

**IN THE HIGH COURT OF MANIPUR**

**AT IMPHAL**

**WP(C) No. 948 of 2021**

1. ***Ningombam Dineshor Singh***, aged about 44 yeas, S/o (L) Nongthombam Ibobi Singh of Kongba Makha Nandeibam Leikai, Singjamei, Imphal East District, Manipur-795008;
2. Kshetrimayum Surjit Singh, aged about 43 years, S/o (I) Ksh. Ibotombi Singh of Uchekon Khunou Keirao Bitra, Imphal East District, Manipur – 795008;
3. Ferdinand Gangmei, aged about 37 years, S/o (L) Gailenglung Gangmei of Dimdaijang Thangmeiband, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004;
4. Pathan Surfaraz, aged about 34 years, S/o (L) Md. Belal Shah of Minuthong Golapati, Imphal East District, Manipur – 795005;
5. Luwang Pheiroijam Priyobarta, aged about 35 years, S/o (L) Pheiroijam Birendra Singh of Kongpal Khongkham Leikai, Imphal East District, Manipur – 795005;
6. Tongbram Priya Devi, aged about 46 years, D/o Tongbram Nutankuma Singh of Sagolband Kongabam Leikai, Imphal West District, Manipur – 795001;
7. Thoudam Sophia, aged about 32 years, D/o (L) Th. Rajen Singh of Khurai Thoudam Leikai, Imphal East District, Manipur – 795010;
8. Dearri Sinruwng, aged about 32 years, D/o (L) Becheng Sinruwng, Tampi Village, Tampi, Chakpikarong, Chandel District, Manipur – 795102;
9. L. Lhingboi Haokip, aged about 43 years, D/o Paokhoneh Kuki of Old Lambulane Jail Road, Imphal West District, Manipur -795001;
10. Hatneithem Tuboi, aged about 36 years, D/o Paolun Tuboi of New Lambulane, Imphal East District, Manipur – 795005;
11. Sorokhaibam Jimeshori Devi, aged about 39 years, W/o Wangkheimayum Bikramjeet Singh of Wangkhei Khunou, Poropat, Imphal East District, Manipur – 795005;
12. Khumanllambam Rita Devi, aged about 31 years, D/o Kh. Rajendro Singh of Lal Moriba, Kongba Makha Nandeibam Leikai, Imphal East District, Manipur – 795005

***...Petitioners***

**-Versus -**

1. The State of Manipur, represented by its Chief Secretary, Government of Manipur, Imphal – 795001;
2. The Addl. Chief Secretary (GAD), Government of Manipur, Imphal – 795001;
3. The Special Secretary (DP), Government of Manipur, Imphal – 795001;

**... Respondents**

4. K. Hemanta Singh;
5. S. Guneshwor Singh;
6. M. Charan Singh;
7. H. Romeo;
8. K. Bisheshwor Singh;
9. Dhaneshwari Devi;
10. Eddy Lianminthang Guite (ST);
11. Suraj Kumar Khuraijam;
12. H. Birjit Singh;
13. Victor Singh Soubam;
14. Ningthoujam Sanjeev Singh;
15. Kennedy Ningombam;
16. L. Jugin Singh;
17. Laishram Thomas Singh;
18. Mayanglambam Bhagat Singh;
19. Khumbongmayum Rakesh;
20. Th. Sureshchandra Singh;
21. Ningombam Anilkumar;
22. Kshetrimayum Javel Singh;
23. Naresh Ningombam;
24. H. Munal Singh;
25. Thounaojam Arunkumar;
26. Okram Bidyashwor Singh;
27. Saikhom Rakshajit Singh;
28. K. Manglem Singh;
29. Mayengbam Bonny Singh;
30. Daniel Konthoujam;

31. Ningombam Bikramjit Singh;
32. Kailaizom Gangte (ST);
33. Elangbam Bidyananda Singh;
34. Sanjenbam Somorjit Singh;
35. Sougaijam Haripriya;
36. L. Seikhojang Milhiem (ST);
37. Konthoujam Chandrasekhar;
38. Sarita Laishram;
39. Laishram Priyadarshani Devi;
40. Laishram Subash;
41. Roger Maibam;
42. Ningthoujam Rustam Singh;
43. Bob Chanambam;
44. Barunkumar Thoudam;
45. Nameirakpam Debendra Singh;
46. Mayanglambam Lucy Devi;
47. L. Pilot Singh;
48. Naorem Naresh Singh;
49. Smritee Thapa;
50. Karam Surdeep Singh;
51. Kangjam Sunil Singh;
52. Sorokhaibam Sonia;
53. Konsam Bikram Singh;
54. Lairenlakpam Binita Devi;
55. Rajkumari Sandhyarani Devi;
56. Sarangthem Herojit Singh;
57. Kanghujam Romita Devi;
58. Lairenlakpam Pakasana;
59. Usharani Nandeibam;
60. Laiphprakpam Prameshwor;
61. Mohd. Mohsin Khan (MP);
62. Khudongbam Gobin;
63. Alice Kimneihei Dimngel (ST);
64. Ningreingam Ramror (ST);
65. Ramneithang (ST)

66. Thanmila Kumrah (ST);
67. Simon Loitongbam;
68. M. Molightson Kanshouwa (ST);
69. Tongsin Konatha Anal (ST);
70. R.K. Binaton Singh;
71. Narhang Koshang (ST);
72. Dangsha Khullakka Peter (ST);
73. D. Shonronton Duidang (ST);
74. Khapaishimrah Peter Kapam (ST);
75. Fondy L. Khartu Monshang (ST);
76. Mohon Dangsawa (ST);
77. Josiah Panmei (ST);
78. Molhouyang Dangsawa (ST);
79. Soraisam Indrajit Singh;
80. Wahengbam Eden Singh;
81. Zingcharla Raman (ST);
82. Kaiminlun Vaiphei (ST);
83. Telvum Letmang Haokip (ST);
84. Thangminlien Hangshing (ST);
85. Md. Abdus Shahid (MP);
86. Mohamad Ezaz Ahamad (MP);
87. Thokchom Nilamani Singh;
88. Yengkokpam Roger Singh;
89. Henry Tinmuanthang (ST);
90. Konsam Bankimchandra;
91. Moyangphun Charanga Maring (ST);
92. Gairillung Thaimei Kabui (ST);
93. Fanai Lalhriatkima (ST);
94. Chongom Rinigkhosan Aimol (ST);
95. Tarachand Singh Oinam;
96. K. Methew Maring (ST);
97. S. Keshorchand Sharma;
98. Kansham Angphun Maring (ST);
99. Mamlienlal Samte (ST)(PWD/Eye);
100. Wairok Pakpi Makunga (ST);

- 101. Dangshawa Korungini Maring (ST);
- 102. Md. Azharuddin (MP);
- 103. Shamjetshabam Nandakumar (SC) (PWD)/Hand);
- 104. Moirangthem Indrakumar (SC)(PWD/Loco).

.... *Private Respondents*

**B E F O R E**

**HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioners :: Mr. S. Biswajit, Advocate  
For the respondents :: Mr. Lenin Hijam, Advocate General  
asstd. by Ms. Caroline, Advocate; &  
Mr. A. Mohendro, Advocate  
Date of Hearing :: **23-11-2022**  
Date of Judgment & Order :: **10-01-2023**

**JUDGMENT & ORDER**

**[1]** Heard Mr. S. Biswajit, learned counsel appearing for the petitioners, Mr. Lenin Hijam, learned Advocate General assisted by Ms. Caroline, learned counsel appearing for the respondents No. 1, 2 and 3 and Mr. A. Mohendro, learned counsel appearing for some of the private respondents.

The issue involved in the present writ petition is about fixation of Inter-se-Seniority between employees appointed under the Die-in-Harness Scheme and direct recruit/ promotees.

**[2]** The petitioners, 12 (twelve) in number, were all appointed as Office Assistants (LDA) in the General Administration Department under the Die-in-Harness Scheme during the period between 18-02-2016 to 21-11-2016 and they have been serving as regular Government employees for the last about six years. On the other hand, all the private respondents were appointed as Office Assistants (LDA) as direct recruit

candidates on 01-12-2016. Accordingly, the petitioners were appointed earlier than the private respondents.

By an order dated 19-09-2019 issued by the Under Secretary (GAD), Government of Manipur, the posts of Office Assistant and Senior Office Assistant were re-designated as Secretariat Assistant and Senior Secretariat Assistant respectively with effect from the date of issue of the said order.

[3] The next promotional post from the post of Office Assistant (now Secretariat Assistant) is the post of Senior Office Assistant (now Senior Secretariat Assistant) and according to the petitioners, they are all eligible and qualified for promotion to the next higher post in terms of the relevant rules. It is the case of the petitioners that there is at present more than 100 vacant posts of Senior Secretariat Assistant available in the General Administration Department and as a measure for filling up the vacant posts, the authorities issued a Tentative Inter-se-Seniority List of Secretariat Assistants of Manipur Secretariat by issuing a Notification dated 05-11-2020 calling for claims and objections to the fixation of the Inter-se-Seniority. In the said Tentative Inter-se-Seniority List, the names of the petitioners are placed above the names of the private respondents.

[4] On publication of the said Tentative Seniority List, some of the private respondents submitted a joint objection to the said Tentative Inter-se-Seniority List stating, inter alia, that indicating Die-in-Harness appointees as direct recruit is not appropriate as they were appointed without undergoing any recruitment process and that placing all the Die-in-Harness appointees of 2016 above the direct recruit and promotees of

2016 batch gave them undue advantage. It has also been stated that under the Office Memorandum dated 11-11-2010 issued by the Government of India, it is provided under para 4.8 that persons appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/appointed through direct recruit, promotion, etc. in that year irrespective of the date of joining of the candidates on compassionate ground.

[5] Under para 4.8 of the said Office Memorandum dated 11-11-2010 issued by the Ministry of Personnel, Public Grievances and Pension (DPT), Government of India, certain guidelines had been laid down with regard to fixation of seniority of persons appointed on compassionate ground to the extent that persons appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/appointed through direct recruitment/promotion, etc., in that year, irrespective of the date of joining of the candidate on compassionate ground. The said guidelines were reiterated under para 16 of the Office Memorandum dated 16-01-2013 issued by the Ministry of Personnel, Public Grievances and Pension (DPT), Government of India for information, guidance and necessary action by all concerned. Para 16 of the said Office Memorandum are reproduced hereunder for ready reference:-

“16. Seniority –

A person appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/ appointed through direct recruitment/ promotion, etc. in that year, irrespective of the date of joining of the candidate on compassionate ground”.

[6] It is the case of the official respondents that under the Manipur Secretariat Sub-ordinate Services Rules, 1982, there is no provisions for fixation of seniority of an employee appointed under the Die-in-Harness Scheme. In order to supplement the lacuna in the relevant service rules, the State Government issued an Office Memorandum dated 06-03-2021 adopting to follow the guidelines under para 16 of the aforesaid O.M. dated 16-01-2013 issued by the Government of India with regard to fixation of seniority of a person appointed on compassionate ground. However, in para 2 of the said O.M., it is provided that the adoption shall be with prospective effect for new appointment and no retrospective effect will be allowed. Subsequently, the State Government issued another Office Memorandum dated 13-07-2021 amending para 2 of the earlier O.M. dated 06-03-2021. The amended para 2 reads as under:-

“Para 2. Henceforth, the O.M. shall be applied in fixing Inter-se-Seniority List for group of employees which include Die-in-Harness appointee whose Final Seniority List has not yet been finalized. Seniority List already finalized shall not be reopened”.

[7] After notification of the aforesaid Office Memorandums dated 06-03-2021 and 13-07-2021, the Under Secretary (GAD), Government of Manipur, issued a Notification dated 06-10-2021 publishing a Tentative Inter-se-Seniority List of Secretariat Assistants of Manipur Secretariat and inviting objections to the fixation of the inter-se-seniority. In the new Tentative Inter-se-Seniority List, the names of the private respondents are placed above the names of the petitioners in terms of the guidelines for fixing of seniority between persons appointed on compassionate ground and candidates appointed through direct recruitment/ promotion, etc. as contained in the aforesaid O.M. dated 06-03-2021 and 13-07-2021.

Despite the written objections submitted by the petitioners to the Tentative Inter-se-Seniority List, the authorities issued a Notification dated 16-12-2021 publishing the Final Inter-se-Seniority List of Secretariat Assistants (formerly Office Assistants) of Manipur Secretariat. In the said Final Inter-se-Seniority List, the private respondents are placed above the petitioners. Having been aggrieved, the petitioners approached this court by filing the present writ petition with the prayer for quashing and setting aside the Office Memorandum dated 13-07-2021 issued by the Department of Personnel and Administrative Reforms as well as the Final Inter se Seniority List of Secretariat Assistants dated 16-12-2021.

[8] Mr. S. Biswajit, learned counsel appearing for the petitioners submitted that the O.M. dated 06-03-2021 of the State of Manipur has already created a lawful legal rights to the petitioners and the said O.M. cannot be amended behind their back without following the principle of natural justice and without giving an opportunity of being heard. The act of the official respondents in amending the earlier O.M. dated 06-03-2021 by issuing the subsequent O.M. dated 13-07-2021 unilaterally and without complying with the principle of natural justice amounts to bias, arbitrary and mala fide in nature and the same is not tenable in the eye of law. It has also been submitted that the second clause of the impugned O.M. itself clearly demonstrated the mala fide intention of the concerned authority to do away with the seniority of the Die-in-Harness appointees, whose seniority could have been finalized long back and the same was delayed intentionally by the concerned authority waiting for the private respondents to be qualified for

promotion to the next higher posts. It has also been submitted that the amendment of the earlier O.M. dated 06-03-2021 was not necessary at all as the same had already been finalized, clarified and settled. The dispute regarding inter-se-seniority between the compassionate appointees and other appointees and that the conduct of the concerned authority clearly shows that they have just wanted to favour the normal direct recruits/ private respondents and promotees by neglecting the essence of the O.M. of the Government of India as well as the State Government.

[9] The learned counsel also submitted that once the State Government accepted the fact that there is no rule for determining seniority of the employees appointed under Die-in-Harness Scheme, than the O.M. on which the determination of the Seniority List is based on cannot be changed / amended arbitrarily and that in the absence of any statutory rule governing the field in a particular Department, seniority would be reckoned from the date of appointment and the same cannot be affected retrospectively by adopting an O.M. It has further been submitted that an amendment having retrospective operation which has the effect of taking away a benefit already available/ accrued to an employee under the existing rules/ O.M./ regulation, etc. is arbitrary and discriminatory and violates the fundamental rights guaranteed under Article 14 and 16 of the Constitution of India and that a administrative/ executive order cannot have retrospective effect so as to take away the right accrued to an employee as per the earlier Circular. The learned counsel also submitted that the Tentative Seniority List dated 05-11-2020, even though a final of the same was

not published, can be assumed to be finalized as the first four incumbents in the said Seniority List have been promoted to the higher posts on 18-08-2021 in order of merit by acting upon the earlier Tentative Seniority List and much before the publication of the impugned Final Seniority List dated 16-12-2021.

In support of his contentions, the learned counsel cited the following case laws:-

1. **“S.K. Ghosh and anr. Vs. Union of India “**  
**(1968 AIR 1385)**

Page 8. “.....It is thus, clear that the revision of seniority in the grade of Directors of Postal Services by the order dated 17<sup>th</sup> January, 1966 was not based on any rule or appropriate principle applicable to determination of seniority in that grade, and must, therefore, be held to be totally arbitrary. Such an arbitrary order, which affects the civil rights of the petitioners in respect of future promotion, must, therefore, be struck down as violating Art. 16 of the Constitution. Once this order dated 17<sup>th</sup> January, 1966 is quashed, the petitioners will no longer be affected in future by the revision of their seniority in the time scale of the service by the order dated 5<sup>th</sup> June, 1965 and, .....

..... We allow this petition and quashed the order dated 17<sup>th</sup> January, 1966 revising the seniority of the petitioners and respondents Nos. 3 to 7 in the grade of Directors of Postal Services.....”

2. **“Ajit Singh and ors. (II) Vs. State of Punjab & ors. “**  
**(1977) 7 SCC 209**

Para 22. “Article 14 and Article 16(1) are closely connected. They deal with the individual rights of the person Article 14 demands that the “State shall not deny to any person equality before the law and equal protection of the laws”. Article 16(1) issues a positive command that

“shall be equality of opportunity for all the citizens in matters relating to employment or appointment to any office under the State”.

It has been held repeatedly by this court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularizes the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee eligible for promotion or who comes within the zone of consideration, a fundamental right to be ‘considered’ for promotion. Equal opportunity here means the right to be ‘considered’ for promotion. If a person satisfied the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

*“Promotion” based on equal opportunity and “seniority” attached to such promotion are facets of fundamental right under Article 16(1).”*

3. **(2007) 5 SCC 447**

**“Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector & Etio and ors.”**

Para 118. “It is in the aforementioned context, that the doctrine of promissory estoppel is sought to be invoked. We will notice hereinafter that even a right can be preserved by reason of invocation of doctrine of promissory estoppel.”

Para 130. “We therefore, of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved”.

4. **(2006) 13 SCC 542****“Union of India & ors. Vs. Asian Food Industries”**

Para 48. “The Delhi High Court, however, in our view correctly opined that the Notification dated 4-7-2006 could not have been taken into consideration on the basis of the purported publicity made in the proposed change in the export policy in electronic or print media. Prohibition promulgated by a statutory order in terms of section 5 read with the relevant provisions of the policy decision in the light of sub-section (2) of section 3 of the 1992 Act can only have a prospective effect. By reasons of a policy, a vested or accrues right cannot be taken away. Such a right, therefore, cannot a fortiori be taken away by an amendment thereof.”

5. **(1997) 6 SCC 623****“Chairman Railway Board & ors. Vs. C.R. Rangdhamaiiah & ors.”**

Para 24. “In many of these decisions the expressions “vested rights’ or “accrues rights” have been used while striking down the impugned provisions which had been retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employees under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 & 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Soni.”

6. **(2010) 2 SCC 422****“Union of India & anr. Vs. Kartick Chandra Mondal & anr.”**

Para 12. “It was also submitted that neither CAT nor the High Court has any power to direct absorption of the respondents when

they have worked only for two years and on the date when OA No. 285 of 1990 was filed before CAT they were not even working as casual workers. The further submission of the counsel appearing for the appellant was that the office memorandum which was issued in 1985 could not have been relied upon or made the basis for issuing orders in favour of the respondents, particularly, in view of the fact that on the date when the aforesaid office memorandum was issued the respondents had already been disengaged from service and were not working with the appellant 2.

Para 14. "In the light of the aforesaid submission of the counsel appearing for the parties we have considered the entire records. So far as the Office Memorandum dated 7.5.1985 is concerned, the same was issued by way of relaxation of the condition of recruitment of casual workers. But the fact remains that the respondents working with the appellants only for two years i.e., from 1981 to 1983 and admittedly on the date when the aforesaid office memorandum which would indicate that there was an intention to give a retrospective effect to the contents of the said notification. Instead, the language used in the aforesaid notification clearly shows that the same was intended to be prospective in nature and not retrospective.

Para 16. "As has been noted earlier, the said Office Memorandum stated that the same would apply only to those persons who might have been continuing as casual workers for a number of years and who were not eligible for regular appointment and whose services might be terminated at any time. Therefore, it envisaged and could be made applicable to only those persons who were in service on the date when the aforesaid office memorandum was issued. Unless and until there is a clear intention expressed in the notification that it would also apply retrospectively, the same cannot be given a retrospective effect and could always operate prospectively."

7. **(2015) 7 SCC 412****“Canara Bank Vs. M. Mahesh Kumar”**

Para 17. “Applying these principles to the case in hand, as discussed earlier, the respondent’s father died on 10-10-1998 while he was serving as a clerk in the appellant Bank and the resident applied timely for compassionate appointment as per the scheme” Dying in Harness Scheme” dated 8.5.1993 claim on 30.6.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant bank sought for particular in connection with the issue of the respondent’s employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when circular No. 154 of 1993 dated 8.5.1993 was in force. Thus as per the judgment referred in Jaspal Kaur Case, the claim cannot be decided as per 2005 scheme providing for ex-gratia payment. The circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per Circular of 1993.”

8. **(2004) 3 SCC 723****“Pramod K. Pankaj Vs. State of Bihar & ors.”**

Para 12. “The policy decision of the State as contained in the resolution of the State Government dated 17.1.1979 is not in question. It is accepted that the said resolution was adopted in the special situation that 20% quota which was earlier reserve for graduate engineers was abolished, as a result whereof they suffered immense prejudice. Clause (cha) of the said circular states that the promotion on the vacant posts of Assistant Engineers under the quota, mentioned in Clause (ka) i.e., 3% would be made on the basis of seniority. In absence of any statutory provision or rules made thereunder or under the proviso appended to Article 309 of the Constitution of India, it is trite that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment.

9. **1994 Suppl. (3) SCC 451**

**“Uday Pratap Singh & ors. Vs. State of Bihar & ors.”**

Para 6. “By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which become crystallized. In this connection, it is profitable to refer a decision of this court in T.R. Kapur V. State of Haryana wherein it is held that rules framed under Article 309 of the Constitution cannot affect or impair vested rights, unless it is specifically so provided in the stator rules concerned. It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in Bishan Sarup Gupta V. Union of India, that effect of upgradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post still it cannot be gainsaid that no retrospective effect could be given to any merger or erstwhile lower branch into higher branch in the cadre so as to effect the vested rights of incumbents already occupying posts in the erstwhile lower branch into higher branch of the cadre.....”

**[10]** Mr. Lenin Hijam, learned Advocate General submitted that there is no provision under the Manipur Secretariat Sub-ordinate Services Rules, 1982 for fixation of Inter-se-Seniority between the employees appointed under the Die-in-Harness Scheme and employees appointed by way of direct recruitment/ promotion in the same year and accordingly, the guidelines/ instructions issued by the Government of India in its Office Memorandum dated 16-01-2013 with regard to fixation of Seniority of compassionate appointees were adopted by the State Government by issuing Office Memorandum dated 06-03-2001 in pursuance of the Cabinet decision taken on 09-12-2020 and the subsequent amendment dated 13-07-2021 was issued as per Cabinet decision taken on

06-07-2021. It has been submitted that the said Office Memorandum was adopted to bring clarity in fixing of Inter-se-seniority amongst the direct recruit, promotees and employees appointed on compassionate ground, who were appointed in the same year and that the Office Memorandum is limited to those cases only where seniority has not yet been finalized as reconsidering seniority list already finalized on the basis of the new Office Memorandum would be unjustified. It has further been submitted that the adoption of the aforesaid Office Memorandums was a policy decision taken by the Government and the Government has the power and authority to issue such guidelines/ instructions for fixation of the seniority and the petitioners have failed to point out that the said Office Memorandums have been issued in violation of any statutory act/rules.

[11] The learned Advocate General strenuously submitted that the petitioners have neither pleaded in their writ petition that the impugned Office Memorandum violated any of their Fundamental Right nor have they denied the stand taken by the respondents in their counter affidavit and accordingly, the petitioners have failed to make out a case for interfering with the impugned Office Memorandum and the impugned seniority list and as such, the present writ petition is liable to be dismissed as being devoid of merit. In support of his contentions, the learned Advocate General cited the following case laws:-

**1. (2013) 16 SCC 147,**  
**“Union of India and anr. Vs. Ashok Kumar Aggarwal”**

“58. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in *Sant Ram Sharma v. State of Rajasthan*, held: (AIR 1967 SC 1914, Para 7)

“7. ....“It is true that the Government cannot amend or supersede statutory rules by administrative instruction, but if the rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed.”

“59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide: *Union of India v. Majji Jangamayya*; *P.D. Aggarwal v. State of U.P.*; *Paluru Ramkrishnaiah v. Union of India*; *C. Rangaswamaiah v. Karnataka Lokayukta and Joint Action Committee of Air Line Pilots’ Assn. of India v. DG of Civil Aviation*).”

“60. Similarly, a Constitution Bench of this Court, in *Naga People’s Movement of Human Rights v. Union of India*, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.”

“61. In *Nagaraj Shivarao Karjagi v. Syndicate Bank*, this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department particularly the recommendations made by CVC.

“62. In *State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh*, this Court held that the order must be passed by the authority after due application of mind uninfluenced by and without surrendering to the dictates of an extraneous body or an authority.

2. **(1988) 2 SCC 233****“R. Prabha Devi & ors. Vs. Government of India & ors.”**

“16. It has also been observed:

"In any event, the appropriate rule-making authority is the best judge in this regard. The rule-making authority is certainly competent to amend the Rule and extend the period from six years to eight years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the rule-making authority; the Tribunal cannot sit in judgment over the opinion of the rule-making authority. No court or Tribunal can substitute its own view in a matter such as this. Such a rule framed by a competent authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

[12] I have heard the arguments advanced by the learned counsel appearing for the parties at length and carefully examined the materials available on record. The impugned Final Inter-se-Seniority List dated 16-12-2021 was prepared on the basis of the Office Memorandums dated 06-03-2021 and 14-07-2021 issued by the Department of Personnel and Administrative Reforms (PD), Government of Manipur. The petitioners only assailed the subsequent Office Memorandum dated 13-07-2021 in the present writ petition. Under the first Office Memorandum dated 06-03-2021, it is provided that a person appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/appointed through direct recruitment, promotion, etc., in that year, irrespective of the date of joining of the candidate on compassionate ground. In para 2 of the said Office Memorandum, it is provided that the said Office Memorandum shall be with prospective effect for new appointment and no retrospective effect will be allowed. By

the second Office Memorandum dated 13-07-2021, para 2 of the earlier Office Memorandum dated 06-03-2021 was amended as under:-

"2. Henceforth, the O.M. shall be applied in fixing Inter-se-Seniority List for group of employees which include Die-in-Harness appointee whose Final Seniority List has not yet been finalized. Seniority List already finalized shall not be reopened".

The said amendment was with prospective effect as no retrospective effect was given.

**[13]** The petitioners assailed the subsequent Office Memorandum dated 13-07-2021 basically on the ground that they have accrued a right under the Office Memorandum dated 06-03-2021 with regard to fixation of their seniority vis-a-vis direct recruit/ promotees and that such a right cannot be denied or curtailed by the authorities by making the amendment under the second Office Memorandum dated 13-07-2021 retrospectively. According to the petitioners, if the authorities published the Final Seniority List before issuing the second Office Memorandum dated 13-07-2021, the provisions under the first Office Memorandum dated 06-03-2021 would not have been applicable in their case in view of para 2 of the said Office Memorandum and their names would have been placed above the private respondents in the Final Seniority List.

It is the case of the petitioners that authorities have deliberately delayed the publication of the Final Seniority List and published the same only after issuance of the second Office Memorandum dated 13-07-2021 which amended the beneficial provisions under para 2 of the first Office Memorandum dated 06-03-2021, thereby depriving the valuable right of the petitioners with regard to fixation of their seniority position. It is also

the case of the petitioners that the authorities cannot retrospectively amend the beneficial provisions under para 2 of the first Office Memorandum dated 06-03-2021.

**[14]** As noted herein above, while making the amendment under the second Office Memorandum dated 13-07-2021, no retrospective effect was given and accordingly, this court is of the considered view that the amendment brought about under the second Office Memorandum dated 13-07-2021 will have only prospective effect. Accordingly, the arguments advanced by the learned counsel appearing for the petitioners that the accrued right of the petitioners had been denied or curtailed retrospectively by the authorities by bringing in the amendment under the second Office Memorandum dated 13-07-2021 are misconceived and baseless.

**[15]** This court is also of the considered view that no Government employee, including the present petitioners, can claim to have any Fundamental Right with regard to fixation of their seniority even though they might have a legal right. The Inter-se-Seniority between the petitioners and the private respondents was fixed for the first time by the Government under the impugned Final Seniority List dated 16-12-2021 and prior to issuance of the said impugned Seniority List, there was no Inter-se-Seniority between the petitioners and the private respondents. In view of the above, this court is of the considered view that the Office Memorandum dated 06-03-2021 read with the subsequent amendment made under the Second Office Memorandum dated 13-07-2021 are applicable in the case of the petitioners and the private respondents in the matter of fixation of their Inter-se-Seniority and this court did not find

any irregularity or illegality being committed by the authorities in issuing the impugned Final Seniority List. The seniority of Government employees have to be fixed as per the relevant and applicable rules and in the absence of such rules, their seniority have to be fixed as per applicable guidelines/ instructions issued in that regard. As the Inter-se-Seniority of the petitioners and the private respondents have not been fixed prior to issuance of the second Office Memorandum dated 13-07-2021, this court is of the view that the applicable rules for fixing of their seniority is the provision under the first Office Memorandum dated 06-03-2021 read with the subsequent amendment brought in the second Office Memorandum dated 13-07-2021 and that the petitioners cannot claim that they have a right to have their seniority fixed vis-a-vis the private respondents solely on the basis of the first Office Memorandum dated 06-03-2021.

I have also carefully perused all the case laws cited by the learned counsel for the petitioner and in my considered view, none of the case laws are applicable in the facts and circumstances of the present case.

**[16]** In the affidavit-in-opposition filed by the respondent No. 2 and some of the private respondents, it is clearly stated that the Final Seniority position of the persons appearing at Sl. Nos. 1 to 4 in the Tentative Seniority List dated 05-11-2020 have already been fixed by the Government under the Final Seniority List of Office Assistants (now Secretariat Assistants) notified on 13-04-2018 and that on the basis of the said Final Seniority List, the said four incumbents were promoted to the next higher posts. It has also been categorically stated that the

Government has never acted on the basis of the said Tentative Seniority List dated 05-11-2020. The petitioners have not controverted or denied such categorical statement made by the respondents and accordingly, this court is not inclined to accept the contentions made on behalf of the petitioners that the Tentative Seniority List dated 05-11-2020 had already been acted upon by the Government before publication of the impugned Final Seniority List and that the said Tentative Seniority List can be assumed to be finalized.

**[17]** In the present case, the petitioners have failed to make out a case that the impugned Office Memorandum dated 13-07-2021 had been issued in violation of any statutory provisions or that by issuance of the said Office Memorandum, any of their Fundamental Rights have been violated. In such view of the matter, this court did not find any ground for interfering with the impugned Office Memorandum dated 13-07-2021 and accordingly, the present writ petition fails and the same is hereby dismissed as being devoid of merit. The parties are to bear their own costs.

**JUDGE**

**FR / NFR**

*Devananda*