

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

WP(C) No. 916 of 2023

With

MC(WP(C) No. 389 of 2024

With

MC(WP(C) No. 472 of 2023

1. Ningthoukhongjam Samarendra Singh, aged about 55 years, S/o (L) N. Amuyaima Singh of Mongshangei School Leirak, P.O. Canchipur, P.S. Singjamei, Imphal West District, Manipur – 795001.
2. Soram Olendro Singh, aged about 46 years, S/o (L) S. Kesho Singh of Nagamapal Soram Leirak, P.O. Lamphel, P.S. City Police, Imphal West District, Manipur – 795001.
3. Joshep Shavei Thaikho, aged about 42 years, S/o (L) Thaikho Shojii of Purul Akutpa Village, P.O. Maram, P.S. Purul, Senapati District.
4. Dinamani Haobam, aged about 44 years, S/o (L) Girimohon Haobam of Brahmapur Bheigyabati Leikai, Tensubam Road, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur – 795001.
5. O. Ibosana Singh, aged about 53 years, S/o (L) O. Bheigya Singh of Thoubal Sabaltongba, P.O. & P.S. and District Thoubal, Manipur.
6. Md. Abdul Salam, aged about 52 years, S/o (L) Md. Abdul Ali of Lilong Hangamthabi, P.O. & P.S. Lilong, Thoubal District, Manipur – 795139.
7. Ch. Sonamani Singh, aged about 46 years, S/o (L) Ch. Tombi Singh of Singjamei Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur – 795008.

...Petitioners

- Versus -

1. The State of Manipur through Commissioner/Secretary, Social Welfare, Government of Manipur at Babupara, Imphal West District, Manipur – 795001.
2. The Joint Secretary (SW), Government of Manipur at Babupara, Imphal West, Manipur – 795001.

3. The Director, Social Welfare, Government of Manipur at Secure Office, AT Road, Imphal West, Manipur.

...Official Respondents

4. Hidangmayum Imo Sharma, Inspector (Statistics), ICDS Project, S/o H. Manglem Sharma of Kongjeng Leikai Club Keithel, Imphal West, Manipur – 795001.

...Private Respondent

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners	:	Mr. HS Paonam, Sr. Advocate with Mr. Lekhakumari, Advocate
For the Respondents	:	Mr. S. Nepolean, GA with Mrs. RK Emliy, DyGA for State Mr. M. Hemchandra, Sr. Advocate with Mr. M. Rendy, Advocate.
Date of Hearing	:	11.12.2024
Date of Order	:	20.12.2024

JUDGMENT & ORDER [CAV]

[1] Heard Mr. H.S. Paonam, learned senior counsel assisted by Ms. Th. Lekhakumari, learned counsel for the petitioners; Mr. S. Nepolean, learned Government Advocate assisted by Mrs. RK. Emily, learned Dy. Government Advocate for the State respondents; and Mr. M. Hemchandra, learned senior counsel assisted by Mr. Rendy Maibam, learned counsel for the private respondent.

[2] By the instant writ petition, the petitioners herein seek to pray for issuing a writ of certiorari or any appropriate writ of the like nature or direction for quashing and setting aside the impugned in-charge appointment in the guise of transfer and posting of a junior person vide order dated 15-12-2023 issued by Joint Secretary (SW), Govt. of Manipur in respect of only Inspector

(Statistics), namely H. Imo Sharma (private respondent) at Sl. No. 27 as i/c CDPO, ICDS Project, Phungyar in Social Welfare Department, Manipur. The petitioners have no grievances against the transfer and posting of the other PO (ICDS), CDPO, Supervisor and Senior Inspectors (Statistics) from Sl. No. 1 to 26 and hence they are not arrayed as party respondents herein. It is further prayed for issuing a writ of mandamus or any appropriate writ of the like nature or direction to the respondents concerned to consider the senior persons while conferring in-charge appointment in terms of the Office Memorandum dated 3rd October, 2020 issued by Govt. of Manipur regulation in charge appointment when eligible candidates are not available. Alongwith the writ petition, the petitioners have also filed an application being MC(WP(C) No. 472 of 2023 for interim relief of staying the impugned order dated 15-12-2023 with respect to the in-charge appointment of the private respondent at Sl. No. 27. Vide order dated 27-12-2023, this Court issued notice and directed that respondent No.4 should not function as CDPO, ICDS Project, Phungyar till next date. The interim order has been extended from time to time.

[3] Petitioner Nos. 1 and 5 were appointed as Statistical Assistants by issuing separate orders vide order dated 24-12-1997 and 08-04-1999, petitioner No. 2 was appointed as Statistical Assistant vide order dated 08-04-2003, petitioner No. 3, 6 and 7 were appointed as Statistical Assistants vide order dated 30-10-2007, petitioner No. 4 was appointed as Statistical Assistant vide order dated 10-02-2009 along with private respondent. Petitioner No. 5 was appointed as Statistical Assistant vide order dated 08-

04-1999. The said post of Statistical Assistant had been re-designated/renamed as Inspector (Statistics) vide order dated 29th September, 2020 in the same pay scale.

[4] The petitioners have been rendering service without getting the chance of promotion to the next higher post as some seniors are in the same cadre. After the retirement or superannuation of some senior incumbents, the department had published a final seniority list of Inspector (Statistics) vide order dated 18th August, 2021 in the Social Welfare Department, Manipur. In the said seniority list, the name of the petitioner no. 1 is found at Sl. No. 18, petitioner No. 2 is at 20, petitioner Nos. 3, 6 and 7 are found at 23, 22 and 21, petitioner No. 4 is at 25 and petitioner No. 5 is at Sl. No. 19 whereas the name of the private respondent is found at Sl. No. 26.

[5] It is not out of place to mention herein that the State Government has no specific norms for making appointment on in-charge basis. In order to bring the uniformity and clarity, the Department of Personnel & Administrative Reforms (Personnel Division), Govt. of Manipur has laid down the norms by publishing an Office Memorandum dated 3rd October, 2020. The relevant portion with the present case is at para 4 which is reproduced hereunder as:

"4. Thus, with a view to bring uniformity, clarity and enforceable norms in making such in-charge appointments, the following norms are hereby issued for compliance by all concerned:

i. Appointment on in-charge basis shall be made against a post only when there is no official eligible as per RR to fill up the said post, either by direct recruitment or by promotion through duly constituted DPC.

ii. In the absence of any official eligible as per RR to fill up a particular post, the senior most person amongst cadre/official belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charge basis, at no extra remuneration and in addition to the substantial post held by the appointee in the lower post. Needless to say, the appointee shall draw pay against the lower post substantially held by him."

[6] In continuation of the aforesaid Office Memorandum, another Office Memorandum dated 09-03-2021 has been issued adding Para (v) which is reproduced herein under for better appreciation as:

"The following norms are hereby issued for compliance by all concerned in addition to para 4 (i)(ii) (iii)(iv) of Department of Personnel Office Memorandum of even number dated 3rd October, 2020:

"(v) Integrity certificate based on Vigilance Clearance, non-pendency of Departmental Enquiry, non-pending of FIR cases which has been taken cognizance by Magistrate etc. is mandatory for in-charge appointments, especially the Head of Department."

[7] The next higher post for promotion from the post of Inspector (Statistics) is the post Child Development Project Officer (CDPO) and even though there are specific norms for appointment on in-charge basis to the higher post, the official respondents issued the impugned in-charge appointment order dated 15th October, 2023 in the guise of transfer and posting of a junior Inspector (Statistics) at Sl. No. 27 conferring the charge of i/c CDPO, ICDS Project, Phungyar in Social Welfare Department, Manipur.

[8] It is submitted that the present private respondent is at Sl. No. 26 in the seniority list and quite junior and conferring the higher charge of CDPO

by superseding and ignoring the case of seniors like the present petitioners by the impugned order dated 15th October, 2023 is nothing but to encourage and favour the junior of their choice to hold the charge of higher post allowing to supervise the seniors is selective discrimination and is per se illegal, unjust and liable to be quashed and set aside as not sustainable in the eyes of law.

[9] It is submitted that it is settled law as held by the Apex Court in a catena of cases that the State respondents while making promotion or otherwise even for temporary measures or on in-charge/look after basis, the related seniority position of the officers should not be neglected and those senior persons should be given preference to their juniors in such arrangement so as to avoid heart burning among the senior persons thereby warranting to interfere the impugned order giving the charge of higher post to junior person i.e. private respondent herein.

[10] It is submitted that to avoid such heart burning and discontents among the senior persons the State Government has already formulated the guidelines in the form of Office Memorandum dated 03-10-2020 for conferring in-charge appointment to the incumbents as the senior most person amongst cadre/officials belonging to the feeder post of the said particular post shall be appointed to hold the said post on in-charge basis. The said Office Memorandum has been framed for implementation in the true letter and spirit. However the State respondents have been violating their own rules in regards to conferring the in-charge appointment which is liable to be quashed and set aside.

[11] It is submitted that by the impugned order private respondent

which is quite junior and conferring the higher charge of CDPO by superseding and ignoring the case of seniors like the present petitioners is nothing but to encourage and favour the junior of their choice to hold the charge of higher post allowing to supervise the seniors. Very recently, in a similar case, this Hon'ble Court had the occasion to deal with such similar issue whereby by an order dated 15-12-2023 passed in WP(C) No. 634 of 2023 : **Ph. Vivekananda Sharma v. State of Manipur & Ors.: MANU/MN/0227/2023** along with connected cases was pleased to pass the following order:

“(30) In the case of Government of AP v. AV Venugopala Rao: (1995) 1 SCC 159, Hon’ble Supreme Court upheld as rational and reasonable that pending finalization of seniority list, seniormost eligible employee in the provisional list could be made in-charge of the promotional post to avoid administrative hardship or heart burning among rival claimants. Reading the ratio of this case along with the OMs dated 03-10-2020 and 09.03.2021, pending finalization of the final seniority list of Joint Directors, the petitioner is least provisionally seniormost in the cadre of the Joint Directors. This Court is of the view that the petitioner should be considered as Director on in-charge basis till appointment of a regular Director, as no vigilance case or FIR is pending against him.

(31) In the circumstances, the writ petitions are allowed and impugned order dated 28-08-2023 and 29-08-2023 are set aside. The State respondents are directed to appoint the petitioner as in-charge Director (Env. & CC), Manipur within a period of 15 days from the receipt of this judgment. No cost. Misc. applications, if any, are disposed of accordingly.”

It is submitted that it would be in the interest of justice that similar order or appropriate interim order be passed to protect the interest of the

present petitioners.

[12] It is also submitted that no Departmental Enquiry and FIR are pending against the present petitioners as envisages in the latter Office Memorandum but without showing any cause the case of the present petitioners for conferring in-charge appointment has been deliberately ignored and one junior person has been picked up on their own whims by the State respondents and thereby immediate interference is highly warranted from this Hon'ble Court.

[13] It is further stated that the impugned order is bad in the eyes of law and not sustainable in as much as a culmination of erroneous and mala fide as well as selective discrimination/favouritism on extraneous consideration by deliberate ignorance of seniors for the post like the present petitioners. The impugned order has virtually allowed the junior to control and supervise the seniors and hence, the same having been issued in violation of fundamental rights and other constitutional rights of the petitioners is liable to be interfered with.

[14] Being aggrieved by the impugned order dated 15-12-2023 conferring the in-charge of a higher post to a junior person, the instant petition is being filed in bona fide against the action of the official respondents which is more efficacious, cheap and speedy in nature and the relief sought for hereinunder when granted shall be just and adequate.

[15] It is the case of the State respondents that the Transfer and Posting order dated 15-12-2023 was issued in view of administrative exigency. The norms as laid down in Para No. 4 (i), (ii) and (iii) of the O.M.

and its relevancy in the case at hand are discussed hereunder:

"4(i): Appointment on in-charge basis shall be made against a post only when there is no official eligible as per RR to fill up the said post, either by direct recruitment or by promotion through a duly constituted DPC."

[16] At present there are 43 sanctioned posts of Child Development Project Officer (hereinafter referred to as CDPO) in Social Welfare Department, Manipur. As per the existing Recruitment Rules, 75% of the post i.e. 32 posts are to be filled up by promotion from Supervisors/ACDPOs and Inspector (Statistics) having 5 years' regular service in the grade and 25% i.e. 11 posts by direct recruitment. It is fit to highlight herein that 32 posts of CDPO has been regularly filled by promotion and as such there is no vacancy at the moment. Further, out of the 11 posts of CDPO to be filled by direct recruitment, 8 posts have been filled vide order dated 2nd December, 2022. The total number of feeder posts for promotion on CDPO are given below:

Sl. No.	Post	Percentage
1.	Supervisor/ACDPO	401 (80%)
2.	Inspector (Statistics)	60 (20%)
Total		461

All the petitioners as well as the private respondent have already fulfilled the eligibility criteria for the post of promotion to CDPO i.e. they all have completed 5 (five) years regular service in the post of Inspector (Statistics) as per the existing RR. Hence, all of them are equally eligible for promotion. However, currently the promotion quota has been filled and as such, there can be no elevation to the post of CDPO for the time being

through promotion. Hence, looking into the status at hand, there arises a grave necessity for holding the post of CDPO on in-charge basis so that the day to day functioning of each District Offices are not hampered.

[17] As far as para No.4 (ii) of O.M. is concerned, it speaks about a scenario wherein there is no official who is eligible as per the concerned RR to fill up a particular post. In such a scenario, it is clearly stated that the senior most person amongst cadre/official belonging to the feeder post of the said particular post shall be appointed to hold the post on in-charge basis. However, in the case at hand, all of the petitioners as well as the private respondent are equally eligible as per the existing RR. However, due to unavailability of promotion quota, DPC for promotion cannot be held at the moment. Hence, Para No. 4(ii) of the O.M. cannot be applied *in toto* to the facts of the case.

[18] Further, it is highlighted that Para No. 4 (ii) of the O.M. is silent on what approach is to be opted for appointment on in-charge basis, where all the officials are eligible as per the existing RR. Hence, at this juncture, it is fit to state that Para No. 4(ii) of the O.M. cannot be said to be relevant.

[19] Additionally, it is fit to point out that the private respondent has been posted at ICDS Project, Phungyar since 2009 vide Transfer and Posting Order dated 26th February, 2009. Hence, it is fit to confer the charge of i/c CDPO, ICDS Project, Phungyar to the private respondent as the said incumbent is well acquainted with the day to day workings of the District Office and the certain demands and necessities of the all the stakeholders as well as beneficiaries of the District concerned as compared to the

petitioners. Hence, it is reiterated that the said Transfer and Posting Order conferring to the charge of i/c CDPO, ICDS Project, Phungyar was solely done from the view point of administrative exigency and nothing else.

[20] Hence, in view of the circumstances laid down above, it is fit to state that the allegations levied by the petitioners are not only point blank, baseless and devoid of any merit but also cannot be said to hold water.

[21] It is the specific case of the respondent No.4 that the impugned transfer and posting order dated 15-12-2023 has been issued in administrative exigency to fill up the vacancy arising out of the transfer of the incumbent to other place. It is denied that there has been discrimination against the petitioners. It is stated that the private respondent has been working in the remote place of Phungyar area since 2009 and is well acquainted with the requirements of the area and accordingly, he has been given in-charge CDPO of that place. It is further pointed out that the private respondent is also eligible as per RR for promotion to the post of CDPO and is the only eligible candidate in Phungyar and as such, para 4 (i) & (ii) of OM dated 03-10-2020 will not be applicable. Private respondent has also adopted the stand of the State respondents. An application being MC(WP(C) No. 389 of 2024 is also filed by the respondent No.4 for vacating the interim order dated 27-12-2023.

[22] The petitioners have filed rejoinder to the counter affidavit filed by respondent No.4 and reiterated that the private respondent being a junior cannot be appointed as in-charge CDPO, ICDS Project Phungyar in terms of the OMs dated 03-10-2020 and 09-03-2021. It is also denied that the

private respondent is the only eligible candidate in Phungyar area.

[23] Mr. S. Nepolean, learned Government Advocate has contended that the Office Memorandum dated 03-10-2020 laying down norms for in-charge appointment when eligible candidates are not available, will not be applicable in the peculiar facts and circumstances of the present case. It is pointed out the OM will be applicable when eligible candidates are not available for appointment. The petitioners as well as the private respondents are all eligible for promotion to the higher post of CDPO, having more than 5 years of regular service in the feeder cadre as stipulated in the RR. All of them are eligible for appointment as CDPO under the promotional quota. Since all 32 posts for promotion have already been filled up, they cannot be considered for promotion. Out of the 11 seats for direct recruit, there are 3 vacancies and the private respondent has been given responsibility of in-charge CDPO in the administrative exigency. In such situation, the OM will not be applicable, as it does not expressly bar appointment of a well-qualified and experienced person. In this regard, learned GA refers to the decision of the Hon'ble Supreme Court in the case of **Union of India v. Tulsiram Patel: (1985) 3 SCC 398 @Para 70** to the point that whatever is not mentioned is specifically excluded. Excerpts from Para 70 are reproduced below as:

“70. The maxim “expressum facit cessare tacitum” (“when there is express mention of certain things, then anything not mentioned is excluded”) applies to the case.”

[24] Mr. S. Nepolean, learned GA tries to impress this Court that since the OM is not applicable, there is no restriction on the power of the State

respondent to make in-charge arrangement in administrative exigency by putting a well experienced person. It is prayed that the writ petition be dismissed being devoid of any merit.

[25] Mr. M. Hemchandra, learned senior counsel appearing on behalf of the respondent No.4 adopts the submission of learned GA. He further relies on the decision of Hon'ble Supreme Court in the case of **Ramakant Shripad Sinai Advalpalkar v. Union of India, 1991 Supp (2) SCC 733 :AIR 1991 SC 1145** where it has been held that internal arrangement to a higher post without remuneration of that post cannot be considered as an instance of promotion. Relevant para 5 is reproduced below:

“5. The arrangements contemplated by this order plainly do not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only what in service parlance is called a “charge allowance”. Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.”

[26] Mr. M. Hemchandra, learned senior counsel has pointed out that in the present case, the respondent No.4 has been conferred the responsibility of higher post of CDPO as an interim arrangement without entitlement of higher pay attached to post and hence the same cannot be treated as promotion on in-charge basis. It is reiterated that the OM dated 03-10-2020 will not be applicable in the fact of the present case and putting an experienced an internal arrangement in administrative exigency cannot be a subject matter of writ jurisdiction in absence of any malafide intention. It is prayed that the writ petition be dismissed with cost.

[27] Mr. HS Paonam, learned senior counsel for the petitioners has repelled the plea of non-applicability of the OM dated 03-1-2020 by drawing reference to the object behind formulating the OM “... *to bring uniformity, clarity and enforceable norms in making such in-charge appointments...*”. He draws the attention of this Court to Para 4(i) of the OM emphasizing that it will be applicable to appointment “...*either by direct recruitment or by promotion..*”. It is pointed out that in the present case, the in-charge appointment in guise of transfer and posting order has been made against the quota for direct recruitments and there are no eligible candidates under this quota. Hence, seniormost available officers are to be considered in terms of the OM. It is further submitted that the principles of the OM will be applicable in case of in-charge arrangement in the direct recruit quota.

[28] In alternative, Mr. HS Paonam submits that assuming for the sake of the argument but not admitting that the OM will not be applicable in the peculiar facts of the present, the seniormost available in the same cadre has

to be considered for in-charge arrangement. Otherwise, it will give unguided discretion to the authority to pick and choose anyone of their liking as done in the present case. He refers to the decision of Hon'ble Supreme Court in the case of **Govt. of AP v. A V Venugopal: (1995) 1 SCC 179** wherein the seniormost in the tentative seniority list has to be considered for in-charge promotion in order to avoid administrative hardship and heart-burning. He further explains that this decision has been relied by this Court in the case of **Vivekannanda (supra)** while considering in-charge appointment under the OM dated 03-10-2020.

[29] Mr. HS Paonam, learned senior counsel for the petitioners refers to Division Bench decision of the Gauhati High Court, Imphal Bench (now, High Court of Manipur) in the case of **Wahengbam Uttarani & Ors v. State of Manipur & Ors** reported as **2009 (1) GLT 331**. The case relates to in-charge appointment in the same department, ie, Social Welfare in the era before the formulation of OM dated 03-10-2020. It was held that while making in-charge appointment, the State is bound to consider all eligible persons and the seniormost should be appointed till regular appointment. It was further held the executive/administrative order could not override rules. It is submitted that the present case is exactly covered by the ratio of **Uttarani case (supra)** and the principle established in the case of **Venugopla Rao (supra)** would hold the field even in absence of any guidelines like the OM dated 03-10-2020. It is further submitted that averments of para 8, 9, 13 of the writ petition with respect to appointment of a junior on in-charge basis have not been denied. It is prayed that the

impugned order of transfer and posting dated 15-12-2023 of making in-charge appointment of a junior at Sl. No. 27 be set aside and the interim order be made absolute.

[30] This Court has considered the materials on record, the submissions made at bar, relevant rules and decisions cited by the learned counsel.

[31] The principles behind the Office Memorandum dated 03-10-2020 laying down norms of in-charge appointment of seniormost when none is available has been discussed by this Court in the case of **Vivekananda (supra)** and issue is no longer res integra. In that case, the ratio in **Venugopal case (supra)** was adopted. Even if it is presumed as pleaded by the respondents that the OM will not be applicable in the facts of the present case where all are eligible for promotion, but the in-charge arrangement is made against direct recruit quota, this Court has not hesitation in holding that the ratio of **Uttarani case (supra)** will rule the field. In other words, while making in-charge arrangement or appointment or any similar act and even if the OM dated 03-10-2020 is not applicable, the seniormost in the feeder cadre has to be considered for such arrangement or appointment.

[32] In the present case, it is an admitted fact the respondent No.4 is junior to the petitioners herein in the final seniority list of Statistical Assistant now renamed as Inspector (Statistics) dated 18-08-2021. Since eligible persons are not available for appointment as CDPO under the direct recruit quota, resort has been made from the feeder cadre for promotion. The

principle behind the OM dated 03-10-2020 would be applicable while making such in-charge arrangement. Otherwise, there is a likelihood of choosing someone to the liking of the authority concerned. The OM has been formulated to avoid such situation and to have uniformity in all situations. The rule laid down in **Venugopal** and **Uttarani** cases will be applicable when the OM does not cover a particular situation as in the present case. The plea of the learned GA of citing **Ramakant case (supra)** cannot be accepted as the case is not a ratio allowing appointment of junior on in-charge basis overlooking his seniors.

[33] In view of the admitted fact that the respondent No.4 is a junior to all the petitioners in the cadre of Inspector (Statistics) prepared by the Social Welfare Department, the manner of conferring in-charge responsibility of CDPO, ICDS Project, Phungyar to him cannot be sustained as discussed in para 31 and 32 above. Accordingly, the impugned order dated 15-12-2023 conferring in-charge responsibility of CDPO to the respondent No.4 at Sl. No.27 is set aside. State respondents are directed to consider the seniormost available in the feeder cadre for making in-charge appointment till the post is filled up on regular basis. The interim order merges with this final order. Misc. applications are disposed accordingly. No cost.

JUDGE

FR/NFR

Victoria