

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 1086 of 2022

Dr. Chingangbam Sarat Singh, aged about 61 years, son of Late Ch. Ibopishak Singh, resident of Kwakeithel Laishram Leirak, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.

...Petitioner

-Versus -

1. The State of Manipur represented by Commissioner/ Secretary (Education-S), Government of Manipur, Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Joint Secretary (Education-S), Government of Manipur, Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001 and
3. Shri Tkhellambam Ojit Singh, aged about 56 years, S/o (Late) Th. Tobe Singh, resident of Chingamakha Ningthoujam Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur - 795008

.... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Shri N. Ibotombi, Sr. Advocate asstd. by Mr. A. Rommel, Advocate
For the respondents	::	Mr. M. Devananda, Addl. AG asstd. by Ms. Jyotsana, Advocate & Mr. N. Kumarjit, Sr. Advocate asstd. by Mr. N. Zequeson, Advocate
Date of Hearing	::	14-02-2023
Date of Judgment & Order	::	27-02-2023

JUDGMENT & ORDER

[1] Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel appearing for the petitioner, Mr M. Devananda,

learned Addl. Advocate General assisted by Ms. Jyotsana, learned counsel appearing for the respondents No. 1 and 2 and Mr. N. Kumarjit, learned senior counsel assisted by Mr. N. Zequeson, learned counsel appearing for the respondent No. 3.

The present writ petition had been filed assailing the appointment of the respondent No. 3 as the Chairman of the Council of Higher Secondary Education, Manipur along with the prayer for directing the respondents No. 1 and 2 to appoint the petitioner as Chairman of the Council of Higher Secondary Education, Manipur (hereinafter referred to as "COHSEM", for short).

[2] The brief facts of the present case is that both the petitioner and the respondent No. 3 were initially appointed as Lecturer of Government Colleges. Subsequently on the recommendation of a Selection Committee associated with the Manipur Public Service Commission, the Governor of Manipur was pleased to accord sanction to the placement of both the petitioner and respondent No. 3 in the senior scale of pay w.e.f. 27-07-1998, vide order dated 01-12-2004 issued by the Commissioner (Hr. Edn), Government of Manipur. Subsequently in pursuance of the UGC's guidelines for Career Advancement Scheme and on the recommendation of the Selection Committee associated with the MPSC, the Governor of Manipur was pleased to order placement of both the petitioner and respondent No. 3 in the grade of Lecturer (Selection Grade) w.e.f. 27-07-2003, vide order dated 31-07-2007 issued by the Joint Secretary (Hr. Edn.), Government of Manipur. In the said order, it was also mentioned that in respect of the petitioner, the date of his placement in the grade of

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Lecturer (Selection Grade) shall be w.e.f. 27-07-2003 notionally and the effective date for cash payment will be w.e.f. 16-08-2005.

[3] By an order dated 12-07-2022 issued by the Deputy Secretary (Education-S), Government of Manipur, the petitioner was appointed as Chairman of COHSEM on in-charge basis till a regular Chairman is appointed. While the petitioner was holding the post of Chairman of COHSEM on in-charge basis, the Secretariat: Education (S) Department issued a Notification dated 18-08-2022 inviting applications from willing candidates for appointment of Chairman, COHSEM on deputation basis. In response to the said Notification, three candidates including the petitioner and respondent No. 3 submitted their applications. Subsequently by an order dated 16-12-2022 issued by the Joint Secretary (Education-S), Government of Manipur, the respondent No. 3 was appointed as Chairman of COHSEM on deputation for a term not exceeding three years. Having been aggrieved, the petitioner approached this court by filing the present writ petition with a prayer for quashing and setting aside the said order dated 16-12-2022.

[4] Mr. N. Ibotombi, learned senior counsel submitted that under the amended provisions of section 12(2) of the Manipur Higher Secondary Education Act, 1992 (hereinafter referred to as the "said Act", for short), it is, inter alia, provided that a Selection Grade Lecturer in a Government College with 18 years of experience as a Selection Grade is eligible for appointment as the Chairman of COHSEM. By drawing the attention of this court to the amended provisions of section 12(2) of the said Act and the order dated 13-07-2007 issued by the Government ordering the placement of the petitioner in the grade of Lecturer (Selection Grade) w.e.f.

27-07-2003, it has been submitted by the learned senior counsel that the petitioner is eligible and qualified for appointment as the Chairman of COHSEM since the petitioner has more than 18 years of experience as a Selection Grade Lecturer. For ready reference, the amended provisions of section 12(2) of the said Act is reproduced hereunder:-

"12.2. The Governor shall appoint on deputation an officer who is working as the Director of Education (U) or the Director of Education (S) or as a Principal of a Government College with a minimum 15 years' service as a Reader/ Selection Grade Lecturer or an Additional Director, Education (U) or the Additional Director of Education (S) or a Reader/ Selection Grade Lecturer in a Government College with 18 years of experience as a Reader or Selection Grade Lecturer as the Chairman of the Council for the term not exceeding three years which may be shortened or extended by one year at a time subject to the condition that the total length of deputation shall not exceed five years.

Provided that he or she will not continue beyond the date of his or her superannuation."

[5] The learned senior counsel appearing for the petitioner strenuously submitted that even though the petitioner is quite eligible and qualified to be appointed as Chairman of COHSEM, the authorities wrongly rejected his candidature on the ground that the petitioner did not possess the eligibility criteria for appointment as the Chairman of COHSEM as prescribed under the provisions of section 12(2) of the said Act. It has also been submitted that without examining the relevant records in respect of the petitioner's qualification, the authorities came to the conclusion that the petitioner is not eligible for appointment as Chairman, COHSEM while in fact the petitioner is eligible for appointment as Chairman of COHSEM as per section 12 of the said Act.

[6] The learned senior counsel appearing for the petitioner submitted that since a notification had been issued inviting applications from willing candidates for appointment on deputation to the post of Chairman, COHSEM and since the petitioner and respondent No. 3 along with another candidate have applied by submitting necessary applications, the authorities are under an obligation and are duty bound to consider the case of all the candidates, including the petitioner, and to select the most suitable and deserving candidate on the basis of merit. However, in the present case there is nothing on record to show that the authorities have also considered the case of the petitioner and selected the respondent No. 3 on the basis of merit. It has also been submitted that in the counter affidavit filed by the official respondents nothing is mentioned that the case of the petitioner was considered and that the authorities have failed to give valid and cogent reasons as to how the respondent No. 3 had been appointed, when the petitioner is also very much eligible to be appointed as Chairman, COHSEM as provided under section 12(2) of the said Act. The learned senior counsel vehemently submitted that the authorities appointed the respondent No. 3 as Chairman, COHSEM without considering the case of the petitioner in a very arbitrary and discriminatory manner and in colourable exercise of power and accordingly the impugned order is liable to be quashed and set aside.

[7] The stand taken by the authorities in their counter affidavit is that the petitioner was appointed as Chairman, COHSEM on in-charge basis as a stop gap arrangement in order to fill up the gap between the release of the previous Chairman till the appointment of a regular Chairman and that on the appointment of the respondent No 3 as a regular Chairman, the

in-charge arrangement given to the petitioner came to an end. It has also been stated that on examination of the official records, based on which decision for appointment of a regular Chairman, COHSEM was taken, it was observed that both the petitioner and respondent No. 3 were found to have been eligible on completion of eighteen years of service and that the appointment of the Chairman, COHSEM is a policy decision of the State Government and the Government appointed the respondent No. 3 in exercise of its statutory power given under section 12(2) of the said Act. In the additional affidavit filed by respondents No. 1 and 2, it has been explained that the Government policy decision is just to mean that the appointment of the respondent No 3 was made by the Government in accordance with the rules regarding appointment of Chairman COHSEM as per section 12 (2) of the said Act.

Mr M. Devananda learned Addl. AG appearing for the official respondents submitted that on the last date for submission of applications i.e., on 02-09-2022, as notified under the Notification dated 18-08-2022, the petitioner has not completed eighteen years of experience as a Selection Grade Lecturer and as such he was not qualified and eligible for appointment as Chairman, COHSEM whereas the respondent No. 3 had already completed eighteen years of experience as a Selection Grade Lecturer, accordingly, the authorities appointed the respondent No. 3 as the Chairman of COHSEM. The Addl. AG further submitted that the petitioner was appointed as in-charge Chairman on stop gap arrangement till a regular Chairman is appointed and that as the Government have appointed the respondent No. 3 as the new Chairman in exercise of the statutory power provided under section 12(2) of the said Act, the petitioner

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has no valid right to challenge the appointment of respondent No. 3 specially when the petitioner is not qualified for such appointment. The learned Addl. AG accordingly submitted that the present writ petition is without any merit and the same is liable to be dismissed.

[8] Mr. N. Kumarjit, learned senior counsel appearing for the respondent No. 3 submitted that the petitioner challenged the impugned order dated 16-12-2022 only on the following grounds:-

- a) The respondents have not examined the relevant records in respect of the petitioner and came to the conclusion that the petitioner is not eligible for appointment as Chairman, COHSEM;
- b) An ineligible person i.e., the respondent No. 3 has been appointed as Chairman, COHSEM;
- c) The petitioner is more qualified than the respondent No. 3; and
- d) No reason has been assigned by the State Government for appointing an ineligible person as Chairman, COHSEM.

[9] With regard to the first ground, it has been submitted by the learned senior counsel for the respondent No. 3 that at para 7 of the counter affidavit filed by the respondents No. 1 and 2, it has been stated that on re-consideration and re-examination of the official records based on which decision for appointment of a regular Chairman, COHSEM was taken, it was observed that both the petitioner and respondent No. 3 were found to have been eligible having completed eighteen years of service as Selection Grade Lecturer. It has been submitted that from the above stand taken by the Government, it is clear that the authorities have duly

re-considered and re-examined the relevant records including the petitioner's qualification and came to the conclusion that the petitioner and respondent No. 3 are eligible for appointment as Chairman, COHSEM and that such stand of the authorities clearly shows that the case of the petitioner was also duly considered by the authorities along with the case of the respondent No. 3 for appointment as Chairman, COHSEM.

[9.1] With regard to the second ground, it has been submitted that as there is no dispute with regard to the fact that the respondent No. 3 is qualified and eligible for appointment as Chairman, COHSEM, there is no substance in the second ground raised by the petitioner.

[9.2] By drawing the attention of this court to various documents produced by the respondent No. 3 in connection with his educational qualification and administrative experience, the learned senior counsel elaborately submitted that the respondent No. 3 has higher educational qualification and better administrative experience than the petitioner and that on examination of the records, it can be safely concluded that the respondent No. 3 is more qualified than the petitioner for appointment as Chairman, COHSEM. The learned senior counsel accordingly submitted that there is no merit on the third ground raised by the petitioner.

[9.3] With regard to the fourth ground raised by the petitioner, it has been submitted by the learned senior counsel appearing for the respondent No. 3 that it has been noted in the relevant Government file that both the petitioner and respondent No. 3 are eligible for appointment as Chairman, COHSEM and that from the entries made and reflected in the Government file, it is crystal clear that the case of both the petitioner

and respondent No. 3 pertaining to their qualification, experience, etc. have been duly examined and verified by the State authorities and came to the conclusion that the respondent No. 3 is more suitable/ meritorious for appointment to the post of Chairman, COHSEM and after obtaining due approval from the concerned authority, the respondent No. 3 was appointed as Chairman, COHSEM. According to the learned senior counsel, such noting in the Government file shows that sufficient reason has been assigned and that no further reasons are required to be given.

[9.4] The learned senior counsel submitted that the authorities have not committed any illegality or irregularity in appointing the respondent No. 3 as Chairman, COHSEM and that the present writ petition is devoid of merit and the same is liable to be dismissed. The learned senior counsel cited the following case laws in support of his contention:-

1. 1992 Supp (2) SCC 481 “National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman & ors.”

“5. The Selection Committee after interview and assessment of relative merits of the candidates recommended a panel of names for appointment as Professor. Dr. Gauri Devi was placed first in the panel of names. Dr. Kalyana Raman was the second. Dr. Gauri Devi was eventually appointed as Professor. Her appointment was challenged by Dr. Kalyana Raman in the High Court of Karnataka by means of a writ petition.”

“6. The High Court allowed the writ petition in the judgment which is impugned in this appeal. The High Court has quashed the proceedings of the Selection Committee and the consequent appointment of Dr. Gauri Devi to the post of Professor of Neurology. The High Court appears to make two points: (i) that it was not possible to say with any degree of confidence that Dr. Kalyana Raman’s case has received a fair and reasonable consideration at the hands of the Selection Committee; and (ii) that the Selection Committee has not given any reason, however brief, to establish any rational

nexus between the facts said to have been considered by the Selection Committee and the conclusion drawn by it on the basis of those facts, and the proceedings of the Selection Committee cannot, withstanding the eminence of its personnel be upheld.”

- “7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has however, referred to the decision of this Court in *Union of India v. Mohan Lal Capoor*. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in *Capoor* case was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The *Capoor* case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass v. Union of India* in which *Capoor* Case was also distinguished.”
- “8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action.

The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however, observed, that Dr. Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated 18 February, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr. Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was somewhat extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, to have stated that he did not satisfy the minimum qualifications prescribed for eligibility. According to the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and reassurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all, are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr. Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr. Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion."

2. (2008) 14 SCC 306 "B.C. Mylarappa Alias Dr. Chikkamylarappa v. Dr. R. Venkatasubbaiah & ors."

"24. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated

earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said post.”

“25. In University of Mysore vs. C.D. Govinda Rao, while dealing with the selection of candidates for academic matters by a Board of experts appointed by the University for the post of Reader and the recommendation of the Board, this Court at para 13 of the aforesaid decision observed:- (AIR pp. 496-97)

“13....Boards of Appointments are nominated by the universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the court should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the court to leave the decisions of academic matter to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more

germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified."

- "26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made herein above, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction."*
- "27. Again in M.V. Thimmaiah v. Union Public Service Commission, this Court clearly held that in the absence of any mala fides attributed to the expert body, such plea is usually raised by an interested party (in this case the unsuccessful candidate) and, therefore, court should not draw any conclusion on the recommendation of the expert body unless allegations are substantiated beyond doubt. That apart, the challenge to the selection made by the expert body and approved by the University Authorities was made by the respondent 1 and 2 who were unsuccessful candidates and were not selected for appointment to the post of Professor in the Department of Sociology."*

"28. *In National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman*, this Court considered in detail the role of an expert body in deciding the candidature for selection to a particular post. While doing so, this Court at SCC pp. 484-85, para 7 of the said decision observed as follows:

"7. ...In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in *Union of India v. Mohan Lai Capoor*. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in *Capoor* case was rendered on 26-9-1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The *Capoor* case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R. S. Dass v. Union of India* in which *Capoor* case was also distinguished."

Keeping this observation in our mind and considering the facts and circumstances of the present case, we find that there was no dispute in this case that the selection was made by the assessment of relative merit of rival candidates determined in the course of the interview of the candidates and after thoroughly verifying the experience and service of the respective candidates selected the appellant to the post of the Professor in the said Department."

"29. It is not in dispute that there is no rule or regulation requiring the Board to record reasons. Therefore, in our view, the High Court was not justified in making the observation that from the resolution of the Board selecting the appellant for appointment, no reason was recorded by the Board. In our view, in the absence of any rule or regulation requiring the Board to record reasons and in the absence of mala fides attributed against the members of the Board, the selection made by the Board without recording reasons cannot be faulted with."

"30. Before we conclude, at the risk of repetition, we may reiterate that the Chairman, Department of Sociology, University of Bangalore submitted his scrutiny and verification report in which it was stated as under:

"On my scrutiny, I am satisfied that the candidate under reference fulfils all the requirements as laid down in the University Notification under reference and the candidate may be invited for the interview. If the candidate is not eligible, please furnish the details."

"31. A reading of the scrutiny report which was extracted by the learned Single Judge in his order would clearly show that the Chairman found only four persons eligible for the post and invited the appellant and the respondent 1 and 2 and one more candidate for interview. After being satisfied and after verifying the report of the eligibility and the requirements for appointment to the post of Professor in the Sociology Department of the University, the scrutiny and verification report was filed by the Chairman and on the basis of which the appellant was selected and appointed in the post of Professor in the University. That being the position and in view of our discussions made herein above, we are of the view that the Division Bench as well as the learned Single Judge ought not to have exercised the writ jurisdiction and

interfered with the selection of the expert committee of the University for the reasons made in the order and particularly when the selection of the appellant was not challenged on the ground of mala fides.”

“32. For the reasons aforesaid, we are inclined to set aside the orders of the High Court. Accordingly the impugned orders of the High Court are set aside and the writ petition filed by the respondents is hereby rejected. In view of the fact that we have already found that the appointment of the appellant is legal, the University is directed to re-instate the appellant within two months from the date of supply of a copy of this order. The appeal is allowed. There will be no order as to costs.”

[10] I have heard the arguments advanced by the learned counsel appearing for the parties at length and also examined the materials available on record. I have also carefully examined the relevant Government file produced by the learned Government Advocate. The only grievance raised on behalf of the petitioner is that even though the petitioner is qualified and eligible for appointment as Chairman of COHSEM in terms of the provisions of section 12(2) of the said Act, the authorities appointed the respondent No. 3 without at all considering the case of the petitioner. In view of the specific grievances raised by the petitioner, this Court needs to examine whether the case of the petitioner was examined by the authorities at the time of appointment of the respondent No. 3 as Chairman, COHSEM.

In the counter affidavit as well as in the additional affidavit filed by the official respondents, nothing is mentioned that the case of the petitioner was also considered along with the case of the respondent No. 3. There is also no materials available on record to show that the comparative merits of both the petitioner and the respondent No. 3 were

examined or evaluated. The process for selection and appointment of the respondent No. 3 as the Chairman, COHSEM are recorded in Note Nos. 10 to 12 of the relevant Government file which are reproduced hereunder for ready reference:-

"Note # 10

The proposal has been re-examined as per Notification No. 2/60/2009-Leg/I dated 17th March, 2010 of the Manipur Higher Secondary Education (Second Amendment) Act, 2010 of Section 12(2) "Reader/Selection Grade Lecturer of Government College with 18 years can be chairman of COHSEM".

- 1. Shri T. Ojit Singh who was promoted to Selection Grade on 27/07/2003 Govt. vide order No. 7(2)/5/2005-S/HE(I) dated 31st July, 2007, completed 18 years and Shri. Dr. Ch. Sarat Singh got promoted to Selection grade on dated 1-12-2004 completed 17 years 8 months on the date of notification. However as now Shri. Ch. Sarat Singh also completed 18 years.*
- 2. As on this date both are eligible for the Chairman of COHSEM.*
- 3. Submitting for further necessary action please.*

16/12/2022 04:24 PM

*HMANGTE LERTE KOM
JOINT SECRETARY (EDN-S)*

Note # 11

As discussed may kindly approve the appointment of Shri T. Ojit Singh as Chairperson CoHSEM.

16/12/2022 04:28 PM

*GYAN PRAKASH
COMMISSIONER (EDN-S)*

Note # 12

*Approved
16/12/2022 04:40 PM*

*THOUNAOJAM BASANTA SINGH
MINISTER"*

[11] On careful examination of the above quoted notings recorded in the relevant Government file, it is clearly revealed that the concerned

authorities were of the opinion that the respondent No. 3 had completed eighteen years as Selection Grade Lecturer whereas the petitioner had completed only seventeen years and eight months as on the date of issuance of the notification dated 18-08-2022 and that the petitioner completed eighteen years as Selection Grade Lecturer only on the date of recording Note No. 10 i.e., 16-12-2022, meaning thereby that the authorities considered the petitioner not qualified for appointment as Chairman, COHSEM. It is also clearly revealed that on the basis of the notings under the aforesaid Note No. 10, the authorities selected the respondent No. 3 and approved the appointment of respondent No. 3 as Chairman, COHSEM.

[12] In my considered view, the authorities wrongly treated the petitioner as not qualified for appointment as Chairman, COHSEM and the authorities selected and appointed the respondent No. 3 without considering and evaluating the comparative merits of the petitioner and the respondent No. 3. The view of this court is fortified by the submission made by the learned Addl. AG that the petitioner is not qualified for appointment as Chairman, COHSEM since the petitioner did not complete eighteen years as Selection Grade Lecturer as on the last date of submission of applications as notified under the notification dated 18-08-2022. In view of the above, this Court is of the considered view that the authorities rejected the candidature of the petitioner without proper examination of his qualifications and without proper application of mind and that the petitioner had been able to make out a case for interfering with the impugned order dated 16-12-2022.

So far as case laws cited on behalf of the respondent No. 3 are concerned, this Court is in total agreement with the principle of law laid down by the Hon'ble Apex Court, however, this Court is of the considered view that the said case laws are of no help to the respondent No. 3 since the ratio laid down therein have no application in the facts and circumstances of the present case.

In the result, the present writ petition is allowed by quashing and setting aside the impugned order dated 16-12-2022. The respondents are further directed to re-consider both the cases of the petitioner and respondent No. 3 by evaluating their comparative merits and to appoint the suitable candidate as Chairman of COHSEM.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own cost.

JUDGE

FR/NFR

Devananda