

GAHC020007852022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/248/2022

MR. JOHN WESLEY MAGH AND 14 ORS
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

2: MR VEDUZO SASU RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

3: MR OBED ACHUMI
BDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

4: THUNGJANBEMO LOTH
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

5: MR HAMDOK K KONYAK
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

6: MRS KEVISEYIENUO SALE
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

7: MRS CELIN THOI
BDO
RD BLOCK KOHIMA

8: MR MHABEMO T HUMTSOE
BDO
RD BLOCK CHANGPANG

9: MR IMOAKUM BDO
RD BLOCK KUBULONG
MOKOKCHUNG

10: SMTI K SHONGMAO BDO
RD BLOCK NOKSEN
TUENSANG

11: MR E EBOU CHANG
BDO
RD BLOCK SANGSANGNYU
TUENSANG

12: MR VEKHROLO KOZA
BDO
RD BLOCK PFUTSERO

13: MR W MOBA BDO
RD BLOCK TOBU-MON

14: MR ITEISING
BDO
RD BLOCK PEREN

15: MR HEIPEUDING ILUNGLUNG BDO
RD BLOCK PHEK
VERSUS

THE STATE OF NAGALAND AND 16 ORS
REPRESENTED BY THE SECRETARY
DEPARTMENT OF RURAL DEVELOPMENT
GOVT. OF NAGALAND KOHIMA
NAGALAND

2:THE COMMISSIONER AND SECRETARY
P AND AR DEPARTMENT NAGALAND KOHIMA

3:THE DIRECTOR
DIRECTORATE OF RURAL DEPARTMENT
GOVT. OF NAGALAND
KOHIMA

4:MR. KUHUCUYI BDO
RD BLOCK MELURI

5:MR Y CHIMOKLEMBA BDO
RD BLOCK ZUNHEBOTO NAGALAND

6:MR TAKOCHUNGBA PHOM BDO
RD BLOCK- SAKSHI

7:RM S SAMUEL PHOM
RD BLOCK-TAMLU

8:MR ANGAM P LONGHO BDO
RD BLOCK-SHAMATOR

9:MR M CHELONG CHENTH BDO
RD BLOCK-LONGLENG

10:MR LIMAMEREN YADEN
BDO
RD BLOCK- TULI

11:MR MOKTON KONTAK BDO
RD BLOCK- KHONSA

12:MS AKUMENLA AIER BDO
RD BLOCK-NIULAND

13:MR MULETO TUNYI BDO
RD BLOCK-WEZIHO
PHEK

14:MS JENNY KATH BDO
RD BLOCK- TSEMINYU

15:MRS GRACE WANGNAO BDO
RD BLOCK-DHANSARIPAR

16:MS SEDIVINUO RIO BDO
RD BLOCK-BOTSA

17:THE NAGALAND PUBLIC SERVICE COMMISSION
NAGALAND KOHIMA
REPRESENTED BY ITS CHAIRMAN

Advocate for : S. S. DEY SR. ADV
Advocate for : T. B. JAMIR appearing for THE STATE OF NAGALAND
AND 16 ORS

Linked Case : WP(C)/322/2022

MR JOHN WESLEY MAGH, RDO AND 14 ORS
DIRECTORATE OF RURAL DEVELOPMENT, NAGALAND KOHIMA

2: MR. VEDUZO SASU
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

3: MR. OBED ACHUMI
BDO
RURAL DEVELOPMENT BLOCK-GHATHASHI
ZUNHEBOTO
NAGALAND

4: THUNGJANBEMO LOTHIA
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

5: MR.HAMDOK M KONYAK
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

6: MRS. KEVISEYIENO SALE
RDO
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

7: MRS. CELIN THOL
BDO
RD BLOCK KOHIMA
KOHIMA NAGALAND

8: MR. MHABEMO T HUMTSOE
BDO
RURAL DEVELOPMENT BLOCK-CHANGPANG
WOKHA
NAGALAND

9: MR. IMOAKUM BDO
RURAL DEVELOPMENT BLOCK-KUBULONG MOKOKCHUNG

10: SMTI. K. SHONGMAO
BDO

RD BLOCK NOKSEN
TUENSANG
NAGALAND

11: MR. E. EBOU CHANG
BDO
RD BLOCK SANGSANGNYU
TUENSANG NAGALAND

12: MR. VEKHROLO KOZA
BDO
RD BLOCK PFUTSERO
PHEK
NAGALAND

13: MR. W. MOBA BDO
RD BLOCK
TOBU
MON NAGALAND

14: MR. ITEISING
BDO
RD BLOCK-PEREN
PEREN NAGALAND

15: MR. HEIPEUDING ILUNGLUNG
BDO
RD BLOCK PHEK
NAGALAN

VERSUS

THE STATE OF NAGALAND AND 17 ORS
REPRESENTED BY THE SECRETARY, DEPARTMENT OF RURAL
DEVELOPMENT, GOVT. OF NAGALAND, KOHIMA NAGALAND

2:THE UNDER SECRETARY TO THE GOVT. OF NAGALAND
DEPARTMENT OF RURAL DEVELOPMENT
GOVT. OF NAGALAND
KOHIMA NAGALAND

3:THE COMMISSIONER AND SECRETARY
P AND AR DEPARTMENT
KOHIMA NAGALAND

4:THE DIRECTOR
DIRECTORATE OF RURAL DEVELOPMENT
NAGALAND KOHIMA

5:MR. KUHUCUYI
BDO
RD BLOCK MELURI
PHEK
NAGALAND

6:MR. Y. CHIMOKLEMB
BDO
RD BLOCK ZUNHEBOTO
NAGALAND

7:MR. TAKOCHUNGBA PHOM
BDO
RD BLOCK-SAKSHI
LONGLENG
NAGALAND

8:MR. S SAMUEL PHOM
BDO
RD BLOCK - TAMLU
LONGLENG NAGALAND

9:MR. ANGAM P LONGHO
BDO
RD BLOCK-SHAMATOR
TUENSANG NAGALAND

10:MR. M CHELONG CHENTH
BDO
RD BLOCK LONGLENG

11:MR. LIMAMEREN YADEN
BDO
RD BLOCK TULI
MOKOKCHNG NAGALAND

12:MR. NOKTON KONYAK
BDO
R BLOCK- KHONSA KIPHIRE
NAGALAND

13:MS. AKUMENLA AIER
BDO
RD BLOCK-NIULAND
NAGALAND

14:MR. MULETO TUNYI

BDO
RD BLOCK TSEMINYU

15:MS JENNY KATH
BDO
RD BLOCK TSEMINYU

16:MR. GRACE WANGNAO
BDO
RD BLOCK DHANSARIPAR DIMAPUR NAGALAND

17:MS SEDEVINUO RIO BDO
RD BLOCK BOTSA KOHIMA

18:THE NAGALAND PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETAR

Advocate for the Petitioner : S. S. DEY, SR. ADV

Advocate for the Respondent : T. B. JAMIR

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Advocate for the petitioners : Mr. S. S. Dey, Sr. Advocate

Advocate For the respondents : Mr. Taka Masa, Sr. Advocate
Mr. T. B. Jamir, Advocate

Date of hearing : 12.06.2023

Date of Judgment/ Order : 21.06.2023

JUDGMENT & ORDER(CAV)

Date : 21.06.2023

By this judgment and order, it has been proposed to dispose of

WP(C) No.248/2022 and WP(C) No. 322/2022 as the cause of action in the aforesaid two petitions are alike.

2. Heard Mr. S.S. Dey, learned Sr. Counsel appearing for the petitioners and Mr. T.B. Jamir, learned counsel for the respondent Nos. 1, 2 and 3 in WP(C) No.248/2022 and for respondent Nos. 1 to 4 in WP(C) No.322/2022. Also heard Mr. Taka Masa, learned Sr. Counsel appearing for the private respondent Nos. 4 to 16 in WP(C) No.248/2022 and for private respondent Nos. 5 to 17 in WP(C) No.322/2022. None appeared for the respondent No. 17/ Nagaland Public Service Commission (for short 'N.P.S.C.') in WP(C) No.248/2022 and for respondent No.18 in WP(C) No.322/2022.

PETITIONERS' CASE:

3. In both the petitions, the grievance of the petitioners is that they were appointed to the post of BDO pursuant to an Addendum Advertisement, dated 12.07.2012 for 16 posts of BDO following the procedure laid in Nagaland Rural Development Service Rules, 2006 (for short 'Rules of 2006') which came into force vide Notification, dated 18.08.2006. As per Rule 6(1)(f) read with Rule 8 and Schedule-II of the Rules of 2006, the post of BDO/RDO/APO are included in the Group A Junior Grade Service and those posts are to be filled up by 25% of the total vacancy of a year by promotion and 75% by way of direct recruitment by the N.P.S.C. On selection through process as per Rule vide various notifications, the petitioners were appointed as BDOs between 04.07.2013 and 31.01.2014 and accordingly, they joined in their respective posts. In 2018, the petitioners were eligible for consideration for the

purpose of promotion to the post of Deputy Director, which was hitherto known as Assistant Director. By a Cabinet decision, dated 19.09.2022, the Government of Nagaland had upgraded 16 posts of Assistant Director to that of Deputy Director under the Directorate of Rural Development increasing the total strength in the Cadre of Deputy Director in the said department. In the meantime, the petitioners had approached this Court by way of filing a writ petition being WP(C) No. 213/2018, *inter-alia*, praying for quashing of the Tentative Seniority List, dated 23.04.2018 and re-fixation of the seniority of the petitioners vis-à-vis respondent Nos. 4 to 16 in WP(C) No.248/2022. The said writ petition stood dismissed by a judgment and order, dated 08.04.2022. Being aggrieved, the petitioners preferred a writ appeal being W.A. No. 11/2022 before the Division Bench of this Court. The Division Bench of this Court by its judgment and order, dated 26.08.2022, dismissed the appeal. The petitioners have stated that the private respondent Nos. 4 to 16 in WP(C) No.248/2022 and private respondent Nos. 5 to 17 in WP(C) No.322/2022 (henceforth to be referred to as 'private respondents') were not appointed as per the due procedure of law provided in the Rules of 2006 and as such, their induction, entry or so called absorption/regularization in service was *per se* illegal, which is not condonable on any count and the validity of their service in public employment cannot be deemed to be legal or regularized by reason of long continuation or tenure in the post. The petitioners have stated that the private respondents were initially brought on deputation/appointed on contract basis for a specific period of time, but allowed to continue in service and subsequently, absorbed/regularized *dehors* the Rules of 2006 affecting the rights of the petitioners, who were appointed to the posts in

accordance with the Rules of 2006 through a selection process conducted by the N.P.S.C.

4. It has been further stated that being aggrieved, the petitioners submitted representation, dated 31.10.2022, praying for cancellation of the appointment/deputation orders of private respondents and all other consequential orders, but the same remained not responded to. The petitioners have further contended that the Rules of 2006 do not contemplate the appointment on contract basis followed by regularization nor does it provide for appointment on deputation and subsequent absorption as has been done in case of the private respondents. The aforesaid illegality in employment of the private respondents cannot now be validated by exercise of executive authority violating the constitutional provisions and statutory rules and as such, their appointment orders and all the consequential orders are being bad in law are liable to be quashed and set aside.

ARGUMENTS:

5. Mr. S.S. Dey, learned Sr. Counsel appearing for the petitioners, at the outset explained the ingredients of Section 11 of the Code of Civil Procedure and submitted that the previous WP(C) No.213/2018 was not decided on merit and as such, the doctrine of *res judicata* will not come into play in the instant second writ petitions. Mr. Dey emphatically submitted that the private respondents were initially inducted in service on deputation/on contract basis for a specific period of time and allowed to continue and despite lapse of time, their services were made to continue and they were subsequently absorbed/regularized *dehors* the Rules of

2006. Mr. Dey submitted that the state respondents cannot act arbitrarily, illegally and discriminatorily in matters of public employment. It has been submitted that exercise of executive authority cannot supplant and/or violate the constitutional provisions and statutory rules. Mr. Dey, submitted that the petitioners are admittedly the first batch of BDO/RDO directly recruited by the N.P.S.C. in the years 2013 and 2014. Mr. Dey further submitted that the moot question is whether the issue involved in the earlier writ petition, that is, the illegal appointment of the private respondents as well as the Tentative Seniority List **were not substantially** raised, heard and finally disposed of. Mr. Dey submitted that this Court has jurisdiction to entertain the instant petitions to hear and decide the matter. In support of his submission, Mr. Dey has relied on the judgments rendered by the Hon'ble Supreme Court in- (1) *Ramnandan Prasad Narayan Singh -Vs- Kapildeo Ramjee and Anr.*, reported in 1951 SCC OnLine SC 2; (2) *Krishan Lal -Vs- State of J& K*, reported in (1994) 4 SCC 422; (3) *Ferro Alloys Corpn. Ltd. & Anr. -Vs- Union of India and Ors.*, reported in (1999) 4 SCC 149; (4) *Sajjadanashin Sayed Md. -Vs- Musa Dadabhai Ummer & Ors.*, reported in (2000) 3 SCC 350; (5) *National Confederation of Officers Association of Central Public Sector Enterprises & Ors. -Vs- Union of India and Ors.*, reported in (2022) 4 SCC 764; (6) *National Institute of Technology and Ors. -Vs- Niraj Kumar Singh*, reported in (2007) 2 SCC 481 and (7) ***Secretary, State of Karnataka & Ors. -Vs- Uma Devi and Ors.*, reported in (2006) 4 SCC 1.**

6. Mr. T.B. Jamir, learned counsel for the respondent Nos. 1, 2 and 3 in WP(C) No.248/2022 and for respondent Nos. 1 to 4 in WP(C)

No.322/2022, at the outset, raised two preliminary questions of law as regards the maintainability of the instant petitions. Firstly, on earlier occasion, the petitioners had approached this Court by filing WP(C) No.213/2018 with prayer for quashing and setting aside the Tentative Seniority List, dated 23.04.2018 in so far as the same related to the petitioners and the private respondents and a note, dated 16.04.2018 as well as the minutes, dated 16.10.2018 and to direct the State to rectify the Seniority List, dated 23.04.2018 and re-fix the seniority of the petitioners placing their seniority above the private respondents. Secondly, while praying so, the petitioners had not challenged the initial appointment order/notification of the private respondents, who were already regularized/absorbed in service before the petitioners were born in the cadre of BDO/RDO. In this regard, Mr. Jamir submitted that the petitioners had filed all the relevant documentary evidence before the Court which the Court duly considered. As such, Mr. Jamir submitted, that the aforesaid lapse on the part of the petitioners in the portion of the reliefs sought for has estopped themselves to raise the same issue of their seniority over the private respondents by virtue of being barred by *res judicata* in the instant new writ petition over the same cause of action and thereupon, the aforesaid writ petition was being dismissed and the subsequent writ appeal being W.A. No. 11/2022 thereto was dismissed as well. Mr. Jamir further submitted that as the petitioners have not preferred any appeal against the judgment and order of dismissal of the writ appeal to the Apex Court by way of filing an S.L.P. (C), the same attained finality, which cannot now be reopened by this Court in the instant separate writ petitions. It has been denied that as the petitioners had been appointed in

terms of the Rules of 2006 and the private respondents were absorbed/regularized in service, as such, they are belonged to separate classes. Mr. Jamir submitted that in WP(C) No. 213/2018, the petitioners have challenged only the consequential orders without challenging the aforesaid basis orders and as such, cannot give rise to fresh cause of action for the instant petitions, which were directly and substantially decided finally in the previous petition being WP(C) No.213/2018 and accordingly, the present writ petitions are not sustainable in law. Mr. Jamir also submitted that the WP(C) No. 248/2022 having suffered from inordinate delay and laches for having sought extraordinary remedy under Article 226 of the Constitution of India after more than two decades without any explanation whatsoever by the petitioners, is fatal to the petitioners' case. Therefore, Mr. Jamir submitted that no direction for publication of final Seniority List showing the inter se seniority of the petitioners above the private respondents and to direct the State respondents to consider their promotion to the post of Deputy Director and further, to debar the private respondents from being promoted to any higher post on the basis of the impugned Final Seniority List published on 26.09.2022 cannot be made. In support of his submission, Mr. Jamir has relied on the judgments rendered by the Hon'ble Supreme Court in- (1) *Suzuki Parasrampur Private Limited -Vs- Official Liquidator of Mahendra Petrochemicals Limited and Ors.*, reported in (2018) 10 SCC 707; (2) *Jamia Masjid -Vs- Sri K.V. Rudrappa (Since Dead) By Legal Representatives and Ors.*, reported in (2022) 9 SCC 225; (3) *Central Bank of India and Ors. -Vs- Dragendra Singh Jadon*, reported in (2022) 8 SCC 378; (4) *State of U.P. -Vs- Nawab Hussain*, reported in (1977) 2 SCC 806;

(5) Forward Construction Co. and Ors. Vs. Prabhat Mandal (Regd.), Andheri and Ors., reported in (1986) 1 SCC 100; (6) Deewan Singh and Ors. -Vs- Rajendra Pd. Ardevi and Ors., reported in (2007) 10 SCC 528; (7) Chennai Metropolitan Water Supply and Sewerage Board and Ors. -Vs- T.T. Murali Babu, reported in (2014) 4 SCC 108; (8) State of M.P. and Ors. -Vs- Nandlal Jaiswal and Ors., reported in (1986) 4 SCC 566; (9) Rabindranath Bose and Ors. -Vs- The Union of India and Ors., reported in (1970) 1 SCC 84 (10) Roshan Lal and Ors. -Vs- International Airport Authority of India and Ors., reported in 1980 (Supp) SCC 449; (11) Commissioner of Income Tax, Bombay -Vs- T.P. Kumaran, reported in (1996) 10 SCC 561 and (12) Judgment & Order passed by this Court in Sabitri Roy Vs. Anil Mandal & Ors., reported in 2016 (4) GLT 707.

7. Mr. Taka Masa, learned Sr. Counsel appearing for the private respondent Nos. 4 to 16 in WP(C) No.248/2022 and for private respondent Nos. 5 to 17 in WP(C) No.322/202, submitted in the line of the submission made by Mr. T.B. Jamir, learned counsel, raising the preliminary objections on the maintainability of the aforesaid both the writ petitions. Mr. Masa submitted that the private respondents had filed their affidavit-in-opposition taking the stand that the writ petitioners in WP(C) 213/2018 did not challenge their initial regularization/absorption in service before the writ petitioners were born in the cadre of BDO/RDO. The petitioners had contended in the said writ petition being WP(C) 213/2018 that they were appointed in accordance with the Rules of 2006 whereas the private respondents were appointed *dehors* the said Rules of 2006 and that since their recruitment in service in the government was governed by the Rules of 2006, the private respondents cannot be placed above the petitioners in

the Seniority List prepared in accordance with the said Rules. Mr. Masa further submitted that in spite of pointing out the aforesaid fatal defects without challenging the initial appointments/regularizations/absorption orders of the private respondents, which were the fundamental basis orders, the writ petitioners have no legal right to challenge the Tentative Seniority List as well as the Final Seniority List which are consequential orders in nature. It has been further submitted by Mr. Masa, learned Sr. Counsel that in the judgment and order, dated 08.04.2022, passed in WP(C) No. 213/2018, the learned Single Judge had rejected the writ petition for the aforesaid reasons and for having prayed for re-fixation of their seniority above the private respondents in the Tentative Seniority List of 2018 apart from setting aside the meeting minutes, dated 16.04.2018. Mr. Masa submitted that as the judgment and order, dated 26.08.2022, passed in W.A. No.11/2022 attained finality, the State Government has issued the impugned Final Seniority List, dated 26.09.2022 and as such, the same cannot be interfered with by modification/alteration as prayed by the petitioners and also, the eligibility of the private respondents to the higher post on its basis. In support of his submission, Mr. Masa has relied on the judgments of the Hon'ble Apex Court rendered in- (1) *Shiv Chander More and Ors. -Vs- Lieutenant Governor and Ors.*, reported in (2014) 11 SCC 744; (2) *Central Bank of India and Ors. -Vs- Dragendra Singh Jadon*, reported in (2022) 8 SCC 378; (3) *Sonnel Clocks and Gifts Ltd. -Vs- New India Assurance Company Ltd.*, reported in (2018) 9 SCC 784; (4) *Hassan District Central Cooperative Bank Ltd. -Vs- Joint Registrar of Cooperative Societies and Anr.*, reported in (2011) 15 SCC 108; (5) *Roshan Lal and Ors. -Vs- International Airport Authority of India and Ors.*,

reported in 1980 (Supp) SCC 449; (6) Chennai Metropolitan Water Supply and Sewerage Board & Ors. -Vs- T.T. Murali Babu, reported in (2014) 4 SCC 108; (7) Union of India and Ors. -Vs- M.K. Sarkar, reported in (2010) 2 SCC 59; (8) Hassan District Central Cooperative Bank Limited -Vs- Joint Registrar of Cooperative Societies and Anr., reported in (2011) 15 SCC 108; and (9) State of T.N. -Vs- Seshachalam, reported in (2007) 10 SCC 137.

APPRECIATION OF THE PROCEEDINGS:

8. For better understanding the case of the parties, a reference may be made to the relevant Rule. Rule 6(1)(f) of the Rules of 2006 reads as hereinbelow extracted-

"6. CLASSIFICATION AND GRADUATION OF POSTS UNDER THE SERVICES.

- (1) The service shall consist of the following classes and grades of posts.

<u>Grade</u>	<u>Post</u>
(a).....	
(b).....	
(c).....	
(d).....	
(e).....	
(f) Junior Grade	Block Dev. Officer/ Rural Dev. Officer/ Asst. Project Officer"

Schedule- II, Sl. No.6 of the Rules of 2006 reads as below-

NAGALAND RURAL DEVELOPMENT SERVICE RULE-2006**SCHEDULE-II****(See Rule- 8(ii))**

Sl. No.	Name of post	Percentage of post for direct recruitment	To be filled up by the Departmental Promotions	To be filled up by direct recruitment	Eligibility and other conditions for promotions
1	2	3	4	5	6
NAGALAND RURAL DEVELOPMENT (CLASS-I) SERVICE					
6.	Rural Development Officer/ Block Development Officer/ Asst.Project Officer	-	25%	75%	(a) 25% of the post of total vacancy of post in a calendar year will be filled up by promotion from amongst the confirmed Research Assistants/ Mukhya Sevikas/ Investigators who have rendered not less than 5(five) years of continuous regular service in the grade. The basis of selection shall be merit-cum-seniority for promotion to the post of Rural Development Officer/ BDO. A candidate must have Bachelor's Degree in any discipline from any Universities recognized by the Association of Indian Universities. (b) 75% of the posts will be filled by direct recruitment through NPSC. Educational qualification is Bachelors degree in any discipline from any Universities recognized by the Association of Indian Universities.

9. A perusal of the record of WP(C) No. 213/2018, it is revealed that the petitioners, *inter-alia*, had prayed for the following reliefs-

“A) Quash and set aside:

- i) The Tentative Seniority List issued vide Memorandum No. RD/ESTT-38-94 dated 23.04.18 in so far as it relates to the petitioners and the respondent Nos.4 to 17 (Annexure- 16 to the petition).***
- ii) Note dated 16.04.18 (Annexure-39 to the petition) and the Minutes dated 16.10.18 at item No. 44 (Annexure-42 to the petition) in relation to the said Note.***
- B) Direct the State respondents to rectify the Seniority List issued vide Memorandum dated 23.04.18 (Annexure-16 to the petition) and re-fix the seniority list of the petitioners placing them senior to the respondent Nos. 4 to 17.***

And in the interim, pending disposal be pleased to direct that there shall be no further promotions of the private respondents on the basis of the Tentative Seniority List issued vide Memorandum dated 23.4.18 (Annexure-16 to the petition). "

10. A Single Bench of this Court vide its judgment and order, dated 08.04.2022, passed in WP(C) No.213/2018 dismissed the petition holding as follows-

"Thus, upon due consideration of the case in its entirety, I do not find merit in the writ petition and the same is accordingly dismissed."

11. The basic rationality behind the above decision of the learned Single Judge was that the petitioners did not challenge the absorption/regularization of the private respondents against the post of BDO/RDO and that they have also not challenged the office memorandum by which it has been provided that seniority in the posts in question will be counted from the date of absorption or from the date on which the

absorption is approved by the state cabinet. It has been further noted that the Tentative Seniority Lists of 2015 and 2018 not being final inter-se seniority lists, it would be premature to challenge the same. The learned Single Judge pertinently relied on the ratio of the decisions of this Court rendered in- i) *Judgment & Order dated 30.11.2017, passed in W.A. No. 8(K)/13- 14(K)/13 [Er. Fineson Pojar & 7 Ors. -Vs- Er. Hokato Sema & 4 Ors.]*; ii) *M. Nakhro -Vs- State of Nagaland & Ors., reported in 2008 (Suppl) GLT 676* and of the Hon'ble Supreme Court in- iii) *S. Sumnyam & Ors. -Vs- Limi Niri & Ors., reported in (2010) 6 SCC 791*; (iv) *Ganga Vishan Gujarati & Ors. -Vs- State of Rajasthan & Ors., reported in (2019) 16 SCC 28*; (v) *Class II Engg. Officers' Assn. -Vs- State of Maharashtra, reported in (1990) 2 SCC 715*; (vi) *Amarjeet Singh & Ors. -Vs- Devi Ratan & Ors., reported in (2010) 1 SCC 417* etc.

12. Being aggrieved by the above judgment and order of the learned Single Judge, the petitioners had preferred writ appeal being W.A. No.11/2022, which also stood dismissed by judgment and order, dated 26.08.2022, passed by a Division Bench of this Court holding as extracted hereinbelow-

“42. In view of the discussions above and taking into consideration all attending facts and circumstances, we find no infirmity with the judgment & order dated 08/04/2022 passed in W.P. (C) No. 213/2018 by the learned Single Judge. The present appeal is accordingly dismissed.”

13. By the above judgment and order in the writ appeal, the learned Division Bench, it is noticed, endorsed the detailed reasoning recorded by the learned Single Judge in WP(C) No. 213/2018.

14. A perusal of the above reliefs incorporating various modes of induction, entry or absorption/regularization which are stated to have been done in contravention of the Rules of 2006 were annexed to the previous WP(C) No.213/2018 as Annexure Nos. 22, 24, 25, 26, 27, 29, 30, 31, 32, 34, 35, 23 and 28 respectively while praying for quashing and setting aside the Tentative Seniority List, dated 23.04.2018 so far those related to the service of the petitioners and the private respondents and further, to direct the State respondents to rectify the said Seniority List re-fixing the seniority of the petitioners above the said private respondents. The aforesaid documents annexed afresh to the instant writ petition being WP(C) No.248/2022 are related to the facts as shown below-

1. **Mr. Kuhucuyi (R. No. 4):** While serving as Assistant Teacher, was brought on deputation to the post of BDO for a period of 2 years by notification dated 03.12.1999. Subsequently, he was absorbed as BDO by notification dated 21.12.2012.
2. **Mr. Y Chimoklemba & Mr. Takochungba Phom (R. Nos. 5 & 6):** While serving as Graduate Teacher, appointed as BDO on deputation for a period of 1 year by common order dated 27.05.2009. By notification dated 21.12.2012, R. No. 5 & 6 were absorbed as BDO.
3. **Mr. S. Samuel Phom (R. No. 7):** While serving as LDA under Power Department, was appointed as BDO on deputation for a period of 1 year by order dated 15.12.2009 and subsequently absorbed as BDO by notification dated 21.12.2012.

- 4. Mr. Angam P. Longho (R. No. 8):** While serving as Supervisor under Social Welfare Department, was appointed as BDO on deputation for a period of 1 year by order dated 18.03.2010 and was subsequently absorbed as BDO by notification dated 21.12.2012.
- 5. Mr. Chelong Chenth (R. No. 9):** Was appointed to the post of RDO on contract basis by order dated 26.10.2005. Regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.
- 6. Mr.Limameren Yaden (R. No. 10):** Was appointed as RDO on contract basis for a period of 1 year by order dated 04.03.2006, regularized by notification dated 21.12.2012.
- 7. Mr. Nokton Konyak (R. No. 11):** Was appointed as RDO for 1 year on contract basis vide order dated 04.03.2006. His service was regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.
- 8. Ms. Akumenla Aier (R. No. 12):** Was appointed as RDO for 1 year on contract basis vide order dated 04.03.2006. His service was regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.
- 9. Mr. Muleto Tunyi (R. No. 13):** Was appointed as RDO for 1 year on contract basis vide order dated 04.03.2006. His service was regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.
- 10. Ms. Jenny Kath (R. No. 14):** Was appointed as RDO for 1 year on contract basis vide order dated 04.03.2006. His service was regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.

11. Ms. Grace Wangnao & Ms. Sedevinuo Rio (R. Nos. 15 & 16):

Were appointed as RDO on contract basis by order dated 21.06.2007 and regularized by notification dated 21.12.2012 w.e.f. 18.12.2012.

15. It may pertinently be mentioned that the learned Single Bench had taken into consideration of the matter of absorption and regularization of the above referred private respondents against the posts of BDO/RDO and held the view that as the writ petitioners had not challenged the same and the corresponding office memoranda, dated 19.10.2015 and 23.04.2018 vide Annexure- 12 and 16 respectively in WP(C) No. 213/2018 publishing the Tentative Seniority List in question with reference to Note, dated 16.04.2018 vide Annexure-39, the writ petition filed by the present petitioners was held to be premature. In spite of being pointed out the aforesaid material defects in the writ petition by the respondents stating that the petition was not sustainable in law as the writ petitioners did not challenge their initial appointments and the absorption/regularization of the private respondents as it is the established principle of law that when the basis orders are not challenged, the petitioners have no legal rights to challenge the consequential orders. Resultantly, the said writ petition stood dismissed on merit vide judgment and order, dated 08.04.2022 and the writ appeal preferred against the said judgment and order, dated 08.04.2022 passed in W.A. No.11/2022 was also dismissed on merit vide judgment and order, dated 26.08.2022 endorsing the reasons recorded in the aforesaid judgment and order, dated 08.04.2022 passed in WP(C) No. 213/2018. It is apparent on record that the documents whereby the private respondents were appointed/absorbed/regularized in service, were part and parcel of the judgments rendered in WP(C) No.213/2018 and WA

No.11/2022 which were duly considered by the learned Single Judge and by the learned Division Bench. The decision in the writ appeal has now attained finality as the writ petitioners have not preferred appeal against the judgment and order, dated 26.08.2022, rendered in the said WA No.11/2022.

16. However, again, the petitioners have brought a fresh writ petition being WP(C) No.322/2022 seeking the following reliefs-

“a) Quash and set aside the Final Seniority List vide Memo dated 26/09/2022 by deleting the names of the private respondent Nos. 5 to 17 therefrom and directing the Respondent authorities No.1 to 4 to immediately publish Final Seniority List correctly showing the inter-se Seniority position of the petitioners;

b) Direct the State Respondents to consider the Petitioners for promotion to the post of Deputy Director by immediately convening the process therefor in accordance with law and also debar the authorities to consider and/or to promote the Respondent Nos. 5 to 17 in any higher post on the basis of the impugned Final Seniority List dated 26/09/2022; and

c) In the interim be further pleased to stay the operation of the Final Seniority List dated 26/09/2022 in respect of BDO/APO/RDOs further directing the Respondent authorities not to promote any of the Private Respondent Nos. 5 to 17 to any Higher Grade pending final disposal of this Petition.”

17. In ***Nawab Hussain (Supra)***, the Apex Court held that the rule of constructive *res judicata* under Section 11 of the Civil Procedure Code applies to a subsequent writ proceeding under Article 226 of the Constitution of India inasmuch as if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be

permitted to take that plea against the same party in a subsequent proceeding, which is based on the same cause of action founded on considerations of public policy and if the doctrine of constructive *res judicata* is not applied to such proceeding, it would be open for the party to take one proceeding after another urging new grounds. In ***Prabhat Mandal(supra)***, the Apex Court held that Explanation IV to Section 11 of CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. It has been held that an adjudication is conclusive and final not only as to the actual matter determined, but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming in the legitimate purview of the original action both in respect of the matters of claim or defence. Likewise, in ***Dragendra Singh Jadon (supra)***, the Hon'ble Supreme Court held that the principles of *res judicata* are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings between the same parties in a competent forum having jurisdiction. *Res judicata* debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties. The Court further held that where an issue could have been raised in earlier proceedings, but has not been raised, the principle of constructive *res judicata* would be attracted to deny relief, for it is not the policy of law that multiple proceedings should be initiated in Court in relation to the same cause of action.

18. Thus, it is seen that the doctrine of *res judicata* embodied in Section 11 CPC is based on justice, equity and good conscience and lays down the finality of litigation between the same parties litigating on the same subject matter or matter directly and substantially in issue in a former proceeding. This is a fundamental principle which sustains the Rule of Law in ensuring finality to litigation to prevent abuse in the matter of accessing to Court for agitating on issues which has become final between the parties. In the case in hand, as stated above, the reliefs which have been sought for by the petitioners in the present writ petitions were directly and substantially in issue in the previous writ proceeding being WP(C) No.213/2018 except the question of Final Seniority List, dated 26.09.2022, which has now been challenged in WP(C) No.322/2022. The decision rendered in the aforesaid writ petition vide judgment and order, dated 08.04.2022, attained finality with the dismissal of the writ appeal being WA No. 11/2022 vide judgment and order, dated 26.08.2022, against which the writ petitioners have not challenged in any further appeal. This follows the logical inference that the petitioners are estopped to raise the same issue(s) by taking different stands in different proceedings as per the doctrine of estoppel that has been succinctly explained in ***Deewan Singh (supra)***. In a sense, the petitioners have diligently and knowingly waived their valuable legal right which cannot now be reopened and raised in different proceedings instituted as the position has been explained in the case of ***Sonnel Clocks and Gifts Ltd. (Supra)***.

19. It has been further noticed that the writ petitioners have challenged herein the appointment/absorption/regularization in the post of BDO/RDO which incepted in the years starting from 03.12.1999 to 21.12.2012 as is

shown above without following the due procedure of law or without due selection procedure being followed. The petitioners have pleaded that their appointments were *per se* illegal not merely irregular, which cannot be validated by efflux of time in view of the mandate of the Apex Court in ***Uma Devi case(supra)***, wherein it has been held that absorption, regularization or permanent continuance of temporary, contractual or adhoc employees appointed/recruited *dehors* the constitutional scheme of public employment is not permissible in law. In ***T.T. Murali Babu(supra)***, it has been held that the doctrine of delay and laches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. In this context, the Apex Court reiterated its previous judgment rendered in ***Nandlal Jaiswal (supra)*** wherein it has been observed that '.... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.' It has been further stated therein that 'If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.' In ***Seshachalam (supra)***, the Apex Court observed that delay or laches is a relevant factor for a Court of law to determine the question as to whether the claim made by an applicant deserves consideration. It has been further observed that law leans in favour of those who are alert and vigilant.

20. In the cases in hand, it is noticed that the writ petitioners neither in

their previous writ petition being WP(C) No. 213/2018 nor in the instant both the writ petitions have advanced any satisfactory reason for the delay in bringing action against the private respondents in respect of their initial appointment/ absorption/regularization against the posts of BDO/RDO allegedly in contravention of the constitutional scheme of public employment, more specifically the Rules of 2006 which does not provide for such mode of induction/appointment in the Nagaland Rural Development Service.

21. Therefore, this Court is of the opinion that the present writ petitions are bad for apparent applicability of the doctrine of *res judicata*/constructive *res judicata* and delay and laches in bringing action to enforce fundamental/legal rights by the writ petitioners in the backdrop of facts of the case and the judicial principles discussed above more particularly, in *Prabhat Mandal (supra)*. As such, resorting to the extraordinary remedy under the writ jurisdiction of this Court in the aforesaid facts and the recognized principles of law at an inordinately belated stage, after many years/more than two decades will undoubtedly cause great public inconvenience and will bring in injustice at large. Accordingly, the preliminary questions of law raised by the respondents are answered in the affirmative.

22. Additionally, it is well settled that under Article 226 of the Constitution of India, the High Court can entertain a writ petition if infraction of fundamental rights or legal rights of the petitioners is raised and proved by the petitioners. However, the petitioners herein have not specifically sought for any relief against any infringement or infraction of

their fundamental or legal rights by reason of illegal appointments of the private respondents and placing them over them in seniority in service as BDOs/RDOs in WP(C) No.248/2022. The contesting parties cannot now travel beyond their pleadings. The petitioners appear to have disclosed the fundamental facts in the body of the aforesaid writ petition, but unfortunately, without seeking appropriate relief to protect their rights. Further, they have not even shown any cogent and satisfactory reason as to how their rights are affected if the appointments/absorptions/regularizations of the private respondents in service, made several years/decades ago, are not set aside and quashed. Therefore, a relief which has not been diligently and knowingly sought for by the petitioners in WP(C) No.248/2022 cannot be granted applying what has come to the knowledge of this writ Court from the text of the petition. Although by filing another writ petition being WP(C) No.322/2022 the petitioners have sought for enforcement of their fundamental/legal rights, the same cannot be accepted for the same reasons set forth while appreciating the facts of WP(C) No.248/2022.

CONCLUSION:

23. Accordingly, both the writ petitions being devoid of any merit, the same stand **dismissed**.

The writ petitions stand disposed of accordingly.

JUDGE

Comparing Assistant