

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 118 of 2022

(Ref:- WP(C) No. 102 of 2021)

1. Dr. Ch. Deependra Singh, by occupation Assistant Professor (JNIMS), aged about 43 years, S/o Dr. Ch. Chandramani Singh of Thangmeiband Hijam Leikai, P.O. Lamphel, P.S. Imphal, Imphal West District, Manipur – 795004.
2. D. Naorem Sunanda Chanu, by occupation Assistant Professor (JNIMS), aged about 43 years, W/o Dr. Ak. Ibohal Singh of Wangkhei Meihoupham Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795005.
3. Dr. Mayanglambam Ronita Devi, by occupation Assistant Professor (JNIMS), aged about 41 years, W/o Maishnam Rustam Singh of Khagempalli Panthak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
4. Dr. Melody Vushum, by occupation Assistant Professor (JNIMS), aged about 39 years, W/o Dr. Kanmi Ningshen of Nagaram Block-B, Near Community Hall, P.O. Lamlong, P.S. Lamphel, Imphal East District, Manipur-795010.
5. Dr. Chitra Yengkokpam, by occupation Assistant Professor (JNIMS), aged about 43 years, W/o Dr. Dayananda Ingudam of Sagolband Tera Yengkhom Leirak, P.O. & P.S. Imphal, Imphal East District, Manipur-795001.
6. Dr. Debashree Ningthoujam, by occupation Assistant Professor (JNIMS), aged about 39 years, S/o Ningthoujam Devananda Singh of Chingamathak Nameirakpam Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur-795001.
7. Dr. Ningthoujam Jugindro Singh, by occupation Assistant Professor (JNIMS), aged about 42 years, S/o (Late) Ningthoujam Lokeswor Singh of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
8. Dr. Pinky Soraisham, by occupation Assistant Professor (JNIMS), aged about 38 years, W/o Mutum Davison Singh of

Sagolband Meino Leirak, P.O. Imphal, P.S. Lamphel, Imphal West District, Manipur-795001.

... Appellants

-Versus-

1. The State of Manipur represented by the Addl. Chief Secretary (Health), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Jawaharlal Nehru Institute of Medical Sciences, Porompat, P.O. & P.S. Porompat, Imphal East District, Manipur-795005, through its Director.

... Respondents

AND

IN THE MATTER OF:

IN WRIT PETITION (C) NO. 102 OF 2021

1. Dr. Ch. Deependra Singh, by occupation Assistant Professor (JNIMS), aged about 42 years, S/o Dr. Ch. Chandramani Singh of Thangmeiband Hijam Leikai, P.O. Lamphel, P.S. Imphal, Imphal West District, Manipur – 795004.
2. D. Naorem Sunanda Chanu, by occupation Assistant Professor (JNIMS), aged about 42 years, W/o Dr. Ak. Ibohal Singh of Wangkhei Meihoupham Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795005.
3. Dr. Mayanglambam Ronita Devi, by occupation Assistant Professor (JNIMS), aged about 40 years, W/o Maishnam Rustam Singh of Khagempalli Panthak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
4. Dr. Melody Vushum, by occupation Assistant Professor (JNIMS), aged about 38 years, W/o Dr. Kanmi Ningshen of Nagaram Block-B, Near Community Hall, P.O. Lamlong, P.S. Lamphel, Imphal East District, Manipur-795010.
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2. The Jawaharlal Nehru Institute of Medical Sciences, Porompat, P.O. & P.S. Porompat, Imphal East District, Manipur-795005, through its Director.

... Respondents

B E F O R E

**HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the appellants	::	Mr. N. Ibotombi, Sr. Advocate asstd. by Ms. Babina, Advocate
For the respondents	::	Mr. Y. Ashang, GA
Date of Hearing	::	13-10-2023
Date of Judgment & Order	::	23-11-2023

JUDGMENT & ORDER

(A. Bimol Singh, J.)

[1] Heard Mr. N. Ibotombi, learned senior counsel appearing for the appellants and Mr. Y. Ashang, learned GA appearing for the respondents.

[2] The present writ appeal had been filed by eight appellants, who are the petitioners in the writ petition, assailing the judgment and order

dated 12-08-2022 passed by the learned Single Judge in WP(C) No. 102 of 2021.

[3] The appellants No. 1 to 4 possesses post-graduate degree in Obstetrics & Gynaecology and they were initially appointed as Senior Residents in the Department of Obstetrics & Gynaecology, Jawaharlal Nehru Institute of Medical Sciences, Porompat (JNIMS) in the month of February, 2011. The appellant No. 5 possess educational qualification of Ph.D. in Medical Science (Microbiology) and she was initially appointed as Tutor/ Demonstrator in the Department of Microbiology, JNIMS on 01-12-2010. The appellant No. 6 possess post-graduate degree in Pharmacology and he was initially appointed as Tutor in the Department of Pharmacology, JNIMS on 01-07-2014. The appellant No. 7 possess post-graduate degree in Physical Medicine and Rehabilitation and he was initially appointed as Senior Resident in the Department of Physical Medicine and Rehabilitation, JNIMS on 01-12-2010. The appellant No. 8 possess post-graduate degree in Pathology and she was initially appointed as Tutor/ Demonstrator in the Department of Pathology in JNIMS on 01-12-2010.

All the appellants have rendered more than six years of regular service in the teaching posts of Senior Resident/ Tutor/ Demonstrator in their respective Departments in JNIMS and they have also got more than one year of teaching experience after obtaining their PG degree in the same subject.

[4] The authorities of JNIMS framed a rule called **“The Time Scale Promotion (Regularly appointed Senior Resident/ Tutor/ Demonstrator/ Lady Demonstrator possessing Post-Graduate Degree) Rules, 2018** (hereinafter referred to as the **“Rules of 2018”**, for short). The scheme of the said Rules of 2018, as provided under Rule 3, is in the nature of flexible complementing scheme wherein the regularly appointed Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer are upgraded to the posts of Assistant Professor (non-functional) in which no additional posts of Assistant Professor are created and without altering the combined authorised strength for the posts of Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer. The said Rule of 2018 is applicable to only 74 (seventy-four) regularly appointed Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer of JNIMS and 3 (three) regularly appointed Senior Resident/ Tutor/ Demonstrator of Dental College of JNIMS whose names are given in the list enclosed as Annexure-I and Annexure-II appended to the said rule.

[5] The objective of the said Rules of 2018 as provided under Rule 5 is to provide opportunity for promotion to the regularly appointed Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer by incurring minimum expenditure and give scope for Time-Scale Promotion to Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officer, who are regularly appointed and have no scope of future promotion. Under Rule 6 of the said Rules of 2018, it is, inter alia, provided that the promotion under the said rule shall be based on the recommendation of the DPC duly constituted as per Rule 10(b) of JNIMS Service Rules, 2015 and that if an Officer appointed to the

post under the rule is promoted to the next higher post, retires, expires or leaves the job, the post which the incumbent was holding will cease to exist and revert back to original post i.e., Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer from which the person was promoted.

[6] Under Rule 7 of the said Rules of 2018, it is provided as under:

“7. Scheme Guidelines:

- a) ***They must have requisite and recognized Post Graduate qualification as per M.C.I /D.C.1. norms in the concerned subject.***
- b) ***They must have rendered minimum of 6 (six) years of regular service in the teaching posts of Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer in a Department of J.N. Institute of Medical Sciences.***
- c) ***Within 6(six) years of regular teaching service as the case may be, minimum 1(one) year of teaching experience of the same discipline/ Department after obtaining P.G Degree is mandatory.***
- d) ***Special relaxing of 1 (one) year and 2 (two) years shall be made for those who have joined the institute after Post Graduation and Super-specialties respectively.***
- e) ***This will be only personal designation.***
- f) ***Combined authorized strength of the Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer from which these posts are upgraded will not be altered.***
- g) ***The promotion shall be based on a Seniority List prepared for the 74 (seventy four) Senior Resident / Tutor/ Demonstrator/ Lady Medical Officer of JNIMS and 3 (three) Senior Residents of Dental College, JNIMS, who are regularly appointed in the respective sub-cadres without regard to any specialties.***
- h) ***The Promotee under this scheme shall have to carry out duties of original posts i.e. Senior Resident/ Tutor/ Demonstrator/ Lady Medical officer till they are adjusted against any regular vacancies of the post of Assistant Professor. The Promotee has to sign an agreement with JNIMS Authority that, in the event of any such promote declining to carry out his/ her duty of the original posts from which he/ she was promoted under the Time Scale Promotion Scheme for regularly appointed Senior resident / Tutor/ Demonstrator/ Lady Medical Officer, the authority may, in the***

public interest withdraw the personal promotion of Assistant Professor (non-functional) given to him/her.

- i) Recommendation of D.P.C. on seniority-cum-fitness will be required.***
- j) This group of promotees will be junior to those who are already holding the post of Assistant Professor on a regular basis.***
- k) Not more than 50% of the eligible Senior Resident/ Tutor/ Demonstrators/ Lady Medical officer possessing post graduate degree shall be upgraded in a year. Further provided, that in the event of only 1(one) candidate being eligible in a given year, he/ she shall be considered for promotion under the scheme even if the 50% criteria is not fulfilled.***
- l) Senior Resident/ Tutor/ Demonstrators/ Lady Medical Officer - who possess Post Graduate Degree in the subject other than the Department in which he/she was initially appointed shall be given a chance to be appointed /slotted (on regular basis) in the Department he/she has done P.G., as and when vacancy in the Department arises and treat the vacancy in the parent Department as Tenure post so as to qualify for the scheme.***
- m) Combined service rendered in the parent Department as well as new Department shall be counted for the purpose qualifying service under the Scheme. However, 2(one) year of Post P.G. teaching experience in the Department where he/she has done post graduation is mandatory.***
- n) Save as otherwise provided under this scheme, no person shall be transferred/ utilized etc. to any Department different from the Department where he/she was initially appointed, at any point of time.***
- o) If a promotee under the Time Scale Promotion Scheme is already enjoying Post graduate allowance, it will be discontinued.”***

[7] As per Rule 7(a)(b) and (c) of the said Rules of 2018, it is provided that the candidate must have requisite and recognised post-graduate qualification as per M.C.I./ D.C.I norms in the concerned subject and that the candidate must render minimum of six years of regular service in the teaching posts of Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer in the Departments of JNIMS and that the candidate must possess

minimum of one year of teaching experience in the same discipline/ Department after obtaining the PG degree. In Rule 7(h) of the said Rules, it is, inter alia, provided that the promotee under the scheme shall have to carry out duties of original posts, i.e., Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer till they are adjusted against any regular vacancies of the post of Assistant Professor.

[8] On consideration of their cases and having found to be qualified and eligible in every respect as provided under the said Rules of 2018, the Departmental Promotion Committee in its meeting held on 13-12-2018 recommended the cases of the appellants along with other candidates for their upgradation to the posts of Assistant Professor. Thereafter, on the basis of the recommendation made by the said DPC and with the approval of the competent authority of JNIMS, the Director of JNIMS issued an order dated 03-01-2019 upgrading the appellants and their posts held by them as Assistant Professor (non-functional) w.e.f. the date of issue of the said order.

[9] It is the case of the appellants that as four posts of Assistant Professor in the Department of Obstetrics & Gynaecology, two posts of Assistant Professor in the Department of Pharmacology, one post of Assistant Professor in the Department of PMR and three posts of Assistant Professor in the Department of Pathology were lying vacant before the appellants were given upgradation to the posts of Assistant Professor (non-functional), the appellants No. 1 to 4, 6, 7 and 8 submitted their representations to the authorities of JNIMS requesting for taking up appropriate action to adjust their services to the regular available vacancies

as provided under Rule 7(h) of the aforesaid Rules of 2018, however, without any positive result. Having been aggrieved, the appellants approached this court by filing the connected writ petition for redressing their grievances.

[10] The claims made on behalf of the appellants before the learned Single Judge are as under:-

- (a) The whole purpose and objective of framing and implementing the Rules of 2018 is to provide promotional avenues to the Teachers and Medical Officers, i.e., Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer in JNIMS and to adjust the Assistant Professor (non-functional) against any regular vacancies of the posts of Assistant Professor.
- (b) As regular vacancies for the posts of Assistant Professor in the concerned Department were available even before the appellants were upgraded as Assistant Professor (non-functional), the respondents ought to have adjusted the appellants against those regular vacancies by invoking the provision of the Rule 7(h) of the Rules of 2018 and that the respondents are implementing the provisions of the said Rules of 2018 in part and not as a whole.
- (c) Many Doctors of RIMS who were given promotion to the posts of Assistant Professor under the Time Scale Promotion Rules, 1991 of RIMS were adjusted against regular vacancies of Assistant Professor as and when such vacancies arose and that the Time Scale Promotion Rules, 1991 of RIMS is parity with the Time

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Scale Promotion Rules, 2018 of JNIMS. However, the authorities of JNIMS have failed to give similar treatment to the appellants.

[11] The stand of the respondents taken before the learned Single Judge are as under:-

- (a) The Rules of 2018 is a one-time rule specially framed for 77 regularly appointed Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers of JNIMS who otherwise have no scope for further promotion and, therefore, the appellants by citing the provision of Rules of 2018 cannot sought for reliefs to adjust them against regular vacancies w.e.f. 03-01-2019.
- (b) In the Rules of 2018, there is no provision as to how the adjustment are to be made against any regular vacancies of the posts of Assistant Professor and that as per the JNIMS Service Rules, 2015, the post of Assistant Professor is to be filled up by direct recruitment only and there is no avenue for appointment by promotion to the post of Assistant Professor and as such, the claims of the appellants are liable to be dismissed.

[12] The learned Single Judge found force in the stands taken by the respondents and declined to grant the reliefs sought for by the appellants by holding that when there is no specific provision as to how the adjustment are to be made against any regular vacancies of the post of Assistant Professor, the appellants cannot insist the respondents to adjust them against the regular vacancies by invoking Rule 7(h) of the Rules of 2018 and that when there is no avenue for appointment by promotion to the post

[11]

of Assistant Professor as per the JNIMS Service Rules, 2015, the appellants cannot claim as a matter of right for their adjustment. The learned Single Judge also held that nothing has been produced to prove the claim of the appellants that the Time-Scale Promotion Rules, 2018 of JNIMS is parity with the Time-Scale Promotion Rules, 2019 of RIMS. The learned Single Judge also held that the appellants have no legal right to claim adjustment against regular vacancies w.e.f. 03-01-2019, the date on which they were appointed as Assistant Professors (non-functional) on upgradation.

[13] We have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also examined all the materials available on record. We have also carefully examined the provisions of the said Rules of 2018. On careful examination of the provisions of the Rules of 2018, we are of the considered view that the said rule had been framed by the authorities of JNIMS with the sole purpose and objective of providing to only 77 regularly appointed Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers of JNIMS for their upgradation to the posts of Assistant Professor without creating any additional posts of Assistant Professor and with minimum expenditure. The rule also postulates that such upgradation shall be subject to the fulfilment of the academic qualifications, qualifying services, teaching experiences and only on the recommendation of the constituted DPC as provided under the rules.

[14] Under Rule 7(h) of the Rules of 2018, it is specifically provided that even after upgradation to the posts of Assistant Professor

(non-functional), the incumbents shall have to carry out duties of the original posts, i.e., Senior Resident/ Tutor/ Demonstrator/ Lady Medical Officer till they are adjusted against the regular vacancies of the posts of Assistant Professor. In our considered opinion, such provision of Rule 7(h) is in the nature of interim exception to the upgradation with the ultimate promise of adjusting the upgraded incumbents against any regular vacancies of the posts of Assistant Professor which occurred from time to time. We said so, keeping in view the fact that if the Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers are upgraded as full-fledged Assistant Professors without there being any vacant post of Assistant Professor for their adjustment, there will be increase in the cadre strength of the Assistant Professors and decrease in the post of Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers, which is not permissible under the rules. In our considered opinion, the authorities have inserted such provision under Rule 7(h) with a view to safeguard and keep a check in maintaining the required cadre strength in both the grade of Assistant Professors and Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers of JNIMS and at the same time ensuring the adjustment of the upgraded Assistant Professors (non-functional) against regular vacancies of the posts of Assistant Professor. Accordingly, we have no hesitation to hold that the said Rules of 2018 has been made by the authorities with the sole purpose and objective of upgrading the eligible and qualified incumbents out of the aforesaid 77 regular Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers as a full-fledged Assistant Professors in their respective Departments and that the authorities have made a promise under Rule 7(h) of the said rules for adjusting the upgraded

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Assistant Professors (non-functional) against any regular vacancies of the post of Assistant Professor which occurred from time to time.

[15] In the present case, all the appellants possesses the essential qualifications prescribed under the relevant Service Rules for their appointment as Assistant Professors and in fact they have already been upgraded to the posts of Assistant Professor (though non-functional) by the authorities on the recommendation of a duly constituted DPC as provided under Rule 10(b) of JNIMS Service Rules, 2015. What remains to be done by the authorities is to adjust the appellants against the available vacant posts of Assistant Professor in JNIMS in their respective Departments.

[16] As per the list of faculty, JNIMS as on October, 2023 submitted by the Director of JNIMS under his letter dated 11-10-2023, the vacancy position in the grade of Assistant Professors are shown as under:-

- (i) There are eight posts of Assistant Professor in Obstetrics & Gynaecology Department and all the said eight posts are shown as vacant. Against the said eight vacancies, the appellants No. 1 to 4 can be adjusted;
- (ii) In the Microbiology Department, number of posts of Assistant Professor are shown as two and the said two posts are shown as vacant. Against the said vacancies, the appellants No. 5 can be adjusted;
- (iii) In the Department of Pharmacology, number of posts of Assistant Professor are shown as two and the said two post are shown as

vacant. Against the said two vacancies, the appellant No. 6 can be adjusted;

(iv) In the Department of Physical Medicines and Rehabilitation (PMR), the number of post of Assistant Professor is shown as one and the said post is shown as vacant. Against the said vacant post, the appellant No. 7 can be adjusted; and

(v) In the Department of Pathology, the number of posts of Assistant Professor are shown as five and out of five posts, four posts are shown as vacant. Against the said vacancies, appellant No. 8 can be adjusted.

[17] Keeping in view the available vacant posts of Assistant Professor as shown hereinabove, we are of the considered view that there will be no impediment on the part of the authorities of JNIMS in adjusting the appellants against such vacancies by giving full effect to the provisions of the Rules of 2018 more particularly, the Rule 7(h) of the said rules. As and when the authorities make such adjustment and the appellants are adjusted as a full-fledged Assistant Professors in their respective Departments, the authorities will be filling up some of the vacancies in the posts of Assistant Professor and at the same time, the original posts hold by the appellants will automatically revert back to their original cadre, i.e., Senior Residents/ Tutors/ Demonstrators, etc. from the date of absorption of the appellants in the grade of Assistant Professors as provided under Rule 6(c) of the Rules of 2018, which will not only serve the purpose of the said rules but also the interest of the institution and the general public at large.

[18] In our considered opinion, the objections raised by the appellants are not valid or reasonable for the reasons and discussions given hereinabove. The respondents cannot take the plea that there is no provision under the Rules of 2018 as to how the adjustment is to be made when such adjustment can be carried out as explained hereinabove. Besides, accepting for argument sake, the plea taken by the respondents that the Rules of 2018 is silent on how the adjustment is to be done, such omission or lapses had been caused by the respondents while making the Rules of 2018. As such, the respondents cannot be allowed to take advantage of the lapses or mistake committed by them while framing the said rules and the appellants cannot be made to suffer for the mistake or lapses committed by the respondents.

[19] Despite having knowledge that in the Service Rules of JNIMS, 2015, appointment to the post of Assistant Professor is to be made by way of direct recruitment, the authorities of JNIMS have framed the Rules of 2018 with the sole purpose and the objective of upgrading the eligible and qualified incumbents out of the 77 regularly appointed Senior Residents/ Tutors/ Demonstrators/ Lady Medical Officers of JNIMS as full-fledged Assistant Professors. As such, the respondents cannot now take a U-Turn and raise objections that the appellants cannot be adjusted against the regular vacancies of Assistant Professor in JNIMS in terms of the provision of the Rules of 2018. In our considered opinion, the Rules of 2018 is a special rule which can be given full effect for achieving the sole purpose and objective for which the rule has been framed without giving any hindrance to the operation of the JNIMS Service Rules, 2015. Moreover,

we are of the considered view that the respondents are barred by the principle of *Promissory Estoppel* from raising such plea. In this regard, it will be gainful to rely on the judgment rendered by the Hon'ble Apex Court in the case of ***“Union of India & ors. Vs. Godfrey Philips India Ltd.”*** reported in (1985) 4 SCC 369, wherein it has been held as under:-

“9. Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in Central London Property Trust Limited v. High Trees House Limited. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Padampat Sugar Mills v. State of U.P., it is now well-settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills case contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.”

“10. More importantly, it is necessary to point out that the decision in Motilal Sugar Mills case marks a significant development in the law relating to the doctrine of promissory estoppel. The principal question debated in that case was as to whether and if so, to what

extent, is the doctrine of promissory estoppel applicable against the Government. It was contended on behalf of the State of Uttar Pradesh that the plea of promissory estoppel is not available against the exercise of executive functions of the State, for the State cannot bind itself, so as to fetter its future executive action. This contention was sought to be supported by relying on the observations of Rowlatt J. in an early decision in Rederiaktiebolaget Amphitrite v. Rex. But this Court observed in Motilal Sugar mills case that what Rowlatt J. said in that case did not represent the correct law on the subject and pointed out that the doctrine of executive necessity propounded by Rowlatt J. was disapproved by Denning, J. as he then was, in Roberston v. Minister of Pensions. Denning, J. categorically expressed the view in Roberston's case that the crown cannot escape its obligation under the doctrine of promissory estoppel "by praying in aid the doctrine of executive necessity". Shah, J. speaking on behalf of the Court negated the argument urged on behalf of the Government that "it is not competent for the Government to fetter its future executive action which may necessarily be determined by the needs of the community when the question arises and no promise or undertaking can be held to be binding on the Government so as to hamper its freedom of executive action" and observed at page 376 of the Report:

We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law; if a member of the Executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute - the courts will be competent to and indeed would be bound to protect the rights of the aggrieved citizens.

The learned judge also after examining the decisions cited before him summed up the position in the following words:

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex-parte appraisalment of the circumstances in which the obligation has arisen.

The defence of executive necessity was thus clearly negated by this Court and it was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting in reliance on the promise, had altered his position. The doctrine of promissory estoppel was in such a case applicable against the Government and it could not be defeated by invoking the defence of executive necessity. This Court in Motilal Sugar Mills case also negated the argument that if the Government were held bound by every representation made by it regarding its intention, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 of the Constitution was executed. It was held by this Court that a party who has, acting in reliance on a promise or representation made by the Government, altered his position, is entitled to enforce the promise or the representation against the Government, even though the promise or representation is not in the form of a formal contract as required by Article 299 and that article does not militate against the applicability of the doctrine of promissory estoppel against the Government."

"11. The resultant position was summarised by this Court in Motilal Sugar Mills case in the following words:

The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisees and, in fact, the promisee, acting in reliance on it, alters his position the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisees, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the government say that it is under no obligation to act in a manner i.e. fair and just or that it is not bound by the

considerations of “honesty and good faith”? Why should the government not be held to a high “standard of rectangular rectitude while dealing with its citizen”? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the government to repudiate even its contractual obligations, but let it be said to the eternal glory of this court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this court that the government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action.

The doctrine of promissory estoppel as explained above was also held to be applicable against public authorities as pointed out in Motilal Sugar Mills case. This court in Motilal Sugar Mills case quoted with approval the observations of Shah, J. in Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council where the learned Judge said:

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice.

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out, its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.”

The Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.”

[20] In view of the facts and circumstances of the present case and for the discussion and reasons given hereinabove, we cannot bring ourselves to agree with the findings and decisions of the learned Single Judge in his judgment and order dated 12-08-2022 passed in WP(C) No. 102 of 2021. Accordingly, we hereby quash and set aside the said impugned judgment and order passed by the learned Single Judge. The respondents are directed to adjust the appellants against the available

vacant posts of Assistant Professor in their respective Departments as provided under Rule 7(h) of the Rules of 2018 by issuing necessary orders in this regard. It is made clear that such absorption should be given effect only from the date of issue of such order and no retrospective adjustment should be given. The whole exercise should be completed within a period of two months from today.

With the aforesaid directions, the present writ appeal is allowed. In the facts and circumstances of the present case, there will be no order as to cost.

JUDGE

JUDGE

FR / NFR

Devananda