

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.A. No. 33 of 2023

1. The State of Manipur, represented by the Principal Secretary (Education/S), Government of Manipur.
2. The Director of Education (S), Government of Manipur, Imphal.

.... Appellants

- Versus -

1. Shri Oinam Manisana Singh, aged about 54 years, S/O (L) O. Dukanjao Singh of Chingmei Awang Leikai, P.O. & P.S. Moirang, Bishnupur District, Manipur.
2. Shri P.K. Mawi Guite, aged about 46 years, S/O Vumtuan Guite of Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
3. Shri N. Ibobi Singh, aged about 60 years, S/O (L) N. Angaton Singh of Khuga Tampak, Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
4. Shri Laishram Haridas Singh, aged about 58 years, S/O (L) L. Bokuljao Singh of Ningthoukhong Ward No. 11, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
5. Shri Thokchom Ingo Singh, aged about 59 years, S/O (L) Th. Ibobi Singh of Ningthoukhong, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
6. Khawllienkim, aged about 54 years, D/O J. Batlien of Khawmawi Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
7. Wungkathing Makang, aged about 53 years, S/O Okngai Makang of Tongou Village, P.O. & P.S. Somdal, Ukhrul District, Manipur.

8. Mathotmi Z. Ngalung, aged about 54 years, S/O (L) Tungshon Z. Ngalung of Tongou Village, P.O & P.S. Somdal, Ukhrul District, Manipur.
9. S.R. Ningthar, aged about 58 years, S/O (L) S.R. Lungshim of Nongdam Tangkhul Village, P.O. Lamlong, P.S. Litan, Ukhrul District, Manipur.
10. Shri Ningombam Heramani Singh, aged about 59 years, S/O (L) N. Ibobi Singh of Wangkhei Ayangpali, P.O. & P.S. Porompat, Imphal East District, Manipur.
11. Nongmaithem Sucheta Devi, aged about 29 years, D/O (L) N. Surendra Singh of Wangkhei Yonglan Leirak, P.O. & P.S. Porompat, Imphal East District, Manipur.
12. Shri Lourembam Rachandra Singh, aged about 56 years, S/O (L) L. Rajamani Singh of Koirengei Bazar, P.O. Mantripukrhi, P.S. Heingang, Imphal East District, Manipur.
13. Shri Nirmal Dornal, aged about 41 years, S/O Dhanbir Dornal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
14. Shri Dev Kumar Katwal, aged about 43 years, S/O (L) Bal Bahadur Katwal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
15. Shri T.S. Raisong, aged about 57 years, S/O (L) Sangba of Tumuyon Khullen, P.O. & P.S. Kangpokpi, Kangpokpi District, Manipur.
16. Shri Phairenbam Ibungcha Singh, aged about 57 years, S/O (L) Ph. Maipak Singh of Chingei, P.O. & P.S. Moirang, Bishnupur District, Manipur.
17. Shri Shelley P.H., aged about 40 years, S/O Hrani P.H. of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
18. Shri P.S. Hepuni, aged about 57 years, S/O (L) P. Shehrii of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.

19. Shri Kamo Joseph, aged about 41 years, S/O (L) Y. Kamo of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
20. Shri S. Hruni, aged about 53 years, S/O (L) S. Shirang of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
21. Shri Wangkheimayum Opendro Singh, aged about 56 years, S/O (L) W. Tombi Singh of Wangkhei Khunou, P.O. & P.S. Porompat, Imphal East District, Manipur.
22. Shri Yarnao Keinam, aged about 58 years, S/O (L) K. Ophai of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
23. Shri Ngangbam Manidhaja Singh, aged about 53 years, S/O Ng. Chandramani Singh of Samaram, P.O. Wangjing, P.S. Khongjom, Thoubal District, Manipur.
24. Shri K.T. Ngalangzar, aged about 60 years, S/O (L) K. Kapong of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
25. Shri Chiri Keinam, aged about 60 years, S/O (L) K. Tungtor of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
26. Shri S. Ngou, aged about 41 years, S/O (L) S. Sahrii of Laii Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
27. Shri A. Hillaryo, aged about 60 years, S/O Ahrai of Phaibung Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
28. Shri Thokchom Bijendra Singh, aged about 52 years, S/O (L) Th. Ingo Singh of Heirok Part-II, Mayai Leikai, P.O. Wangjing, P.S. Heirok, Thoubal District, Manipur.
29. Ngangkham Gomati Devi, aged about 59 years, D/O (L) Ng. Angouba Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur, (Deceased) represented by –
 - (i) Ngangkham Raghu Singh, aged about 59 years, S/o. Ng. Angouba Singh, a resident of Khurai Konsam Leikai, Khurai, Imphal East, Lamlong, Manipur – 795010.

- (ii) Ngangkham Ranjit Singh, aged about 59 years, S/o. Ngangkham Angou, a resident of Khurai Konsam Leikai, Khurai, Imphal East, Manipur – 795010.
 - (iii) Ngangkham Loken Singh, aged about 55 years, S/o. Ngangkham Angouba, a resident of Khurai Konsam Leikai, Khurai, Imphal East, Manipur – 795010.
 - (iv) Ngangkham Brajamohan Singh, aged about 47 years, S/o. Ngangkham Angou, a resident of Khurai Konsam Leikai, Khurai, Imphal East, Manipur – 795010.
- 30. Shri Dennis T. Dongzahau, aged about 44 years, S/O T. Goukam of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
 - 31. T. Paudam, aged about 41 years, S/O (L) T. Vungkhum of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
 - 32. L. Gouchinkhup, aged about 45 years, S/O (L) L. Nengkhogin of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.

.... Respondents

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the appellants : Mr. Th. Vashum, Government Advocate
For the respondents: Mr. T. Rajendra, Senior Advocate
Date of hearing : 11.06.2024
Date of Judgment &
Order : **06.08.2024**

JUDGMENT & ORDER
(CAV)

(Golmei Gaiphulshillu, J.)

[1] Heard Mr. Th. Vashum, learned GA appearing on behalf of the appellants and Mr. T. Rajendra, learned senior counsel appearing on behalf of the respondent.

[2] The instant writ appeal has been instituted against the judgment and order dated 07.02.2022 passed by the Hon'ble Single Judge of this High Court in W.P.(C) No. 137 of 2018 with the following prayer:

- (i) To admit the present writ appeal.
- (ii) To set aside the impugned judgment & order dated 07.02.2022 passed W.P.(C) No. 137 of 2018.
- (iii) To pass any appropriate order(s) or direction(s) which the Hon'ble Court may deem fit, proper and just in the facts and circumstances of the case.

[3] Mr. Th. Vashum, learned GA appearing for the appellants submits that the respondents/writ petitioners were appointed as Graduate Teachers (Science & Arts) and LDCs in the erstwhile 13 (thirteen) Government Aided High Schools in the Hill Districts of Manipur the respective School Management Committee as approved by the Department of Education (S), Government of Manipur. Vide Government's order dated 22.02.2016, the aided schools were converted into full-fledged Government High Schools.

The respondents/writ petitioners were all approved staffs of the said 13 (thirteen) Government Aided High Schools. In the said order dated 22.02.2016, it was specifically mentioned that all the 52 (fifty two) approved staffs @ 3(three) Graduate Teachers and 1 (one) LDC for each school who were approved by the Education (S) Department will be retained after conversion. In the order, it was also mentioned that the services of the staffs as Government employees will commence from the date of the conversion but, their pay and next date of increment will be protected after the particulars of their services are duly verified by the Director of Education (S), Government of Manipur. The order dated 22.02.2016 reads as follows:

"Annexure-X/35

**GOVERNMENT OF MANIPUR
SECRETARIAT: EDUCATION (S) DEPARTMENT**

**ORDERS BY THE GOVERNOR
Imphal, the 22nd February, 2016
(Order No. 47 of 2016)**

*No.17/3/06-SE(S): The Governor of Manipur is, pleased to accord approval to the take over of the 13(thirteen) Government Aided High Schools in the Hill Districts having classes IX & X only as Government High Schools, along with amalgamation of these 13(thirteen) High Schools with the respective 13(thirteen) Government Junior High Schools that are functioning at the same campus or at the adjacent campus under the new nomenclature as detailed in the **Annexure**, with immediate effect under the terms and conditions given below:-*

- 1) The liabilities of the School as on the date of conversion will not be accepted by the Government and will have to be settled by the School Managing Committee.*
- 2) No claim for compensation for land or other properties will be entertained by the Government. The landed property of the School before conversion should be duly registered and mutated in the name of the School.*

- 3) All the 52(fifty-two) approved staff @ 3(three) Graduate Teachers and 1 (one) LDC for each school who are approved by the Education (S) Department will be retained after conversion
- 4) The services of the staff as Government employees will commence from the date of conversion, but their pay and next date of increment will be protected after the particulars of their services are duly verified by the Director of Education(S), Manipur.
- 5) All the properties of the School that have been shown as assets must remain intact. These will have to be handed over physically within 30 days from the date of issue of the conversion orders.
- 6) Further, the Director of Education(S), Manipur shall issue respective appointment orders in favour of the Approved teachers and staff of the respective schools.

This issues with the concurrence of Finance Department vide their UO No. 198/2015-2016/FD(PIC) dated 07/01/2016.

Sd/-
(H. Deleep Singh)
Commissioner (Education-S)
Government of Manipur

Sl. No.	Name of Aided High School	Name of Govt. Jr. H/S wherein the Aided Schools are to be amalgamated to	Name of Zone	New Nomenclature after Conversion/Amalgamation
(1)	(2)	(3)	(4)	(5)
1.	Gorkha High School	Kalapahar Junior High School	ZEO-Kangpokpi	Kalapahar High School
2.	Hill Model High School	Singhat High School	ZEO Churachandpur	Singhat High School
3.	Laii High School	Laii Junior High School	ZEO Senapati	Laii High School
4.	Makui High School	Makui Junior High School	DI Tamei	Makui High School
5.	Mapithel Area High School	Mapithel Area Junior High School	ZEO Ukhrul	Mapithel Area High School
6.	Maram High School	Maram Junior High School	ZEO Kangpokpi	Maram High School
7.	Ngari High School	Ngari Junior High School	ZEO Seapati	Ngari High School
8.	North District High School	Tungjoy Junior High School	ZEO Senapati	Tungjoy High School
9.	Patpuihmun High School	DR Thouma Govt. Junior High School	ZEO Churachandpur	DR Thouma Govt. High School

10.	<i>Phaibung High School</i>	<i>Phaibung Junior High School</i>	<i>ZEO Senapati</i>	<i>Phaibung High School</i>
11.	<i>Thiwa High School</i>	<i>Thiwa Junior High School</i>	<i>ZEO Senapati</i>	<i>Thiwa High School</i>
12.	<i>Tongou High School</i>	<i>Tongou Junior High School</i>	<i>ZEO Ukhrul</i>	<i>Tongou High School</i>
13.	<i>ValteKhamzathang High School</i>	<i>Bijangloubuk Junior High School</i>	<i>ZEO Churachandpur</i>	<i>Bijangloubuk High School</i>

[4] Mr. T. Rajendra, learned senior counsel appearing for the respondents submitted that the services of the respondents/writ petitioners, which will be counted from the date of their entering into services as approved teachers/staffs till 22.02.2016, which has also been approved by the competent authority, have been left out / not counted. However, they are very much entitled to have their services counted from the date of entering into their respective posts as approved staffs.

[5] The learned senior counsel also submitted that a joint representation was made on 07.03.2017 to the appellants/respondents No. 1 and 2 for giving protection to their past services by giving their date of appointment from their date which was approved by the concerned authority. However, since the representation was not considered, they filed a writ petition being W.P.(C) No. 342 of 2017 before this High Court. Vide order dated 12.05.2017, the writ petition was disposed of with a direction to consider the representation within a period of 2 (two) months. The operative portion of the order passed in the said writ petition are extracted herein below:

"In view of the above submission, the present writ petition is disposed of by directing the respondents to consider the representation dated 07.03.2017 submitted by the petitioners preferably within a period of 2 (two) months from the date of receipt of a certified copy of this order. The petitioners would be at liberty to approach this Court again, if they are aggrieved by the order which will be passed by the authorities after considering their representation."

[6] Further, the learned senior counsel submitted that vide order dated 15.12.1995, similarly situated persons were given service protection for their past services when they were converted into Government employees in respect of Heirok Part – I, High School (Aided). The order reads as follows:

"Annexure – X/40
SECRETARIAT : EDUCATION DEPARTMENT
(School Section)

ORDERS BY THE GOVERNOR, MANIPUR
Imphal, the 15th December, 1995

2(3)/2/94-SE(S): The Governor of Manipur is pleased to take over the Heirok Part-1 High School (Aided) with immediate effect under the terms and conditions given below :

- (1) The liabilities of the school as on the date of conversion will be taken by the Government.*
- (2) No claim for compensation for land and other properties will be entertained by the Govt. The landed properties of the School before conversion should be duly registered and mutated in the name of the School.*
- (3) All staffs for 4(four) approved employees 1(one) Headmaster, 1 (one) 2nd Master and 1(one) Graduate Teacher, 1(one) L.D.C. and 6 unapproved employees including 3(three) Graduate Teacher, 1(one) P.E.T. and 2(two) Grade-IV shall be absorbed/appointed against the post transferred subject to eligibility for entering into Govt. service. For absorption of the 10(ten) (4 approved and 6 unapproved employees) no fresh posts need be created. This may be adjusted by transferring posts from the available vacancies in the Education Deptt.*

- (4) *No additional physical infrastructure, like buildings etc. will be provided by the Government.*
 - (5) *The services of the staff as Govt. employees will commence from the date of entering their services as approved employees and for unapproved employees their services will commence from the date of conversion, but their pay and next date of increment will be protected after particulars of their services are duly checked by the concerned Zonal Education Officer.*
 - (6) *All the properties of the School which have been shown as assets must remain intact. These will have to be handed over physically within 30 days from the date of issue of the conversion orders.*
2. *Further, it is ordered that Heirok Part-I Govt. High School will amalgamate with Heirok Pt-I Govt. Jr. High School with immediate effect.*
 3. *This order is issued in consultation with the Finance Deptt.*

*BY ORDERS & IN THE NAME OF GOVERNOR
Sd/-
(S. Kunjabihari Singh)
Secretary to the Govt. of Manipur"*

In another similar case, vide order dated 29.02.2004, link-up services were also given in respect of the erstwhile Sagang High School. The said order reads as follows:

"Annexure – X/41

GOVERNMENT OF MANIPUR
SECRETARIAT : EDUCATION DEPARTMENT
(SCHOOL SECTION)

ORDERS BY THE GOVERNOR: MANIPUR
Imphal, the 29th February, 2004.

No. 30/20/2003-SE(S): The Governor of Manipur ispleaded accord approval of the linking up of services of the following 18 (eighteen) teachers of the erstwhile Sagang High School (Aided) for the periods mentioned against their names for the purpose of pensionary benefits only as per the terms and conditions of the Manipur Civil Services (Appointment and other service conditions of employees of Government Aided/Private Institutions taken over by the Government) Rules, 1981 issued vide Notification No. 1/89/80-Rules/DP dated 25.5.1981:

<u>Sl. No.</u>	<u>Name and designation</u>	<u>Period of linking up</u>
1.	Shri N. Chaoba Singh, G/T	1-10-79 to 19-1-97
2.	Shri L.V. AlinKom, G/T	1-1-84 to 19-1-97
3.	Shri LeivonAsong, Kom, G/T	1-10-79 to 19-1-97
4.	Shri M. Manichandra Singh, U.G.T.	1-1-75 to 19-1-97
5.	Smt. Tangkipnei, Kom, U.G.T	1-10-79 to 19-1-97
6.	Shri L. Shaojalal, Kom, U.G.T	1-1-82 to 19-1-97
7.	Smt. Ng. Thambalngou Devi, G/T	1-10-71 to 19-1-97
8.	Shri L. Joy Singh, G/T	1-8-85 to 19-1-97
9.	Smt. L. Thoibi Devi, U.G.T	1-10-80 to 19-1-97
10.	Shri W. Shantakumar Singh, G/T	1-1-84 to 12-1-98
11.	L.V. Eli Kom, U.G.T.	1-10-79 to 12-1-97
12.	Smt. ParlangsongKom, G/T	1-10-79 to 19-1-97
13.	Smt. A. Memchoubi Devi, U.G.T.	10-1-73 to 19-1-97
14.	Smt. K. Kamala Devi, G/T	10-1-73 to 19-1-97
15.	Shri M. Shyamkeshor Singh, G/T	2-1-81 to 19-1-97
16.	Shri K. Devan Singh, G/T	1-10-85 to 19-1-97
17.	Shri A. Rajen Singh, G/T	1-10-87 to 19-1-97
18.	Smt. W. Leima Devi, Hindi G/T	10-10-87 to 19-1-97

By Orders & in the name of the Governor

Sd/-
(P. Bharat Singh)
Commissioner, Education(S),
Government of Manipur"

It is also submitted that if the State Government does not count their past services, the respondents/writ petitioners will suffer an irreparable loss and injury. Unless their past services are protected, many of them will not get any retirement benefits. Accordingly, commencement of their services shall be from the date of their entering services as approved employees in respect of the erstwhile 13 (thirteen) Aided High School.

[7] The learned senior counsel further submitted that the representation aforementioned made by the respondents/writ petitioners was rejected vide order dated 07.11.2017 issued by the Principal Secretary (Education/S), Government of Manipur, whereby mentioning that the effective date of appointment/absorption as Government employees shall be with immediate effect from the date of issuance of the administrative approval. Being aggrieved by the said order, the respondents/writ petitioners filed a writ petition being W.P.(C) No. 137 of 2018 for quashing the impugned order dated 07.11.2017.

However, vide order dated 07.02.2022, the Hon'ble Single Judge of this High Court disposed of the said writ petition being W.P.(C) No. 137 of 2018 whereby quashing and setting aside the order dated 07.11.2017 issued by the Principal Secretary (Education/S), Government of Manipur with a direction to the appellants/State respondents to consider the cases of the respondents/writ petitioners for absorption in Government service

w.e.f. the date on which they have been approved by the Department of Education (S), Government of Manipur as approved teachers in their respective Aided High School. The operative portion of the order dated 07.11.2017 is extracted herein below:

"In the result, the writ petition is allowed by quashing and setting aside the impugned order dated 07.11.2017 issued by the Principal Secretary, Education (S), Government of Manipur and the respondents are directed to consider the cases of the petitioners for absorption in Government service with effect from the date on which they have been approved by the Department of Education (S) as approved Teachers in their respective erstwhile aided high schools. The whole exercise should be completed within a period of 3 (three) months from the date of receipt of a copy of this order. With the aforesaid directions, the present writ petition is disposed of, however, without any costs."

[8] Challenging the order dated 07.02.2022 impugned herein passed by the Hon'ble Single Judge of this High Court in W.P.(C) No. 137 of 2018, the present writ appeal has been instituted on the following grounds:

- (i) The Ld. Single Judge, without properly examining the relevant facts and law of the writ petition, passed the impugned order dated 07-02-2022 in W.P. (C) No. 137 of 2018.
- (ii) The Ld. Single Judge, without properly examining the counter affidavit of the appellants/respondents, passed the impugned aforesaid order.
- (iii) **In the counter affidavit, the appellants/respondents have clearly and specifically mentioned that the conversion of the erstwhile 13(thirteen) Aided High Schools was done in pursuance of the Cabinet Decision/Policy Decision of the Government. However, this**

aspect was not properly examined by the Ld. Single Judge. In the catena of Hon'ble Supreme Court decision, it is held that a Writ Court cannot interfere with any policy decision of the Government.

- (iv) The appellants further contended in the counter affidavit that the conversion of the erstwhile 13(thirteen) Aided High Schools into full-fledged Government High Schools only Teachers/staffs who were approved by the Education Department, shall be retained and their service shall be commenced from the date of conversion and their pay and next date of increment will only be protected. However, this aspect was overlooked by the Ld. Single Judge.**
- (v) The appellants further stated in the counter affidavit that in pursuance of the Cabinet Decision and also in pursuance of the Finance Department (PIC), in conversion of 13(thirteen) Government Aided High Schools into full-fledged Government High Schools, the Education Department will retain only approved teachers/staffs and those untrained Graduate Teachers shall undergo the B.Ed. Course as per NCTE norms and the order shall be with immediate effect i.e. with effect from the date of the order of Administrative Department.**
- (vi) The Ld. Single Judge misinterpreted Government Aided/Private Institution taking over by the Government Rules 1981 in the Section 7(b), wherein it is clearly mentioned that the service rendered by the employees of the Government Aided/Private Institutions on an equated post shall be counted as experienced or service required for**

promotion or direct recruitment, as the case may be. However, the Ld. Single Judge misinterpreted this section 7(b) of the Government Aided/Private Institutions taking over by the Government Rules, 1981. Therefore, the impugned Judgment & order dated 07-02-2022 passed in W.P. (C) No. 137 of 2018 is liable to be quashed.

(vii) After the introduction of National Pension Scheme (NPS) w.e.f. 01-01-2005, any Government employees who entered into service have to subscribe the National Pension Scheme. The service of the writ petitioners were regularised/entered in the year 2013 as such, their case will be governed by the National Pension Scheme.

(viii) The writ petitioners do not challenge the Government order dated 22-02-2016 before the Ld. Single Judge. As such, as long as the Government order dated 22-02-2016 remained, the service condition of the writ petitioners has to be governed by the Government order dated 22-02-2016.

(ix) The present writ appeal could not be filed within time because the reason explained in the separate application for condonation of delay occurred in filing the present writ appeal is bonafide and unintentional and delay caused was due to the circumstances beyond the control of the appellants. And as such, the Hon'ble Court may be pleased to condone the delay and the appeal be heard on merit, in view of the facts and circumstances enumerated in the memo of Appeal.

[9] Heard both the learned counsels for the parties and also perused the applications with the records available with us.

For the sake of convenience, we extracted the names of the petitioners, the posts held by them, the Government's approval order number and date are extracted hereunder:

SL. No.	NAME OF STAFF	POST	School Name (before conversion)	School Name (after conversion)	GOVT. APPROVAL ORDERS NO. & DATE	DATE OF EFFECT
1.	<i>O. Manisana Singh, Petitioner No. 1</i>	SGT	<i>ValteKhamzathang High School</i>	<i>BijangLoubak High School</i>	<i>No. 3/2/2010-ED (CCP), Dt. 14.05.2012</i>	<i>23/12/2011</i>
2.	<i>P.K. MawiGuite, Petitioner No. 2</i>	LDC	-do-	-do-	<i>No. 4/4/86-DEO (CC), Dt. 10.08.1987</i>	<i>01/06/1987</i>
3.	<i>N. Ibobi Singh, Petitioner No. 3</i>	SGT	-do-	-do-	<i>No. 4/4/86-DEO (CC), Dt. 19.01.1987</i>	<i>01/12/1986</i>
4.	<i>L. Haridas Singh, Petitioner No. 4</i>	AGT	<i>Patpuihmun H/S</i>	<i>Dr. Thouma Govt. H/S</i>	<i>No. 4/3/83-DEO (S), Dt. 27.09.1983</i>	<i>01/10/1980</i>
5.	<i>Th. Ingo Singh, Petitioner No. 5</i>	AGT	-do-	-do-	<i>No. 4/3/83-DEO (S), Dt. 27.09.1983</i>	<i>01/10/1980</i>
6.	<i>Khawllienkim, Petitioner No. 6</i>	AGT	-do-	-do-	<i>No. 4/4/87-DEO (CC), Dt. 07.11.1987</i>	<i>16/04/1987</i>
7.	<i>WungkathingMakan 9, Petitioner No. 7</i>	AGT	<i>Tongou H/S</i>	<i>Tongou H/S</i>	<i>No. 3/1/2012-ZEO/Appt/UKL, Dt. 25.4.2012</i>	<i>23/12/2011</i>
8.	<i>Mathotmi Z. Ngalung, Petitioner No. 8</i>	AGT	-do-	-do-	<i>No. 3/1/2012-ZEO/Appt/UKL, Dt. 25.4.2012</i>	<i>23/12/2011</i>
9.	<i>S.R. Ningthar, Petitioner No. 9</i>	LDC	<i>Mapithel Area H/S</i>	<i>Mapithel Area H/S</i>	<i>No. 12/10/74-DEO (UK), Dt. 28.11.1980</i>	<i>01/10/1980</i>
10.	<i>N. Hiramni Singh, Petitioner No. 10</i>	AGT	<i>Makui H/S</i>	<i>Makui H/S</i>	<i>No. 2/16/69-ED (TML), Dt. 25.11.1980</i>	<i>01/10/1980</i>
11.	<i>N. Sucheta Devi, Petitioner No. 11</i>	AGT	-do-	-do-	<i>No. 6/31/97-ED (TML), Dt. 26.07.2012</i>	<i>01/01/2012</i>
12.	<i>L. Rachandra Singh, Petitioner No. 12</i>	SGT	-do-	-do-	<i>No. 2/16/69-ED (TML), Pt. II Dt. 01.09.1986</i>	<i>01/12/1986</i>
13.	<i>NirmalDornal, Petitioner No. 13</i>	AGT	<i>Gorkha H/S</i>	<i>Kalapahar H/S</i>	<i>No. 3/14/2005-ZEO (Kpi), Dt. 06.06.2012</i>	<i>01/01/2012</i>
14.	<i>Dev Kumar Katwal, Petitioner No. 14</i>	LDC	-do-	-do-	<i>No. 3/4/91-DEO (K), Dt. 12.02.1993</i>	<i>11/11/1992</i>
15.	<i>T.G. Raisong, Petitioner No. 15</i>	LDC	<i>Maram Aided H/S</i>	<i>Maram H/S</i>	<i>No. 5/6/DEO-M/80, Dt. 15.11.1980</i>	<i>01/10/1980</i>
16.	<i>Ph. Ibungcha Singh, Petitioner No. 16</i>	SGT	-do-	-do-	<i>No. 3/AAT/86-DEO (K), Dt. 27.02.1988</i>	<i>11/02/1988</i>
17.	<i>Shelley P.H., Petitioner No. 17</i>	SGT	<i>North District Govt. Aided H/S</i>	<i>Tungjoy H/S</i>	<i>No. 1/16/2005(ZEO-SPT), Dt. 09.05.2012</i>	<i>23/12/2011</i>
18.	<i>P.S. Hepuni, Petitioner No. 18</i>	LDC	-do-	-do-	<i>No. 5/7/DEO-N-80, Dt. 06.01.1981</i>	<i>01/10/1980</i>
19.	<i>Kamo Joseph, Petitioner No. 19</i>	AGT	<i>Ngari H/S</i>	<i>Ngari H/S</i>	<i>No. 1/16/2005(ZEO-SPT), Dt. 09.05.2012</i>	<i>23/12/2011</i>
20.	<i>S. Hruni,</i>	LDC	-do-	-do-	<i>No. 5/7/DEO-SPT/80,</i>	<i>01/11/1983</i>

	Petitioner No. 20				<i>Dt. 21.12.1983</i>	
21.	<i>W. Opendro Singh,</i> Petitioner No. 21	SGT	-do-	-do-	<i>No. 5/30/DEO-SPT/80,</i> <i>Dt. 24.06.1987</i>	<i>20/04/1987</i>
22.	<i>YarnaoKeinam,</i> Petitioner No. 22	AGT	<i>Thiwa H/S</i>	<i>Thiwa H/S</i>	<i>No. 5/6/DEO-N/80, Dt.</i> <i>25.11.1980</i>	<i>01/10/1980</i>
23.	<i>Ng. Manidhaja Singh,</i> Petitioner No. 23	AGT	-do-	-do-	<i>No. 5/30/DEO-Spt/80,</i> <i>Dt. 21.06.1988</i>	<i>01/06/1988</i>
24.	<i>K.T. Ngalangzar,</i> Petitioner No. 24	LDC	-do-	-do-	<i>No. 5/6/DEO-N/80, Dt.</i> <i>25.11.1980</i>	<i>01/10/1980</i>
25.	<i>ChiriKeinam,</i> Petitioner No. 25	AGT	-do-	-do-	<i>No. 5/30/DEO-SPT/80,</i> <i>Dt. 24.06.1987</i>	<i>20/04/1987</i>
26.	<i>S. Ngou,</i> Petitioner No. 26	AGT	<i>Laii H/S</i>	<i>Laii H/S</i>	<i>No. 5/19/ZEO-SPT/81,</i> <i>Dt. 02.09.2003</i>	<i>17/07/2003</i>
27.	<i>A. Hillaryo,</i> Petitioner No. 27	LDC	<i>Phaibung H/S</i>	<i>Phaibung H/S</i>	<i>No. 5/7/DEO-N/80, Dt.</i> <i>01.09.1982</i>	<i>01/09/1982</i>
28.	<i>Th. Bijendra Singh,</i> Petitioner No. 29	SGT	-do-	-do-	<i>No. 4/61/ZEO-SPT/80,</i> <i>Dt. 04.04.2003</i>	<i>29/11/2001</i>
29.	<i>Ng. Gomati Devi,</i> Petitioner No. 30	AGT	<i>Mapithel Area H/S</i>	<i>Mapithel Area H/S</i>	<i>No. 3/1/2012-ZEO/Appt/UKL, Dt.</i> <i>25.04.2012</i>	<i>23/12/2011</i>
30.	<i>Dennis T. Dongzahao,</i> Petitioner No. 31	SGT	<i>Hill Model Aided H/S</i>	<i>Singngat H/S</i>	<i>No. 3/8/92-DEO(CC),</i> <i>Dt. 06.04.1993</i>	<i>01/01/1994</i>
31.	<i>T. Paudam,</i> Petitioner No. 32	AGT	-do-	-do-	<i>No. 3/4/03-ED(CCP),</i> <i>Dt. 09.11.2006</i>	<i>01/10/2006</i>
32.	<i>L. Gouchingkhup,</i> Petitioner No. 33	AGT	-do-	-do-	<i>No. 3/4/03-ED(CCP),</i> <i>Dt. 09.11.2006</i>	<i>01/10/2006</i>

[10] Carefully perused the grounds taken herein by the appellants as extracted above. In that, the relevant grounds to be discussed in the present appeal are Grounds No. (iii), (iv), (v), (vii) & (viii) and the rest of the grounds have been discussed and decided properly by the Ld. Single Judge in the impugned order.

[11] As submitted by the learned counsel for the appellants, the conversion of the 13 (thirteen) Government Aided High Schools into full-fledged Government High Schools with the rider that the Education Department will retain only approve teachers/staffs and those untrained teachers shall undergo as per NCTE norms and other shall be with immediate effect i.e. with effect from the date of the order of Administrative Department was done in pursuance of the

Cabinet policy/policy decision of the Government as such, a Writ Court cannot interfere with any policy decision of the Government.

It is an admitted fact that the administrative decision/cabinet policy/policy decision of the Government, if arbitrariness is not committed in taking the said decision, Court cannot interfere with any policy decision of the Government. But, in the instant case, on perusal of the facts as put out by both the learned counsels, the commission of the arbitrariness on the part of the Government in taking policy decision is evident.

In this regard, the Ld. Single Judge discussed about it in detail. Para No. 17 of the impugned judgment is extracted herein below:

"[17] After hearing the learned counsel appearing for the parties at length and after careful examination of the records, this Court finds force and merit in the submissions made on behalf of the petitioners. On careful examination of the memorandum for Cabinet dated 27.11.2015 and the proposal made there under as well as the State Cabinet decision taken on 27.11.2015 approving the proposal for conversion of 13 (thirteen) Government Aided High Schools to full-fledged Government High Schools and absorption of the services of the approved employees (three Graduate Teachers and one LDC) for each schools, no condition was mentioned either in the said memorandum for Cabinet or in the said decision of the Cabinet for effecting such conversion or absorption with effect from the date of issue of order by the Administrative Department. However, the Finance Department, while conveying concurrence to the aforesaid State Cabinet decision, incorporated the condition that the order shall be with effect from the date of issue of order by the Administrative Department. On examination of the relevant files of the Finance Department produced by the respondents, no reason whatsoever were given or disclosed by the Finance Department for adding or incorporating the condition that the order WP(C) No. 137 of 2018 Page 19 should be with effect from the date of issue of the order by the Administrative Department. Accordingly, this Court is of the considered view that the said condition imposed by the

Finance Department is neither in conformity with the decision taken by the State Cabinet, nor is it supported by any reason, hence, the act of the Finance Department imposing such conditions is arbitrary and therefore legally unsustainable."

[12] With the above observation, the Ld. Single Judge rightly relied upon the following Apex Court's judgment & orders, Para No. 18, 19, 20, 21 & 22 are extracted herein below:

*"[18] In the case of **"Shrilekha Vidyarthi Vs. State of U.P."** reported in (1991) 1 SCC 212, the Hon'ble Apex Court held as under:-*

"36. The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

*[19] In the case of **"East Coast Railway Vs. Mahadev Appa Rao"** reported in (2010) 7 SCC 678 (Supra), it has been held by the Hon'ble Apex Court as under:-*

"23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority

to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

[20] *In the case of "Union of India Vs. International Trading Co." reported in (2003) 5 SCC 437, it has been held by the Hon'ble Apex Court at Para 16 that where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.*

[21] *In the case of "State of Orissa Vs. Dhaniram Luhar" reported in (2004) 5 SCC 568, it has been held by the Hon'ble Apex Court as under:-*

"7. Reason is the heartbeat of every conclusion, without the same it becomes lifeless."

"8. Even in respect of administrative orders Lord Denning M.R. in Breen V. Amalgamated Engg. Union observed: "the giving of reason is one of the fundamental of good administration". In Alexander Machinery (Dudley) Ltd. Vs. Crabtree it was observed: "Failure to give reason amounts to denial of justice". "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rational is that the affected party can know why the decision as gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance".

[22] *In the case of "Krishna Swami Vs. Union of India" reported in (1992) 4 SCC 605, it has been held by the Hon'ble Apex Court at Para 47 that –*

"47. Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public

authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. But expectations are envisaged keeping institutional pragmatism into play, conscious as we are of each other's limitations".

After discussing the above fact with the observation made by the Hon'ble Apex Court, the Ld. Single Judge rightly observed that the imposition of the condition by the Finance Department was arbitrary and accordingly, unsustainable in law and the same is reproduced herein below:

"23. In view of the facts and circumstances of the present case and in view of the above-quoted well settled principle of law laid down by the Hon'ble Apex Court, this Court has no hesitation to hold that imposition of the condition by the Finance Department for absorption of the services of the petitioners with effect from the date of issue of order by the Administrative Department without assigning or disclosing any reason is per se arbitrary and accordingly unsustainable in law."

With respect to Grounds No. (iii), (iv) and (v), the Ld. Single Judge rightly and satisfactorily discussed this aspect of the matter at Para No. 17 of the impugned judgment and order supported by Hon'ble Apex Court's orders and the same is extracted herein below:

"17. After hearing the learned counsel appearing for the parties at length and after careful examination of the records, this Court finds force and merit in the examination of the memorandum for Cabinet dated 27.11.2015 and the proposal made there under as well as the State Cabinet decision taken on 27.11.2015 approving the proposal for conversion of 13 (thirteen) Government Aided High Schools to full-fledged

Government High Schools and absorption of the services of the approved employees (three Graduate Teachers and one LDC) for each school, no condition was mentioned either in the said memorandum for Cabinet or in the said decision of the Cabinet for effecting such conversion or absorption with effect from the date of issue of order by the Administrative Department. However, the Finance Department, while conveying concurrence to the aforesaid State Cabinet decision, incorporated the condition that the order shall be with effect from the date of issue of order by the Administrative Department. On examination of the relevant files of the Finance Department produce by the respondents, no reason whatsoever were given or disclosed by the Finance Department for adding or incorporating the condition that the order should be with effect from the date of issue of the order by the Administrative Department. Accordingly, this Court is of the considered view that the said condition imposed by the Finance Department is either in conformity with the decision taken by the State Cabinet, nor is it supported by any reason, hence, the act of the Finance Department imposing such conditions is arbitrary and therefore legally unsustainable."

[13] Furthermore, it is an admitted fact that in similarly situated position with the facts of the instant case, while conversion of the 2 (two) Aided High Schools to full-fledged Government High Schools i.e. (i) Heirok Part – I Aided High School and (ii) Sagang Aided High School, in the said two orders, the State Government clearly allowed the absorption of the services of the approved employees of the said two schools in Government services w.e.f. the date of entering their services as approved employees for the purpose of pension benefit only.

[14] On further perusal, such absorptions have been allowed by the State Government as per the provisions of the Manipur Civil Services (Appointment and Other Service Conditions of Employees of Government Aided/Private Institutions taken over by the Government Rules, 1981). Admittedly, this fact is not denied by the appellants

anywhere in the present appeal as well as the counter affidavit filed in the writ petition. In deciding this point, the Ld. Single Judge appropriately discussed about the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India framed rules called "The Manipur Civil Service Appointment and Other Service Conditions of Employees of Government Aided/Private Institutions taken over by the Government Rules, 1981" and also rightly referred Rule 7 of the said Rules; for convenience sake, the same is extracted herein below:

"7. Protection of past service :

(a) The persons so appointed in the Government service shall be deemed to have been appointed in the same capacity as in the Government Aided/Private Institutions, i.e. Temporary, Officiating, Substantive, as the case may be, and the condition of probation and confirmation shall be deemed to have been waived in case of substantive or permanent officials.

(b) The service rendered by the employees of the Government Aided/Private Institutions on an equated post shall be counted as experience or service required for promotion or direct recruitment as the case may be."

[15] It is settled principle of law that one should not be discriminated and the equality clause enshrined under Article 14 & 16 of the Constitution of India must be preserved and protected. The Apex Court in ***Union of India vs. K.T. Shashtri reported in AIR 1990 SC 598***, as extracted in the impugned judgment & order of the Ld. Single Judge, observed that -

[13] In support of his contentions, the learned counsel relied on the judgment rendered by the Hon'ble Apex Court in the case of "Union of India Vs. K.T. Shashtri" reported in AIR 1990 SC 598 wherein, the Hon'ble Apex Court held as under:

"5. It is this decision which is challenged before us by the appellants. Mr. Subba Rao, learned counsel appearing for the appellants contended that the Government had a right to prescribe different conditions of service for the members belonging to the different units, and merely because the superannuation age of the members of the DRDS was increased, it could not be held that the respondent who belonged to another unit, viz. DAQAS, was entitled to the said benefit. There is no dispute that the Government has power to vary the service conditions of the members of the services from time to time. The question involved in the present appeal is, however, not whether the Government had such power. The question is whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the case. The admitted facts are that in 1966 when the respondent was recruited to the Defence Science Service, the three units belonged to the said Service and the employees were recruited initially to that service and then sent to different units. The service conditions of the employees belonging to the three units were the same and their services were interchangeable between the three units. The Service Rules which applied to all the three units were also common, viz. Defence Science Service Rules. The three units, therefore, belonged to and constituted one single service. It is later in the year 1979, that the Defence Research Service was reconstituted into three different services as stated above. However, at that time, admittedly no option was given to the employees working in the different units to opt for one or the other of the units. It appears that those who were already working in either of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action. The classification made between them further has no rational basis and no nexus of such classification to the object sought to be achieved has been shown to us by Mr. Subba Rao appearing for the appellants. In the circumstances, the denial of the benefit of the enhanced superannuation age to the members of one unit while the same is granted to the members of the other unit amounts to discrimination, violative of Article 16 of the Constitution. We are, therefore, satisfied that the decision of the Tribunal is both

proper and valid, and there is no substance in the present appeal. The appeal is, therefore, dismissed."

[16] Furthermore, the Hon'ble Supreme Court observed in this matter in series of its judgment & orders:

Karnataka Industrial Areas Development Board &Anr. V. Prakash Dal Mill &Ors. (2011) 6 SCC 714-

"23. The Board being State within the meaning of Article 12 of the Constitution of India is required to act fairly, reasonably and not arbitrarily or whimsically. The guarantee of equality before law or equal protection of the law under Article 14 embraces within its realm exercise of discretionary powers by the State. The High Court examined the entire issue on the touchstone of Article 14 of the Constitution of India. It has been observed b that the fixation of price done by the Board has violated Article 14 of the Constitution of India. It is correctly observed that though Clause 7(b) permits the Board to fix the final price of the demised premises, it cannot be said that where the Board arbitrarily or irrationally fixes the final price of the site without any basis, such fixation of the price could bind the lessee. In such circumstances, the Court will have the jurisdiction to annul the decision, upon declaring the same to be void and non est."

East Coast Railway &Anr. V. Mahadev Appa Rao &Ors. (2010) 7 SCC 678 –

"9. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge. The legal position in this regard is settled by the decision of this Court in Commr. of Police v. Gordhandas Bhanji wherein this Court observed: (AIR p. 18, para 9)

"9.... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and

must be construed objectively with reference to the language used in the order itself."

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.

23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

S.G. Jiasinghani Appellant V. Union of India &Ors. Respondents (Civil Appeal No. 1038 of 1965) C.K. Tikku Appellate Asstt Commissioner of Income Tax, Intervener, Mohan Chandra Joshi Petitioner V. Union of India &Ors. Respondents (Writ Petn. No. 5 of 1966) C.K. Tikku Appellate Asstt. Commissioner of Income Tax, Intervener [AIR 1967 SC 1427] –

"14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey- "Law of the Constitution - Tenth Edn., Introduction cx). "Law has reached its finest moments, stated Douglas, J. in United States v. Wunderlich. (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler..... Where discretion is

absolute man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice Discretion as Lord Mansfield stated it in classic terms in the case of John Wilkes. (1770) 4 Burr 2528 at p. 2539 "means sound discretion guided by law. It must be governed by rule not by humour it must not be arbitrary, vague and fanciful."

Union of India &Anr. v. K.T. Shastri (AIR 1990 SC 598) –

5. It this decision which is challenged before us by the appellants. Mr. Subba Rao, learned counsel appearing for the appellants contended that the Government had a right to prescribe different conditions of service for the members belonging to the different units, and merely because the superannuation age of the members of the DRDS was increased, it could not be held that the respondent who belonged to another unit, viz. DAQAS, was entitled to the said benefit. There is no dispute that the Government has power to vary the service conditions of the members of the services from time to time. The question involved in the present appeal is, however, not whether the Government had such power. The question is whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the case. The admitted facts are that in 1966 when the respondent was recruited to the Defence Science Service, the three units belonged to the said Service and the employees were recruited initially to that service and then sent to different units. The service conditions of the employees belonging to the three units were the same and their services were interchangeable between the three units. The Service Rules which applied to all the three units were also common, viz. Defence Science Service Rules. The three units, therefore, belonged to and constituted one single service. It is later in the year 1979, that the Defence Research Service was reconstituted into three different services as stated above. However, at that time, admittedly no option was given to the employees working in the different units to opt for one or the other of the units. It appears that those who were already working in either of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action. The classification made between them further has no rational basis and no nexus of such classification to 'the object sought to be achieved has been shown to us by Mr. Subba Rao appearing for the appellants. In the circumstances, the denial of the benefit of the enhanced superannuation age to the members of one unit while the same is granted to the members of the other unit amounts to discrimination, violative of Article 16 of the Constitution, We are, therefore, satisfied that the decision of the Tribunal

is both proper and valid, and there is no substance in the present appeal. The appeal is, therefore, dismissed.

[17] The decision and observation made above by the Hon'ble Supreme Court is squarely covered in the present case. The Hon'ble Supreme Court in ***State of Himachal Pradesh &Anr. Vs. Sheela Devi reported in (2023) SCC OnLine SC 1272***, observed that

"7. The State, in justification of its appeal contends through the Learned Advocate General that the High Court's reasoning is erroneous. It is submitted that Rule 17 of the CCS Pension Rules, 1972 (hereafter called the Pension Rules) is inapplicable, having regard to the exclusionary definition in Rule 2(g). It is further stated that one of the express terms of contract which the employees voluntarily entered into, was that barring specified statutory rules, no other service rules applicable to the regular or permanent employees were applicable to them.

8. At the outset, it would be necessary to extract Rules 2 and 17 of the CCS (Pension) Rules, 1972 (hereinafter "Pension Rules") which reads as follows:-

"2. Application-Save as otherwise provided in these rules, [these rules shall apply to Government servant appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to-

- (a) railways servants;*
- (b) person in casual and daily rated employment;*
- (c) persons paid from contingencies;*
- (d) persons entitled to the benefit of a Contributory Provident Fund;*
- (e) members of the All India Services;*
- (f) persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;*
- (f) persons employed on contract except when the contract provides otherwise; and*
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.*

17. *Counting of service on contract. (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either-*

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service;

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service or if the Government servant is on leave on the day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefit payable or paid to him on account of service rendered on contract.

9. The Learned Advocate General is correct in his interpretation, inasmuch as a facial reading of Rule 2(g) would indicate that contractual employees are excluded from the pale of Pension Rules. However, what is significant is that the rule itself in its opening terms saves the application of other provisions of the pension rules: "Save as otherwise provided in these rules". If the opening phrase of Rule 2 were to be understood in this context, any interpretation of Rule 17 as is urged by the State would render such substantive provision redundant. Rule 17 was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. It is only for the purposes of pension that the past service as a contractual employee is to be taken into account.

10. So far as the other arguments with respect to the voluntariness when the employees enters into contractual services is concerned, this Court is unpersuaded by the submission because those terms were applicable as long as the employees remained on contract. However, his or her status ceased upon regularization.”

[18] It is an admitted position of fact that the initial appointment of the above named respondents/petitioners were against the clear sanctioned posts.

[19] The question involved in the present case is whether the respondents/petitioners are entitled to the benefit embedded in the orders of the abovementioned absorption of the teachers/staffs of (i) Heirolk Part – I Aided High School and (ii) Sagang Aided High School w.e.f. the date of their initial appointment in the facts and circumstances. In this regard, in the facts and circumstances, as narrated above, it is undeniable fact that the same shall be applied to the present respondents/petitioners. This being so, their service conditions will have to run parallel and no discrimination can be made between them by a unilateral action.

In the circumstances, the denial of the benefit enjoyed by the similarly situated persons, as stated above, amounts to discrimination, violative of the Article 16 of the Constitution of India. We are, therefore, satisfied that the decision of the Ld. Single Judge is both proper and valid. There is no room for interference by this Court as there is no substance in the present appeal.

[20] We are of the considered view that the Ld. Single Judge, while rendering the impugned order discussed the facts and circumstances of the cases of the parties and rightly passed the impugned order as per the facts of the case and as per law and as such, the grounds taken in the present appeal are not sustainable in the eyes of law.

[21] Accordingly, the present appeal is dismissed as devoid of merit.

[22] The appellants are directed to comply with the directions given by the Ld. Single Judge in the impugned order and the whole exercise should be completed within a period of 3 (three) months from the date of receipt of a copy of this order.

JUDGE

CHIEF JUSTICE

FR/NFR

Bipin