dated 29.08.2023 is allegedly issued in supersession of the first impugned order dated 28.08.2023, whereby the respondent No. 5 is allowed to look after the charge of Director (Env't. & CC), Manipur as an interim measure till the appointment of a regular Director. The petitioner has challenged both these orders on the ground of violation of the guidelines issued by the Department of Personnel & Administrative Reform (Personnel Division), Government of Manipur in Office Memorandum dated

03.10.2020 with respect to in-charge appointment of seniormost in the cadre, where no eligible person as per the relevant Recruitment Rules is available. Since the writ petitions involve the question of interpretation and applicability of the Office Memorandum dated 03.10.2020 based on the same factual matrix, these are heard together and being disposed of by this common judgment.

[2] Another writ petition being WP(C) No. 289 of 2023 filed by the respondent No.5 herein challenging the final seniority list in the cadre of Deputy Directors, Department of Environment and Climate Change, Govt. of Manipur is also pending. Vide order dated 15.09.2023 in WP(C) No. 634 of 2023, this Court recorded that as the short question involved in the petition with respect to OM dated 03.10.2020 and the matter having been heard extensively, these writ petitions [WP(C) No. 613 of 2023 and WP(C) No. 634 of 2023] would be disposed of without filing of counter and rejoinder affidavit at motion stage and all the parties agreed to this. Relevant part of order dated 15.09.2023 in WP(C) No. 634 of 2023 is reproduced below:

“Present Mr. HS Paonam, learned senior counsel assisted by Mr. Ng. Jotindra, learned counsel for the petitioner, Mr. M. Rarry, learned Special counsel for the State, assisted by Ms. T. Keishing, learned counsel for respondent Nos. 1,2,3 and 4 and Mr. M. Hemchandra, learned senior counsel assisted by Mr. Sevananda Sharma, learned counsel for respondent No.5.

Due to paucity of time, this matter cannot be taken up today. List on 18.09.2023 along with connected matters, ie, WP(C) No. 613 of 2023 and WP(C) No. 289 of 2023 as part heard motion, first item.

It is made clear that WP(C) No. 613 of 2023 and WP(C) No. 634 of 2023 involve short question as to whether the impugned orders dated

28.08.2023 and 29.08.2023 were issued in violation of the OM dated 03.10.2023.

Since this matter has been heard extensively for three consecutive days, this Court is inclined to dispose WP(C) No. 613 of 2023 and WP(C) No. 634 of 2023 at motion stage without filing of counter and rejoinder affidavit.

With regard to WP(C) No.289 of 2023, parties are permitted to exchange their pleadings.”

In the circumstances, the matters are heard on merit on the basis of available materials, as pure question of law of the applicability of OM dated 03.10.2023 is involved and there is no much variance in the factual aspect.

[3] The brief facts of the case are that the petitioner was initially appointed as Data Analyst in the Directorate of Environment & Climate Change, Manipur (erstwhile known as Environment and Ecological Wing) on ad-hoc basis for a period of 3 (three) years vide the order dated 23.06.1999 issued by the Under Secretary (Forests and Environment), Government of Manipur and his service was extended from time to time till the regularization of his service without any break. Vide order dated 02.03.2007 issued by the Addl. Chief Secretary (Forests & Environment), Government of Manipur, the petitioner's service was regularized.

[4] The Principal Secretary (F & E), Government of Manipur issued an order dated 24.12.2011 for strengthening and upgradation of the then existed Environment and Ecology Wing of the Forest and Environment Department, Manipur into a full-fledged Directorate of Environment, Manipur by redesignating the existing one post of Senior Scientific Officer,

two posts of Scientific Officer as Director and Joint Directors respectively. In continuation of the order dated 24.12.2011, another order dated 24.12.2011 was also issued by the Principal Secretary (F & E), Government of Manipur for redesignating Dr. M. Homeshwar Singh (Senior Scientific Officer, Environment and Ecology Wing and Dr. Y. Nabachandra Singh (Scientific Officer as Director of Environment and Joint Director of Environment) respectively to the newly created full fledged Directorate of Environment, Manipur.

[5] Vide order dated 09.03.2016 issued by the Joint Secretary (For. & Env.), Government of Manipur for re-designation with upgradation the post of Data Analyst (post held by the present petitioner), Junior Scientific Officer and Research Officer (post held by respondent No. 5 namely Mr. Tourangbam Brajakumar Singh) to the post of Deputy Director and there are 4 (four) posts of Deputy Director in the Department without any specific classification. As the post of Data Analyst was re-designated to the post of Deputy Director in the Department, it is equivalent to the newly re-designated post of Deputy Director.

[6] Vide order dated 09.03.2016, the petitioner was posted against the newly re-designated post of Deputy Director by an order dated 08.08.2016 issued by the Joint Secretary (Forests & Environment), Government of Manipur in which the petitioner's name is at serial No. 1. A notification dated 21.04.2020 issued by the Under Secretary (DP), Government of Manipur with regard to the Recruitment Rules to the post of Joint Director (re-designated from Scientific Officer) in the Directorate of

Environment & Climate Change, Manipur and the post of Joint Director is by way of promotion from the post of Deputy Director of Environment with 5 (five) years of regular service in the grade. By an order dated 30.03.2021 issued by the Under Secretary (F & E), Government of Manipur, the petitioner along with 2 (two) others (Deputy Directors) were given in-charge of the work of Joint Director in the public interest as the post of Joint Director has been lying vacant in the Department.

[7] The Director of the Department submitted a letter dated 10.08.2021 to the Addl. Chief Secretary (Forest, Environment & Climate Change), Government of Manipur requested for appointment/promotion of the 3 (three) Deputy Directors including the present petitioner to the 3 (three) vacant post of Joint Director on regular basis. Thereafter, seeking administrative approval in order to issue final seniority of the 3 (three) Deputy Directors by a letter dated 06.09.2021 and the petitioner's name appeared at serial No. 1 in the final seniority list of Deputy Directors in the Department. Vide letter dated 07.02.2022, the Deputy Secretary (Forest, Environment & Climate Change), Government of Manipur seeking information as to whether there is any claim on tentative seniority list issued vide the Government letter of even number dated 17.08.2017 and the same has been disposed of. Meanwhile, there was an objection from One Dr. T. Brajakumar (respondent No. 5) in respect of the tentative seniority list which was settled after due consideration.

[8] In such circumstances, the petitioner submitted a representation dated 04.03.2022 to the Addl. Chief Secretary (Forest &

Environment), Government of Manipur requesting to consider the case of the petitioner for promotion to the post of Joint Director in the Department. Thereafter, the said representation was forwarded by the Director of Environment & Climate Change, Manipur to the Addl. Chief Secretary (Forest, Environment & Climate Change), Manipur. As the representation submitted by the petitioner was not conveyed and having no alternative, the petitioner approached this Court praying for directing the respondents to consider the case of the petitioner for promotion to the next higher post of Deputy Director to Joint Director as per RR as he has completed 5 (five) years of regular service.

[9] Being aggrieved by the order dated 25.07.2022 issued by the Deputy Secretary, (For., Evt. & CC), Government of Manipur, the petitioner challenged the same by filing a writ petition being WP(C) No. 849 of 2022 wherein an interim order dated 19.10.2022 was passed directing the respondents to carry out decision for promotion to the post of Joint Director in the Directorate and to finalise the seniority list on or before 15.11.2022. As per the direction of the Hon'ble High Court, the Deputy Secretary (For., Evt. & CC), Government of Manipur issued an order dated 11.01.2023 publishing a final seniority list of three Deputy Directors in the Directorate in which the petitioner is at serial No. 1. Even though the final seniority list was published, no promotion to the post of Joint Director was made despite the Hon'ble Courts' order. Thereafter, a notification dated 07.06.2023 was issued by the Deputy Secretary (For., Evt. & CC), Government of Manipur for holding the DPC Meeting. On recommendation

of the DPC Meeting held on 09.06.2023 and vide order dated 15.06.2023 issued by the Deputy Secretary (For., Env't. & CC), Government of Manipur, the petitioner along with two incumbents were appointed on promotion to the post of Joint Director in the Department of Environment and Climate Change, Manipur.

[10] However, the respondent No. 5 (who is at serial No. 3) in the seniority list of Deputy Director challenged the said seniority list by filing a writ petition being WP(C) No. 262 of 2023 and the same was dismissed as withdrawn. Thereafter, another writ petition being WP(C) No. 289 of 2023 was filed and in the order dated 31.03.2023 wherein it is clearly mentioned that if the respondent No. 5 [petitioner herein] and respondent No. 6 [Deputy Director at sl. No.2, and she is not a party in WP(C) Nos. 613 & 634 of 2023] are given promotion on the basis of the seniority list, such promotion shall be outcome of the said writ petition. However, there was no stay order of the final seniority list of Deputy Directors. As per the notification dated 01.08.2017 issued by the Deputy Secretary (For., Env't. & CC), Government of Manipur publishing the Rules regulating the method of recruitment to the post of Director (re-designated from Senior Scientific Officer) in the Directorate of Environment, Manipur, the feeder post of Director is Joint Director with 5 years of regular service.

[11] An Office Memorandum dated 03.10.2020 was issued by the Special Secretary (DP), Govt. of Manipur regulating the appointment on in-charge basis to various post, when none is found eligible from the feeder

cadre for appointment/promotion on regular basis. The operative portion is reproduced herein below:

“4. Thus, with a view to bring uniformly, clarity and enforceable norms in making such in-charge appointment, the following norms are hereby issued for compliance by all concerned:

- i. Appointment on in-charged basis shall be made against a post only when there is no official eligible as per RR to fulfil the said post either by direct recruitment or promotion through duly constituted DPC.*
- ii. In absence of any official eligible as per RR to fill up a particular post, the senior most person amongst cadre/officials belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charged basis, at no extra remuneration and in addition to the substantial post held by the appointee in lower post. Needless to say, the appointee shall draw pay against the lower post substantially held by him.*
- iii. Where no arrangement can be made as in para (ii) above, an in-charge appointment shall be made to a vacant post from a person holding a similar post (at same rank and/or designation), at no extra remuneration.*
- iv. An official appointed on in-charge basis against any post shall have the same financial power as a person appointed on substantial basis against the said post would enjoy.*

5. These instructions shall be applicable while making appointments on in-charge basis to all posts under the State Government existing in all Government departments, agencies, societies, bodies, offices, companies, PSUs, autonomous bodies, etc.”

[12] Another Office Memorandum dated 09.03.2021 was issued by the Special Secretary (DP), Govt. of Manipur in continuation of the Office Memorandum dated 03.10.2020 adding (v) to Para 4 and the same reads as below:

v. *“Integrity certificate based on Vigilance Clearance, non-pendency of Departmental Enquiry, non-pendency of FIR cases which has been taken cognizance by Magistrate etc. is mandatory for in-charge appointments, especially the Head of Departments”.*

[13] In the light of the Office Memorandums dated 03.10.2020 and 09.03.2021, the petitioner submitted a representation dated 19.06.2023 to the concerned authorities requesting to consider his case for promotion to the post of Director in the Directorate of Environment & Climate Change, Manipur on in-charge basis being the senior-most incumbent and the said representation was not considered by the concerned authorities. The petitioner filed a writ petition being WP(C) No. 491 of 2023 and the same was disposed of on 05.07.2023 directing the respondents especially respondent No. 1 to consider the representation dated 19.06.2023 submitted by the petitioner on its own merit and in light of the Guideline of the Office Memorandum dated 03.10.2020 and also directing to dispose of the same by issuing a speaking order within a period of three months.

[14] Vide order dated 28.08.2023 issued by the Deputy Secretary (DP), Govt. of Manipur, the respondent No. 5 was appointed as Director on in-charge basis in violation of the Office Memorandum dated 03.10.2020.

By way of writ petition being WP(C) No. 613 of 2023, the petitioner has challenged the order dated 28.08.2023 passed by the official respondents making the respondent No.5 herein as Director on in-charge basis as violative of the OM dated 03.10.2020 as the latter is junior to the petitioner who is the seniormost officer in the cadre of Deputy Director as well as Joint Director. Vide order dated 31.08.2023 in WP(C) No. 613 of 2023, this Court stayed the impugned order dated 28.08.2023 till next date as violative of the OM dated 03.10.2020. It may be noted that respondent No.5 appeared on 31.08.2023 by filing a caveat petition. However, the official respondent issued another order dated 29.08.2023 in supersession of the earlier order dated 28.08.2023 making the respondent No.5 to look after the charge of Director (Env't. & CC) as an interim arrangement till a regular Director is appointed. It is submitted that the official respondent has malafidely issued the impugned order dated 29.08.2023 by modifying the order dated 28.08.2023, which is under challenge and the said impugned order is allegedly a back dated order because the same was neither placed by the Government Advocate nor by the counsel for respondent No. 5 (who appeared on caveat) before the Hon'ble Court while hearing the matter on 31.08.2023 for passing the interim order dated 31.08.2023.

[15] Heard Mr. HS Paonam, learned senior counsel assisted by Mr. Ng. Jotindra, learned counsel for the petitioner; Mr. M. Rarry, learned State Special Counsel assisted by Ms. T. Keishing, learned counsel for State Respondent Nos. 1-4 and Mr. M. Hemchandra, learned senior

counsel assisted by Mr. L. Sevananda, learned counsel for private respondent No.5. Mr. A. Romenkumar, learned senior counsel assisted by Mr. RK Bana, learned counsel appeared on behalf of the respondent No.6 in WP(C) no. 289 of 2023. This Court has considered the material on record and relevant case laws cited at bar and written submissions filed by the parties.

[16] *The short question of law involved in the present petitions is the interpretation and applicability of the Office Memorandum dated 03.10.2020 and subsequent Office Memorandum dated 09.03.2021 issued by the Government of Manipur laying down guidelines for appointment of the seniormost on in-charge basis, when none in the feeder cadre is eligible for appointment by direct recruitment or by promotion as per Recruitment Rule.*

[17] Mr. HS Paonam, learned senior counsel for the petitioner has pointed out that on the recommendation of the Manipur Public Service Commission (in short, MPSC), vide order dated 02.03.2007 issued by the Govt. of Manipur, the petitioner was appointed on regular basis as Data Analyst in the Forest & Environment Department, Manipur and vide another order dated 04.03.2009, his period of ad-hoc service wef 23.06.1999 to 01.03.2007 was linked up for the purpose of pensionary benefit and not for other purposes including seniority. It is submitted that the petitioner was regularly appointed on 02.03.2007. Learned senior counsel draws the attention of this Court to an order dated 05.11.2011 appointing the respondent No.5 as Research Officer on regular basis along with two other

persons as Junior Scientific Officers in the Environment & Ecology Wing, Department of Forest & Environment, Manipur. Vide order dated 24.12.2011, the Environment & Ecology Wing was upgraded to full fledged Directorate of Environment, Manipur and by an order dated 04.11.2019, it was re-named as "Directorate of Environment & Climate Change, Manipur". Thereafter, by an order dated 09.03.2016, there was a mass re-designation with up-gradation along with incumbents in the new Directorate of Environment & Climate Change. In this exercise, the post of Data Analyst (held by the petitioner), 2 post of Junior Scientific Officer and one post of Research Officer (held by the private respondent No.5) were re-designated and upgraded as four posts of Deputy Directors. The pay scale of the existing posts of Rs.9300-34800 + GP 4300 was upgraded to Rs.9300-34800 + GP 5400. Consequently, an order dated 08.08.2016 was issued appointing four employees as Deputy Directors on redesignation and the name of the petitioner was placed at serial No.1 and that of the private respondent at No.4. In the Final Seniority List of 3 Deputy Directors (one died during service) dated 11.01.2023 issued by the Deputy Secretary (For., Env't.&CC), Govt. of Manipur, the petitioner was placed at serial No.1 with initial date of regular appointment as 02.03.2007 as Data Analyst and the respondent No.5 at serial No.3 with initial date of appointment as 05.01.2011 as Research Officer. The final seniority of the Deputy Directors has been challenged by the respondent No.5 herein by way of writ petition being WP(C) No. 289 of 2023 and vide order dated 30.03.2023, this Court passed an order that any appointment shall be subject to the outcome of

the writ petition, but the final seniority was not stayed. Learned senior counsel further submits that on the basis of a duly constituted DPC proceedings 09.06.2023 in consultation with MPSC, the three incumbent Deputy Directors were recommended for promotion to the three posts of Joint Directors on consideration of all relevant materials including the ACRs. Accepting the recommendations of the DPC, the Deputy Secretary (For., Env't.&CC), Govt. of Manipur promoted the three Deputy Directors to the higher posts of Joint Directors. In the promotion order, the name of the petitioner is placed at serial No.1 while the respondent No.5 is shown at serial No.3.

[18] Mr. HS Paonam, learned senior counsel for the petitioner has stated that by an order dated 28.08.2023 (first impugned order) issued by the Deputy Secretary (DP), Government of Manipur, the respondent No.5 was appointed to hold charge of Director (Environment & Climate Change) on in charge basis till appointment of a regular Director. Subsequently, by another order dated 29.08.2023 (first impugned order) and in supersession of earlier order dated 28.08.2023, the respondent No.5 was allowed to look after the charge of Director (Environment & Climate Change) on in charge basis till appointment of a regular Director as an interim measure subject to the outcome of WP(C) No. 289 of 2023.

[19] Learned senior counsel has pointed out that the first impugned order dated 28.08.2023 was challenged by the petitioner in WP(C) No. 613 of 2013 and vide order dated 31.08.2023, this Court stayed the order dated 28.08.2023 till next date. It is submitted that the second

impugned order dated 29.08.2023 was issued in order to frustrate the interim order dated 31.08.2023 of suspending the first order dated 28.08.2023 granted by this Court in WP(C) No.613 of 2023. It is vehemently submitted that the second order dated 29.08.2023 was back-dated for the simple reason that both the State and private respondent No.5 who appeared on caveat in WP(C) No. 613 of 2013 did not produce the order dated 29.08.2023 during the course of hearing on 31.08.2023 and the second impugned order dated 29.08.2023 was produced for the first time on 11.09.2023 by the State respondent during the course of hearing of WP(C) No. 613 of 2013. The petitioner also challenged the subsequent order dated 29.08.2023 in WP(C) No. 634 of 2013 on similar grounds as taken in WP(C) No. 613 of 2013 and additional ground of back-dated order.

[20] Mr. HS Paonam, learned senior counsel for the petitioner draws the attention of this Court to the order dated 09.03.2016 for re-designation and up-gradation, the order dated 08.08.2016 of posting on actual re-designation of the petitioner and others in the cadre of Deputy Directors and the final seniority list of Deputy Directors dated 11.01.2023. In the seniority list, the initial date of regular appointment is shown as 02.03.2007 from the date of appointment as Data Analyst, while for other incumbents including the respondent No.5, same is shown as 05.01.2011. It is submitted that there is no illegality in placing the petitioner as the senior most Deputy Director. Learned senior counsel has pointed out that the final seniority list is not stayed by this Court in the writ petition being

WP(C) No. 289 of 2023 challenged by the respondent No.5 herein and only promotion done on the basis of this seniority list will be subject to its outcome. It is stated that the final seniority list of Deputy Directors can be considered for any including promotion, in-charge arrangement, etc.

[21] Mr. HS Paonam, learned senior counsel for the petitioner further refers to the proceedings of the DPC dated 09.06.2023 for promotion to the post of the Joint Directors where the petitioner was recommended at serial No.1 and the respondent No.5 at serial No.3 on the consideration of the seniority, ACRs and other aspects and promotion order dated 15.06.2023. He submits that in view of Para 2.2 of the Office Memorandum dated 03.07.1986 issued by Department of Personnel & Training, Govt. of India determining the seniority position of the promotees in the order in which they are recommended by the DPC. It is clarified that until a final seniority list which is different from the order recommended by the DPC is issued by the competent authority, it will be safe to consider the seniority list for the time being. Reference is made to the decision of Hon'ble Supreme Court in the case of **B. Thirumal v. Ananda Sivakumar: (2014) 16 SCC 593 @ Para 18, 19 & 23** to the point that if no selection procedure is involved in upgradation, it is merely giving a financial benefit and cannot be considered as a promotion to higher post. It is stated that in the case in hand, the order dated 09.03.2016 for re-designation and upgradation, the order dated 08.08.2016 of posting on actual re-designation of the petitioner and others in the cadre of Deputy Directors, are nothing but simple re-designation of the earlier posts as Deputy Directors and are

not promotion orders. Hence, the petitioner will retain his seniority wef 02.03.2007 while the respondent No.5 and other wef 05.01.2011. It is emphasised that the petitioner is seniormost both in the cadre of Deputy Director as well as Joint Director.

[22] Mr. HS Paonam, learned senior counsel for the petitioner explains the object behind the Office Memorandum dated 03.10.2020 where the Govt. of Manipur laying down the guidelines for making in-charge appointment to a post where none in the feeder post is eligible for. He refers to Para 4 of the OM and as per Para 4(ii), the seniormost in the feeder cadre is to be made in-charge appointment till regular appointment. It is further mentioned that the petitioner is seniormost in the cadre of Deputy Director as well as Joint Director. The impugned orders dated 28.09.2023 and 29.08.2023 issued by the Deputy Secretary (DP), Govt. of Manipur allowing the respondent No.5 to look after the charge of Director till appointment of a regular Director is void ab-initio as the same has been issued in violation of OM dated 03.10.2020. It is clarified that as there is no vigilance case or FIR against the petitioner, the OM dated 09.03.2021 will not be applicable to the petitioner. Mr. HS Paonam, learned senior counsel for the petitioner vehemently submits that the OMS have statutory value as issued in exercise of power under Article 309 of the Constitution. It is pointed out that Para 4(iii) of OM dated 03.10.2020 will not be attracted at the first instance and the same is to be resorted only when none is available under Para 4(ii). With respect to the passing of the interim order, learned senior counsel refers to the decisions reported as **(2004) 4 SCC**

697, (2007) 11 SCC 447 and (2009) 10 SCC 388. It is prayed that the impugned orders dated 28.08.2023 and 29.08.2023 be set aside and the petitioner be made in-charge Director as stipulated under OM dated 03.10.2020.

[23] Mr. M. Rarry, learned Special Counsel for State submits that the OM dated 03.10.2020 is not issued under Article 309 of the Constitution and hence it has no statutory value for strict compliance. Even if it is presumed to be applicable, Para 4(iii) of the OM has been invoked for making in-charge arrangement by a person holding same rank. It is clarified that the respondent No.5 is also holding the same rank as the petitioner, being promoted on the same day. In absence of final seniority list in the feeder cadre of Joint Director, there is no wrong in preferring the respondent No.5 considering his contribution and expertise in the filed of environment and climate change. Learned counsel submits that in absence of final seniority list, Para 4(ii) of the OM will not be applicable. Mr. Rarry, learned counsel refers to a judgment dated 31.08.2023 passed by a learned Single Judge of this Court in WP(C) No. 527 of 2023 where Mr. HS Paonam successfully argued that a junior can be made in-charge arrangement on the basis of the same OM. Mr. HS Paonam however, clarifies that in the case cited herein, the senior was having vigilance case and was not considered in view of Para 4(v) of OM dated 09.03.2021.

[24] Mr. M. Rarry, learned Special Counsel for State further has pointed out that there is no material to show that the second impugned order dated 29.09.2023 was issued backdated in order to frustrate the

interim order dated 31.03.2023 passed in WP(C) No. 613 of 2023 staying the first impugned order dated 28.08.2023. During the course of hearing of these cases, learned counsel for State submits that one post of OSD equivalent to Director has been framed and offered to the petitioner. On instruction, Mr. HS Paonam, learned senior counsel for the petitioner rejected the offer. Mr. M. Rarry, learned Special Counsel for State relies on the decisions of **(2009) 12 SCC 175 @ Pr 18** [wrong provision or non-mentioning of provision does not make the order invalid], **(1988) 4 SCC 275 @ Pr 12,13&14** [whole text should be read from beginning to end while interpreting any document], **(2007) 10 SCC 548 @ Pr 25**, **(2003) 5 SCC 604 @ Pr. 49, & (2003) 11 SCC 614 @ Pr 44** [seniority is not a fundamental right], **(2008) 8 SCC 348 @ Pr. 16&17, & (2007) 3 SCC 470 @ Pr. 5,7,12,18,19** [limited effect of interim order, if not extended], and **(1988) 7 SCC 469 @ Pr. 8** [case must establish on pleadings]. It is prayed that there is no illegality in the impugned orders and the writ petitions may be dismissed being devoid of any merit.

[25] Mr. M. Hemchandra, learned senior counsel assisted by Mr. L. Sevananda, learned counsel for the respondent No.5 has pointed out that the impugned orders are not as per the Office Memorandum dated 03.10.2020. It is clarified that for applicability of the OM, there should be an appointment of a person on in-charge basis at the first place. In the present case, the first order 28.08.2023 has been superseded by the second order dated 29.08.2023 to rectify the mistake of considering the cadre Deputy Director while all the incumbents are holding posts of Joint Directors. It is

pointed out that in the second order dated 29.08.2023, the crucial word 'appointment' is not used and the said order has been issued in the administrative exigency. He further continues that even if the OM is presumed to be applicable for the sake of argument, but not admitting, the OM will not be applicable as there is no final seniority list in the cadre of Joint Directors. It is pointed out that the allegation of backdated order is not proved by any material. Learned senior counsel for the respondent No. 5 refers to **Black Law Dictionary (4th Edition)** with respect to the definition of appointment and **Principle of Statutory Interpretation (14th Edition) by Justice GP Singh** regarding giving plain and literal meaning to the contents of the impugned order dated 29.08.2023. To emphasise his other points, learned senior counsel refers to the case laws reported as **1991 (2) SCC 773, (2007) 4 SCC 737** and **(2003) 4 SCC 289**. It is further submitted that judicial review does not lie against the administrative order issued in the exigency of the service and in public interest, unless patent illegality on face of it is apparent. Accordingly, it is prayed that the writ petitions be rejected.

[26] This Court considers the rival submissions made at bar, the materials on record and settled proposition of law. Since the pure question of law of applicability of OMs dated 03.10.2020 and 09.03.2021 are considered on the admitted facts without calling for counter and rejoinder affidavits, this Court will not go into other allegations of back-dated order and final seniority list. The available seniority lists will be considered for the

limited issue with respect to the OMs. It is clarified that the final seniority list of Deputy Directors is not stayed in WP(C) No. 289 of 2023.

[27] On a bare perusal of the OM dated 03.10.2020, nothing is mentioned that it was issued in exercise of power under Article 309 of the Constitution. Hence, there is force in the submission of Mr. M. Rarry that the same does not have statutory value. However, it will be necessary to examine the object behind issuing the same. In Para 4 of the OM, it is stated that the same is issued “... *with a view to bring uniformly, clarity and enforceable norms in making such in-charge appointments...*” and Para 4(ii) stipulates consideration of the seniormost in the feeder cadre and 4(iii) empowers State to appoint any other person when seniormost is not available. This Court is of the view that Para 4(ii) has to be considered first if no eligible person as per Recruitment Rule is available and when such senior person is not available, resort to Para 4(iii) may be made. In view of Para 4(v) of OM dated 09.03.2021, the seniormost incumbent may be ignored, if there is vigilance or FIR case is pending against him, specially with respect to in-charge appointment of Head of Departments. The OMs will be binding in case of appointment of in-charge arrangement is to be made. It is the considered opinion of this Court that OM dated 03.10.2020 and 09.03.2021 are binding on the State Government while making in-charge appointment when such aspect are not found in the relevant rules. The submission of Mr. M. Hemchandra that the impugned order dated 29.08.2023 is not issued as per OM dated 03.10.2020 does not have any

merit. The order dated 29.08.2023 is an in-charge appointment in disguise to frustrate the OMs and this submission is rejected.

[28] Applying the facts of the present case to the views observed in Para 27 above, the writ petitions can be disposed of on the basis of materials available on record.

[29] It is admitted that as on the petitioner is seniormost in the cadre of the Deputy Director, unless the final seniority list dated 11.01.2023 is set aside finally in WP(C) No. 289 of 2023. Moreover, as per recommendation of DPC held on 09.06.2023 for promotion to Joint Director and actual promotion order and posting dated 15.06.2023, the petitioner can be considered seniormost tentatively until finalisation of seniority of Joint Directors, in view of Para 2.2 of OM dated 03.07.1986 issued by DoPT, Govt. Of India.

[30] In the case of **Government of AP v. AV Venugopala Rao: (1995) 1 SCC 159**, Hon'ble Supreme Court upheld as rational and reasonable that pending finalisation of seniority list, seniormost eligible employee in the provisional list could be made in-charge of the promotional post to avoid administrative hardship or heart burning among rival claimants. Reading the ration of this case along with the OMs dated 03.10.2020 and 09.03.2021, pending finalisation of the final seniority list of Joint Directors, the petitioner is at least provisionally seniormost in the cadre of the Joint Directors. This Court is of the view that the petitioner

should be considered as Director on in-charge basis till appointment of a regular Director as no vigilance case or FIR is pending against him.

[31] In the circumstances, the writ petitions are allowed and impugned orders dated 28.08.2023 and 29.08.2023 are set aside. The State respondents are directed to appoint the petitioner as in-charge Director (Env't. & CC), Manipur within a period of 15 days from the receipt of this judgment. No cost. Misc. applications, if any, are disposed of accordingly.

[32] This Court appreciates the valuable assistance given by the learned counsel appearing for the parties.

[33] List WP(C) No. 289 of 2023 on 15.01.2024 for further proceedings.

[34] Send a copy of this judgment to the respondent No.1 for information and doing needful.

JUDGE

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by KH. JOSHUA
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