

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

WP(C)No.255 of 2024

Longjam Subhaschandra Singh, aged about 57 years, S/o (L), L. Mani Singh
of Wangkheimayum Leirak, Imphal East PO & PS Porompat, Imphal East
District Manipur.

.....Petitioner

– Versus –

1. The State of Manipur represented by the Chief Secretary (DP),
Government of Manipur, Secretariat, Babupara, PO & PS Imphal, Imphal
West District, Manipur-795001.
2. The Secretary, Skills Labour Employment and Entrepreneurship
Department, Government of Manipur, Secretariat, Babupara, PO & PS
Imphal, Imphal West District, Manipur-795001.
3. Yaiphaba Longjam, MCS, Joint Director of Craftsmen Training and
Deputy Director/ JNIMS Manipur, Porompat, PO & PS Porompat, Imphal
East District, Manipur-795005

.... Respondents

With

MC(WP(C)) No.216 of 2024

With

MC(WP(C)) No.233 of 2024

With

MC(WP(C)) No.239 of 2024

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. HS Paonam, Sr. Adv.
For the Respondents : Mr. Lenin Hijam, AG & L. Anand, Adv.
Date of Hearing : 17.04.2024.
Date of Order : 24.04.2024

ORDER
(CAV)

[1] Heard Mr. HS Paonam, learned senior counsel assisted by Mr. A. Arunkumar, learned counsel on behalf of the petitioner, Mr. Lenin Hijam, learned AG assisted by Ms. Sharmila, learned counsel on behalf of State respondents/applicants in MC(WP(C)) No.239 of 2024 and Mr. L. Anand, learned counsel along with Mr. B. Kirankumar on behalf of respondent No.3/applicant in MC(WP(C)) No.233 of 2024.

[2] By the present applications being MC(WP(C)) No.233 of 2024 filed by private respondent No.3 and MC(WP(C)) No.239 of 2024 filed by the State respondents in the writ petition being WP(C) No.255 of 2024, the respondents/applicants are raising the question of maintainability and locus of the petitioner to file accompany writ petition being WP(C) No.255 of 2024 challenging

the appointment of respondent No.3 as Joint Director (Training) on deputation in the Directorate of Craftsman Training, Government of Manipur.

[3] By way of writ petition being WP(C) No.255 of 2024, the petitioner has challenged the appointment of Private respondent No.3 as Joint Director (Training), Directorate of Craftsmen Training, Manipur on deputation issued by Joint Secretary(DP), Government of Manipur vide order dated 13.03.2024. By the impugned order dated 13.03.2024, respondent No.3 has been appointed as Joint Director(Training), Directorate of Craftsmen Training, Manipur on deputation for a period of 3(three) years, or until further orders, in addition to his post as Deputy Director(JNIMS) at no extra remuneration. Earlier the petitioner has also challenged the appointment of respondent No.3 as Joint Director(Training) Directorate of Craftsmen Training, Manipur on in-charge basis by way of writ petition being WP(C) No.170 of 2024 and vide order dated 07.03.2024, this Court stayed the impugned order dated 25.02.2024. It is stated that on 07.03.2024, Joint Secretary (DP) Government of Manipur cancelled the order dated 25.02.2024 conferring in-charge Joint Director (Training), Directorate of Craftsmen Training, Manipur to the respondent No.3 in compliance of the order dated 07.03.2024 passed by this Court in WP(C) No.170 of 2024 and subsequently, the impugned order dated 13.03.2024 appointing the respondent No.3 as Joint Director (Training) in the Directorate of Craftsmen, Manipur on deputation was issued.

[4] It is the case of the petitioner that he is the senior most Principal, ITI, Manipur and as per the recruitment rules of Joint Director, (Training), the same is promotion post from the post of Deputy Director of Training and the Principal, ITI having three years of regular service in case of degree holders in Engineering in Mechanical/Electrical/Automobiles Electronic/Computer Engineering and 8(eight) years for Diploma holders, failing which by deputation from State or Central holding analogous post and failing which by direct recruitment.

[5] It is submitted that in case of eligible candidates are not available for promotion as per recruitment rules, the senior most in the feeder cadre has to be appointed on in-charge basis in terms of the Office Memorandum dated 03.10.2020 issued by DP, Government of Manipur. It is also stated that the present impugned order dated 13.03.2024 has been issued in order to frustrate the ad-interim stay order dated 07.03.2023 passed by this Court in WP(C) No.170 of 2024 whereby the appointment of the private respondent No.3 as in-charge Joint Director (Training) was suspended. It is prayed that the impugned order be set aside. The State respondents have filed MC(WP(C)) No.239 of 2024 and private respondent has also filed MC(WP(C)) No.233 of 2024 raising the maintainability of the writ petition at the instance of the petitioner herein, mainly on the ground that the petitioner is not eligible for promotion to the post of Joint Director. It is pointed out that as per para 5 of the writ petition, the petitioner will be eligible for promotion

to the post of Joint Director(Training) in the Directorate of Craftsmen Training in the year 2026 and also the Office Memorandum dated 03.10.2020 issued by the State Government of Manipur for appointment on in-charge basis will not be applicable, as the State Government has resorted to the method of appointment on deputation as provided in the recruitment rules for Joint Director. In the Directorate of Craftsmen Training Manipur(Joint Director of Training) Rules,1999, it is stated in column 10 of the MPS Form No.8 that the appointment to Joint Director will be by promotion failing which by deputation, failing both by direct recruitment.

[6] The private respondent No.3 has also raised the same objection on maintainability of the writ petition as the petitioner is not eligible for promotion and he is not an aggrieved person so as to entitle to challenge the appointment of the private respondent No.3. It is also stated that the petitioner has wrongly averred in para 11 of the writ petition that respondent No.3 is not having engineering degree. It is stated that respondent No.3 is B.Tech in Electronic and Communication Engineering from Pondicherry University and hence, the averment of the petitioner regarding non-possession of Bachelor degree in engineering is wrong and misleading. It is stated that for concealing and misleading, the writ petition ought to be dismissed on this point alone.

[7] Mr. Lenin Hijam, learned AG has raised the question of maintainability of the writ petition and submits that this Court ought to decide this

question first before considering on merit of the case including the prayer for interim relief. Learned AG relies upon the decision of Hon'ble Supreme Court in the case reported as (i) **S. Narahari Vs. S.R. Kumar** reported in **(2023) 7 SCC 740** at para 22 & 23, (ii) **(2000) 10 SCC 253** and (iii) **Union of India Vs. Ranbir Singh Rathaur** reported in **(2006) 11 SCC 696** at para 42, wherein it was held that the issue of maintainability of the petition has to be decided first before going into the merit of the case. It is, therefore, prayed that before going into the merit of the case, the question on the maintainability raised by the respondents has to be considered and decided and only when the same is rejected, the matter can be considered on merit.

[8] Mr. Lenin Hiam, learned AG draws the attention of this Court to the recruitment rules for the post of Joint Director (Training), Craft that the appointment of Joint Director is by promotion, failing which by deputation, and failing which by direct recruitment. The eligibility criteria for promotion is 3(three) years of regular service in case of degree holders and 8(eight) years in case of diploma holders in the engineering trades as enumerated in the rules.

[9] Learned AG has pointed out that admittedly, the petitioner who is a diploma holder, is not yet qualified for appointment to the post of Joint Director and he will be eligible in the year 2026. In the circumstances, the State Government has resorted to the deputation clause as stipulated by the recruitment rules. It is

further highlighted that since the petitioner is not eligible for appointment to the post of Joint Director, Training, he being not aggrieved persons, has no locus to challenge the appointment of respondent No.3 as Joint Director(Training) on deputation as prescribed by the rules.

[10] Mr. Lenin Hiam, learned GA referred to **(2006) 11 SCC 731** holding that writ of certiorari challenging the appointment of a person to a post will be maintainable at the behest of eligible persons only. In the present case, the petitioner is admittedly not eligible for promotion to the post of Joint Director(Training) and as such he has no locus to challenge the appointment of respondent No.3 as Joint director(Training) on deputation as per rules.

[11] Learned AG has further relied upon the judgement & order of **Union of India Vs. Arulmozhi Iniasu** reported as **(2011) 7 SCC 397** at para 26 to the effect that writ of mandamus is maintainable only when there is legal right in favour of the writ petitioner and the corresponding legal obligation on the State.

[12] Mr. Lenin Hiam, learned AG has referred to a decision of Division Court of this Court vide judgement and order dated 30.10.2023 in **WP(C)No.917 of 2017** etc. etc. titled **Shahid Mohammad Shah Vs. State of Manipur & others** whereby in para 26 where it was held referring to the case of **Umakant Saran Vs. State of Bihar:(1973) 1 SCC 485** that a person who is not eligible for consideration

of appointment at the relevant point of time has no right to question the appointments made under the rule, since he was not an aggrieved person and accordingly, the writ petition was dismissed as not maintainable. It is pointed out that the judgment of the Division Bench by authored by me (Justice A. Guneshwar Sharma). It is stated that the decision of the Division Bench on the same point is binding on Single Bench of this Court. Regarding this point, learned Advocate General cites the decision of a constitution bench of the Hon'ble Supreme Court in the case of **Chandra Prakash Vs. State of UP:(2002)4 SCC 234** at para 22 that the doctrine of binding is utmost importance in the administration of justice and pronouncement by a division bench is binding on a division bench of the same or similar number of Judges. Finally, it is also pointed that Office Memorandum dated 03.10.2020 for appointment on in-charge basis will not applicable in the present case, as per para 4(i) of the OM stipulates that resort to appointment on in-charge basis will be made only when eligible persons as per recruitment rules are not available. It is clarified that in the present case, the methods of appointment as per RR is not exhausted and deputation is one of the method provided in the RR and hence, the OM dated 03.10.2020 as referred by the petitioner will not be applicable in the present case. It is prayed that the writ petition be dismissed as not maintainable, as the petitioner has no locus to challenge the appointment of

respondent No.3 as Joint Director(Training) Directorate of Craftsmen Training, Manipur on deputation.

[13] Mr. L. Anand, learned counsel appearing for respondent No.3 has adopted the submissions of learned Advocate General. It is further reiterated that the petitioner is not an aggrieved party, as he is not eligible for promotion to the post of Joint Director and in the circumstances, he cannot file the present writ petition challenging the appointment of respondent No.3. Learned counsel for respondent No.3 has referred to a decision of Hon'ble Supreme Court in the case reported as **AIR 1976 SC 578** at para 12 & 47 which stipulates that only aggrieved person has a locus to file a writ in the nature of certiorari. Since the petitioner has not suffered any legal wrong, he is not an aggrieved person. It is pointed out that in the present case, the petitioner will be eligible for promotion in the year 2026 only and as such he is not an aggrieved persons in the appointment of respondent No.3 as Joint Director(Training) on deputation as per rules.

[14] Learned counsel for respondent No.3 has also relied upon a decision reported in **(1973) 1 SCC 485** at para 15 that ineligible person has no locus to challenge the appointment. Reference is also made to a decision of the Hon'ble Supreme Court vide judgement dated 29.01.2020 in **Civil Appeal No.802 of 2020 title Shripal Bhati Vs. State of UP: (2020) 12 SCC 87 @ Para 26** wherein it is stated that the challenge to the appointment and absorption of the respondent was

dismissed as the petitioners were not eligible for promotion at the relevant time and hence they had no locus to challenge the appointment. It is also stated that the petitioner herein cannot ask for in-charge appointment as a right, when recruitment rules provide for appointment by deputation and direct recruitment when none is available for promotion. In the present case, none is available for consideration for promotion and as such resort to appointment by deputation is rightly made by the State respondents. It is prayed that writ petition may be dismissed on the ground of maintainability.

[15] Mr. H. S. Paonam, learned senior counsel for the petitioner submits that the impugned order is nothing but a devise to frustrate the interim order dated 07.03.2024 passed by this Court in the pending WP(C) No.170 of 2024 whereby the petitioner herein has challenged the appointment of respondent No.3 as Joint Director(Training) Directorate of Craftsmen Training, Manipur on in-charge basis. It is stated that with ulterior motive, the earlier in-charge appointment of the respondent No.3 to the post of Joint Director(Training) was cancelled on 07.03.2024 on the same day that this Court stayed the earlier impugned order dated 25.02.2024. Thereafter, the State respondents issued the present impugned order dated 13.03.2024 appointing the respondent No.3 herein again as Joint Director (Training) on deputation basis in addition to his normal duties without any extra remuneration.

[16] Learned senior counsel for the petitioner draws the attention of this Court to the word “in addition to his existing post as Deputy Director (JNIMS) at no extra remuneration” in the order dated 13.03.2024 and has submitted that this shows that the second impugned order is also an appointment order on in-charge basis. He has referred to an Office Memorandum dated 16.08.2021 issued by Department of Personnel Government of Manipur regarding the Deputation. It is stated that deputation will be outside the normal field of deployment and the borrowing authority shall pay leave salary and the pensionary contribution/NPS as determined by the Accountant General of Manipur. It is pointed out that if a person is appointed on deputation, the salary has to be paid by the borrowing authority.

[17] Mr. H. S. Paonam, learned senior counsel has clarified that in the impugned order dated 13.03.2024, it is stated that respondent No.3 who is on deputation as Deputy Director(JNIMS) is again appointed as Joint Director(Training) Directorate of Craftsmen on deputation in addition to his normal duties at no extra remuneration. This means that respondent No.3 will not be drawing any salary from the Directorate of Craftsmen Training Manipur and he will be drawing salary from JNIMS where he is presently working as Deputy Director (JNIMS) on deputation.

[18] It is also referred to another Office Memorandum dated 17.06.2010 issued by DOPT, Government of India that there shall be ‘cooling off’ period of

3(three) years after deputation and also para 8.4 of Appendix 5 of FR & SR stipulating similarly that there should be a cooling period of 3(three) after a completion of every deputation. It is submitted that in the present case, there is no cooling period as required. It is pointed out that for deputation no advertisement has been issued as done for other department and the respondent No.3 is hand-picked by the respondents without following the norms.

[19] Learned senior counsel for the petitioner draws the attention of this Court to the recruitment rules for Joint Director wherein it has been prescribed that deputation is from officers of the Central Government or State Government holding analogous post.

[20] As per recruitment rules, the qualification as per column 7 of the RR is degree or diploma in Mechanical/Electrical/Automobiles Electronic/Computer Engineering from recognized institute. Respondent No.3 herein is holding a cadre post of MCS Grade-II. It is submitted that MCS Grade-II is not a cadre post for the Joint Director(Training) Craftsmen and they are not analogous. The essential qualification for MCS Grade-II is degree in any field, whereas for the post of Joint Director, it is degree/diploma in engineering as specified by rules as mentioned above. Respondent No.3 having B.Tech in Electronic and Communication Engineering, cannot be termed as a person holding analogous post.

[21] It is submitted that the respondent No.3 holding a post not analogous with the post of Joint Director, is not eligible for appointment on deputation. It is further stated that the grade pay of Joint Director (Training) is Rs.6600/- whereas that of MCS Grade-II officer is Rs.5400/-. It is submitted that respondent No.3 who is holding an inferior post, cannot be considered for appointment on deputation to the post of Joint Director (Training), Directorate of Craftsmen, Manipur.

[22] On behalf of the petitioner, reliance is placed on the decision of Hon'ble Supreme Court in the cases of (i) **State of Punjab Vs. Inder Singh: (1997) 8 SCC 372** where it is held that: *"Concept of "deputation" is well understood in service law and has a recognized meaning. ".Deputation" has a different connotation in service law. The dictionary meaning of the word "deputation" is of no help. In simple words, "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority which controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would,*

therefore, know his rights and privileges in the deputation post..."(para 18)" (ii) **Indu Shekhar Singh VS. State of UP: (2006) 8 SCC 129** it is held that *"..Difference between 'Transfer' and 'Deputation' where deputation from organization constituted under statue to another organization constituted under different statute, the plea of deputationist that should be regarded as appointment of transfer cannot be accepted.."* (para 21 & 39), (iii) **Ashok Kumar Ratilal Patel Vs. Union of India: (2012)7 SCC 757** it is held that *"Difference between appointment on deputation and appointment of transfer.."*(para 13-17) (iv) **Union of India Vs R. Thiyagarajan: (2020) 5 SCC 201** it is held that *"..Determination as regards to the appointment as in the nature of deputation or otherwise.."*(para 15& 16) (v) **Union of India Vs. Raj Grow Inpex LLP: AIR 2021 SC 2993** it is held that *"..Proprietaries of seeking leave of the Court for issuing any new order on an issue which has already seized by the Court.."*(para 54.1) (vi) **Kusheshwar Prasad Singh Vs. State of Bihar: (2007) 11 SCC 447** it is held that *"... A wrongdoer ought not to permitted to make a profit out of his own wrong..."*(Para 16) (vii) **Zenith Mataplast Pvt. Ltd. Vs. State of Maharashtra: (2009)10 SCC 388** " when an interim order required to be passed' at para No.29 & 30) and (viii) **Deoraj Vs. State of Maharastra: (2004) 4 SCC 697** "...discretion for passing interim order.."(para 12).

[23] Learned senior counsel also relied upon the decision of Hon'ble Supreme Court in **V.N. Meenakshi Vs. Union of India: 1998 Legal Eagle (SC) 790** it is held that

“Respondent No. 5 was holding a substantive post in the office of the Comptroller and Auditor General of India as Junior Accounts Officer. He was brought on deputation to the Border Security Force. He was absorbed in the organization of Border Security Force as Joint Assistant Director. Appellant is an employee under the Border Security Force. The absorption of respondent No. 5 in the post of Joint Assistant Director was challenged by the appellant before the Central Administrative Tribunal, inter alia, on the ground that according to the Rules in force, respondent No. 5 could not have been so absorbed. The Tribunal, by the impugned judgment and order, came to hold that the post which respondent No.5 was holding in parent organization is an analogous post to the post of Joint Assistant Director and therefore, there was no illegality in the absorption of said respondent No. 5 as Joint Assistant Director. From the relevant Rules in force, at the point of time, it is clear that unless the two posts are analogous posts, it is not possible for absorption of officer from another organization. Looking at the duties of the two different posts in question, the scale of pay which the post carries as well as the category to which the two posts belong, it is difficult for us to sustain the conclusion

of the Tribunal that respondent No. 5 was holding as analogous post in the parent organization. The Tribunal having committed error in holding that respondent no. 5 was holding an analogous post in the parent organization, the ultimate decision gets vitiated. Having examined the relevant criteria of the two posts in question with which we are concerned, we are of the considered opinion that respondent No. 5 on the date of his absorption as Joint Assistant Director in the Border Security Force was not holding an analogous post under the Comptroller and Auditor General of India and therefore, he was not entitled to be absorbed permanently in the Border Security Force. The said absorption, therefore, is vitiated and must be set aside. We accordingly set aside the order of absorption of respondent No. 5 as Joint Assistant Director under Border Security Force. The impugned order of the Tribunal is accordingly quashed. Since the appellant claimed to be otherwise entitled for promotion to the post of Joint Assistant Director but in the meantime has retired on superannuation his case may be considered for promotion to the post of Joint Assistant Director in accordance with law and if ultimately she is promoted to the post of Joint Assistant Director then he would be entitled to the consequential enhancement in retiral benefits but will not be entitled to any arrear of salary on that score. Appeal is accordingly allowed but there will be no order as to costs.

Appeal allowed.”

[24] This Court has perused the materials on record, the case laws referred herein and considered the oral submissions made by the parties in details.

[25] The point to be decided herein is regarding the maintainability of the writ petition filed by the petitioner challenging the appointment of the respondent No.3 as Joint Director (Training), Directorate of Craftsmen, Manipur on deputation. The plea raised by the respondents is lack of locus on the part of the petitioner, since he is not eligible for promotion to the said post and deputation is one of the methods provided by the rules.

[26] Admittedly, the petitioner is not eligible at the moment for promotion to the post of Joint Director (Training), Directorate of Craftsmen, Manipur, since he is yet to acquire 8 years of regular service in the feeder cadre of Deputy Director and Principal ITI. Earlier, on 25.02.2024 the respondent No.3 was appointed as Joint Director (Training), Directorate of Craftsmen, Manipur on in-charge basis and same was challenged by the petitioner herein by way of writ petition being WP(C) No. 170 of 2024 and vide order dated 07.03.2024 this Court stayed that order. On the same day, ie, on 07.03.2024, the earlier order dated 25.02.2024 was cancelled purportedly in compliance of the order dated 07.03.2024. Subsequently, the present impugned order dated 13.04.2024 was issued in favour of the respondent No.3 appointing him as Joint Director (Training), Directorate of Craftsmen, Manipur on deputation in addition to his duty as Deputy Director (JNIMS) on deputation at

no extra remuneration. It is the case of the respondents that as none is eligible for promotion, resort has been made to appointment by deputation as prescribed by rules and the petitioner who is ineligible for promotion, has no locus to challenge the appointment of the respondent No.3 on deputation. In view of the case laws cited above, it has been urged to dismiss the writ petition summarily on the question of lack of locus at threshold. The petitioner is alleging that the second impugned order is also an appointment on in-charge basis in disguise and he has locus.

[27] This Court thinks it appropriate to first examine as to whether the nature of impugned order is an appointment by deputation or actually on in-charge basis.

[28] It is settled proposition of law that deputation connotes a posting outside the cadre posts of the service. It may be within the same State and/or to other States and Centre. It will be fruitful to refer to the OM dated 16.08.2021 issued by the Govt. of Manipur with regard to deputation. It states that 'deputation' is posting by way of transfer outside normal field of deployment and the borrowing authority shall pay leave, salary and pension and pension contributions/NPS.

[29] The test whether an appointment is on deputation or not, is to examine the substance of such appointment and not by the name or terminology

alone used in the order. It will be relevant to refer to the following decisions of the Hon'ble Apex Court.

[30] In the case of **State of Kerala v. James Varghese: (2022) 9 SCC 593**, Hon'ble Supreme Court discussed the importance of the substance of the enactment while considering its validity and not the name alone. It is held as below:

72. It could thus be seen that the Constitution Bench has held in *Kesoram Industries case*⁸ that when the legislative competence of a State Legislature is questioned on the ground that it encroaches upon the legislative competence of Parliament, since some entries are bound to be overlapping, in such a situation, the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate to. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The true character of the legislation has to be ascertained. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. It has been held that incidental and superficial encroachments are to be disregarded. It has been held that the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II, though it may incidentally affect any item in List I.

8. *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201

[31] In the case of **Municipal Council, Kota v. Delhi Cloth & General Mills Co. Ltd.: (2001) 3 SCC 654**, Hon'ble Apex Court has emphasised the importance of substance of the enactment and not the term used while considering the vires of a taxation statute. It is held as below :

18. We affirm the statement of law thus made above to be correct and in our view it is not the nomenclature used or chosen to christen the levy

that is really relevant or determinative of the real character or the nature of the levy, for the purpose of adjudging a challenge to the competency or the power and authority to legislate or impose a levy. What really has to be seen is the pith and substance or the real nature and character of the levy which has to be adjudged, with reference to the charge, viz., the taxable event and the incidence of the levy. We are convinced on the indisputable facts on record that the levy sought to be imposed and recovered as “Dharmada” being only on the goods brought within the municipal limits of Kota for consumption, use or sale therein the same in truth, reality and substance is only an “octroi” for the purpose of carrying out the several public charitable objects statutorily enjoined upon the Municipal Board and enumerated in Sections 98 and 99 and those undertaken pursuant to the stipulations contained in Sections 101 and 102 of the Act. The mere fact that it is called by a different name (all the more so when the word “octroi” itself is not found used in Entry 52 List II of the Seventh Schedule) for historical reason and administrative needs or exigencies by the draftsmen of the notification does not in any manner either undermine the nature and character of the levy or render it any the less a levy envisaged under Entry 52 List II of the Seventh Schedule. The various charitable objects and ameliorative schemes and projects for which the taxes realised under the classified head of Dharmada are claimed to be spent cannot as the provisions of the Act stand enacted be said to be either unauthorised or without the sanction of law. That, apart, the irregularity or illegality, if any involved in spending the sum after collection cannot have any impact on or adversely affect, the otherwise competency of the authority concerned to impose a levy, well within its legislative competence and further not shown to be violative of any provisions of the Constitution of India. Neither the High Court has gone into any such question of illegality in the matter of spending the tax realised nor are there any materials on record placed before us to substantiate any such claim by the respondent Companies in this regard.

[32] From the above case laws, it is clear that what is important for consideration is the nature and substance of the matter and not the nomenclature alone. For example, a partnership firm may be given name of M/s ABC Co. Ltd and

this alone will not ipso facto become a company, unless it has every character of being a private limited company under the relevant statute.

[33] From a bare perusal of OM dated 16.08.2021 as noted in para 28 above, deputation means posting outside cadre posts and the person on deputation shall draw salary from the borrowing department. In the present case, the petitioner will draw salary from JNIMS where he is still under deputation. The words "in addition to his existing post as Deputy Director (JNIMS) at no extra remuneration" in the impugned order dated 13.03.2024 are very important and these will indicate the true character of the nature of assignment given to the respondent No.3. These words 'in addition to existing post at no extra remuneration' would indicate that the impugned order is nothing but an in-charge appointment of the respondent No.3 to the post of Joint Director (Training) and mere mention of the word 'deputation' alone will not make it a deputation. The essence of deputation as per OM dated 16.08.2021 is lacking. Accordingly, it is held that the second impugned order dated 13.04.2024 is nothing but an appointment on in-charge basis.

[34] Since the impugned order dated 13.04.2024 of the respondent No.3 is in fact an appointment on in-charge basis, the petitioner who is the allegedly seniormost Principal ITI (a feeder cadre for Joint Director), has a right to be considered for appointment on in-charge basis in terms of the Office Memorandum

dated 03.10.2020 issued by Govt. of Manipur for regulating in-charge appointment. In such circumstances, the petitioner cannot be treated to be a person without any locus. The ratio of the cases cited by the respondents will not be applicable to the facts of the present case. In those cases, the appointments were made on regular basis and the ineligible petitioners were held without any locus.

[35] Accordingly, it is held that the impugned order is basically an appointment on in-charge basis painted as deputation and hence, the petitioner has locus in terms of OM dated 03.10.2020. The applications being MC(WP(C)) Nos. 233 of 2024 & 239 of 2024 are rejected and disposed of. No cost.

[36] List WP(C) No. 255 of 2024 and MC(WP(C)) No. 216 of 2024 on **26.04.2024** for further proceedings.

JUDGE

FR/NFR

John Kom