



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

Case No. : WP(C)/149/2023

Marto Kamgo and 6 Ors.

S/o Lt. Kimar Kamgo,

Permanent Resident of Kamki Village,

PO/PS Kamba, West Siang District Arunachal

Pradesh.

2: Kiyang Mize

Age:

Occupation :

Permanent Resident of Bolung

PO/PS Roing

Lower Dibang Valley District

Arunachal Pradesh.

3: Ruchu Niji

Age:

Occupation :

S/o Lt. Taru Niji

Residing at Lekhi Village

PO/PS Naharlagun

District Papum Pare

Arunachal Pradesh.

4: Bengia Kagung

Age:

Occupation :

S/o Lt. Bengia Tajak

Permanent Resident of Pingang Village

PO/PS Koloriang

Kurung Kumey District

Arunachal Pradesh.

5: Mindu Phuntso

Age:

Occupation :

S/o Shri Domchung Phuntso

Permanent Resident of Village Bongleng

PO Mukto

PS Jang

District Tawang

Arunachal Pradesh.

6: Gungli (Loa) Tagang

Age:

Occupation :

S/o Lt. Loa (Gungli) Tache

Permanent Resident of Pathuk Village

PO Parsi Parlo

PS Koloriang

District Kurung Kumey

Arunachal Pradesh.

7: Puluk Gadi

Age:

Occupation :

S/o Lt. Ikpu Gadi

Permanent Resident of Degom Village

PO/PS Tirbin

Leparada District

Arunachal Pradesh

..... **Petitioners**

VERSUS

THE STATE OF AP and 23 Ors.

Represented by the Chief Secretary,
Govt. of Arunachal Pradesh,
Itanagar, PIN 791111

2:The Commissioner/Secretary

Age: 0

Occupation :

(Power)

Govt. of Arunachal Pradesh

Itanagar.

3:The Chairman

Age: 0

Occupation :

Departmental Promotion Committee

dated 10.06.2022

4:The Chief Engineer

Age: 0

Occupation :

Department of Power

Govt. of Arunachal Pradesh

Itanagar.

5:Nima Tsering

Age: 0

Occupation :

Son of Late Towla Monpa

presently posted Assistant Engineer (E) Miao Electrical Division

Miao

Changlang District

Arunachal Pradesh

6:Hage Nengkha

Age: 0

Occupation :

S/o Hage Obin

presently posted Assistant Electrical Inspector

Ziro

Lower Subansiri District

Arunachal Pradesh

7:Purik Buchi

Age: 34

Occupation :

S/o Jumpu Buchi

presently posted Assistant Engineer (E) SLDC Sub Division

Itanagar

Papumpare District

Arunachal Pradesh

8:Moli Kamki

Age: 36

Occupation :

S/o Remo Kamki

presently posted Assistant Engineer (E) Grid Station Sub Division

Itanagar

Papumpare District

Arunachal Pradesh

9:Deken Boje

Age: 42

Occupation :

S/o Lukde Boje

presently posted Assistant Engineer (E) Khonsa Electrical Sub Division

Khonsa

Tirap District

Arunachal Pradesh

10:Yumnya Yongam

Age: 35

Occupation :

S/o Late Minyum Yomgam

presently posted Assistant Engineer (E) Grid Station Sub Division

Deomali

Tirap District

Arunachal Pradesh

11:Nabum Gamin

Age: 42

Occupation :

S/o Nabum Saha

presently posted Assistant Engineer (E) Doimukh Electrical Sub Division

Doimukh

Papumpare District

Arunachal Pradesh

12:Gyati Nobin

Age: 33

Occupation :

S/o Gyati Tada

presently posted Assistant Engineer (E) Kanubari Electrical Sub Division

Kanubari

Longding District

Arunachal Pradesh

13:Ms Jumyir Lollen

Age: 36

Occupation :

D/o Tojum Lollen

presently posted Assistant Engineer (E) Mechuka Electrical Sub Division

Shi Yomi District

Arunachal Pradesh

14:Ms Minpi Tasar

Age: 40

Occupation :

D/o Late Pemin Gadi

presently posted Assistant Engineer (E) Roing Electrical Sub Division

Roing

Lower Dibang Valley District

Arunachal Pradesh

15:Neelam Raba

Age: 44

Occupation :

S/o Neelam Takhi

presently posted Assistant Engineer (E) Yazali Electrical Sub Division

Yazali

Lower Subansiri District

Arunachal Pradesh

16:Moter Basar

Age: 38

Occupation :

S/o Late Emo Basar

presently posted Assistant Engineer (E) Deomali Electrical Sub Division

Deomali

Tirap District

Arunachal Pradesh

17:Kajen Tamin

Age: 40

Occupation :

S/o Late Pakko Debom

presently posted Assistant Engineer (E) Daporijo Electrical Sub Division

Daporijo

Upper Subansiri District

Arunachal Pradesh

18:Todar Basar

Age: 37

Occupation :

S/o Late Dakto Basar

presently posted Assistant Engineer (E) Jairampur Electrical Sub Division

Jairampur

Changlang District

Arunachal Pradesh

19:Duyu Richo

Age: 36

Occupation :

S/o Duyu Gyute

presently posted Assistant Engineer (E) Grid Station Sub Division

Daporijo

Upper Subansiri District

Arunachal Pradesh

20:Oyi Nasi

Age: 33

Occupation :

S/o Maglom Nasi

presently posted Assistant Engineer (E) Dumprijo Electrical Sub Division

Upper Subansiri District

Arunachal Pradesh

21:Hage Habung

Age: 34

Occupation :

Son of Hage Hailyang

presently posted Assistant Engineer (E) Grid Station Sub Division

Khuppi

West Kameng District

Arunachal Pradesh

22:Nyanu Doji

Age: 34

Occupation :

S/o Karnya Doji

presently posted Assistant Engineer (E) Changlang Electrical Sub Division

Changlang District

Arunachal Pradesh

23:Kipa Kame

Age: 41

Occupation :

S/o Kipa Nikio

presently posted Assistant Engineer (E) Grid Station Sub Division

Pasighat

East Siang District

Arunachal Pradesh

24:Doge Ete

Age: 38

Occupation :

S/o Nyado Ete

presently posted Assistant Engineer (E) Nacho Electrical Sub Division

Upper Subansiri District

Arunachal Pradesh

..... **Respondents**

Advocate for the Petitioner : T T Tara, Gamken Bam, Terji Kamki, Khoda Apa,
Riya Sarkar, Y Mugli

Advocate for the Respondent : Mr. L. Perme, SC, Power Dept, Govt. of A.P.
For the respondent nos. 2,3 and 4
Mr. D. Panging, learned counsel for the
respondent nos. 5 to 24.

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

Date of Hearing : 13.08.2024

Date of Judgment : 31.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. T.T. Tara, learned counsel for the petitioners. Also heard Mr. L. Perme, learned Standing Counsel, Power Department, Govt. of Arunachal Pradesh, for the respondent nos.2, 3 and 4 and Mr. D. Panging, learned counsel for the respondent nos. 5 to 24.

2. By filing this writ petition, the petitioners have assailed the order dated 24.06.2022 passed by the Commissioner (Power), Government of Arunachal Pradesh, by which the 23 numbers of Junior Engineers (Electrical) have been

promoted/regularized to the post of Assistant Engineers (Electrical) including the petitioners, to the extent of promoting/regularising the petitioners from the date of Departmental Promotion Committee (referred to as DPC in short) i.e. 10.06.2022. The petitioners have prayed for a direction to hold a review DPC and to regularize the petitioners in the post of Assistant Engineer (Electrical) with retrospective effect from the date of their officiating promotion/ad-hoc against the clear existed vacancies at par with similarly situated persons in the Department.

3. Brief facts, shorn of unnecessary details, are that the petitioners 17 (seventeen) in numbers were appointed as Junior Engineers in the Department of Power, Govt. of Arunachal Pradesh, in the year, 1994, 1997 and 1998. Thereafter, the petitioner no.1 was promoted to the post of officiating promotion to the post of Assistant Engineer (Electrical) on 27.02.2008, the petitioner no. 2 and 3 on 23.08.2009, the petitioner no.4 on 16.06.2010 and the petitioner no. 5, 6 and 7 on 07.07.2011. According to the petitioners, they were promoted on officiating basis against the clear vacancies.

4. As per the Arunachal Pradesh Power Engineering Service Rules, 1993, the qualifying length of service for promotion from the grade of Junior Engineer to the grade of Assistant Engineer was 8 (eight) years for the degree holder and 10 (ten) years for diploma holder. The petitioners contended that since they were confirmed as a Junior Engineer since 1994 to 1998, they became eligible for promotion to the post of Assistant Engineer in the year, 2002, 2005, 2006 respectively. In the year, 2005, the Arunachal Pradesh Power Engineering Service Rule, 1993 was amended prescribing the qualifying length of service for degree holder as 5 (five) years and 8 (eight) years for diploma holder.

5. The petitioners contended that they being graduate in Engineering were

become eligible for regular promotion to the post of Assistant Engineer (Electrical), however, the State respondents had never conducted DPC within an interval of every 6 (six) months. Therefore, the petitioner submitted a representation on 14.09.2012 praying for holding of DPC for regularization of their officiating promotion as Assistant Engineers but the respondent authorities had failed to address the grievance of the petitioners.

6. The respondent authorities convened a DPC on 24.07.2012 after a long gap of many years whereby, the services of 11 (eleven) Junior Engineers, senior to the petitioners in service, were regularized of their officiating promotions in the posts of Assistant Engineer with retrospective effect from the date of their officiating promotion. Thereafter, the 11 (eleven) seniors whose officiating promotions were regularized w.e.f the date of their officiating promotion have been currently further promoted to the posts of Executive Engineer in the Department.

7. The petitioners filed a representation for convening of DPC for regularization of their officiating promotion to the post of Assistant Engineers (Electrical) at par with the 11 (eleven) Assistant Engineers whose services were regularized with retrospective effect. However, the same has not been considered. It is the contention of the petitioners that the respondent authorities had made an attempt to hold the DPC as is reflected from the communication dated 29.05.2013, whereby, ACR/APAR/Dossier and Vigilance Clearance of the petitioners were sought for. The petitioners submitted their ACR/APAR/Dossier and the Vigilance Clearance, however, no DPC was conducted for the reason best known to the respondent authorities.

8. Being aggrieved, some of the present petitioners had filed writ petition being WP(C) 379(AP)/2013, which was disposed of on 24.11.2015 with a

direction to the respondent authorities to hold the DPC at the earliest preferably within a period of 4 (four) months from the date of the order and to consider the case of the petitioners along with other similarly situated persons. Even after the direction of this Hon'ble Court in Writ Petition (Supra), the respondent authority did not initiate any action to convene DPC till the early part of 2022. The petitioners have submitted a representation again on 01.07.2022 with a request to convene DPC at the earliest and to regularize their officiating services as Assistant Engineers at par with similarly situated persons.

9. It is contended that finally on 10.06.2022, a DPC was conducted and recommended as many as 23 (twenty three) Junior Engineers for promotion/regularization to the posts of Assistant Engineer (Electrical) including the petitioners. Consequent thereto, vide impugned order dated 23.06.2022, the services of the petitioners as Assistant Engineer (Electrical) was regularized/promoted, however, w.e.f from the DPC i.e. 10.06.2022, by ignoring the right of the petitioners to have their benefit of retrospective promotion from the date of their officiating promotion, whereas, the DPC/respondent authorities had regularized/promoted the seniors of the petitioners by giving the benefit of retrospective promotion/regularization from the date of their officiating promotion in the Department.

10. Mr. T.T. Tara, learned counsel for the petitioners submits that the impugned order dated 23.06.2022 granting regularization of their officiating service of the petitioners from the date of DPC is arbitrary for that it has given a differential treatment to the similarly situated persons in the same Department by granting retrospective regularization of the services while denying the same benefit to the petitioners, which is antithetical to the mandate of Article 14 of the Constitution of India. He submits that the impugned order is not based on

any reasonableness for that the respondent authorities have never conducted DPC within regular interval period of 6 (six) months as required under the law, which had resulted into the loss of seniority and also seriously affected their future promotional prospect as because the direct recruit Assistant Engineers through the Arunachal Pradesh Public Service Commission from the year 2009 to 2017 will become senior to the petitioners, who were functioning as officiating/Ad-hoc Assistant Engineer starting from 2008 to 2011 and thereafter, continued till the impugned order was issued. He submits that the deliberate delaying in holding DPC depriving the petitioners right to be considered for promotion has caused serious prejudice as the petitioner were eligible to be promoted to the post of Assistant Engineer (Electrical) and were promoted on officiating basis in the clear vacancies at the relevant point of time and no tangible reasons have been assigned for delay in holding the DPC.

11. Mr. Tara, learned counsel, submits that it is a settled position of law that if the appointment is not made by following the procedure laid down by the rules, but the appointee continues in the post uninterruptedly, till the regularization of his service in accordance with rules, the period of officiating service shall be counted from the date of his appointment not according to the date of his confirmation of the service. He submits that this proposition of law has been totally ignored by the respondent authorities while holding the DPC on 10.06.2022. He further submits that the case of the petitioner could also be considered as per the Cabinet decision dated 29.06.2022, which was notified by the State Government which provides for one time exception to conduct DPC with a back date regularization from the date of initial officiating promotion.

12. Mr. T.T. Tara, learned counsel, further submits that the respondent authorities have deliberately not regularized the officiating services of the

petitioners as Assistant Engineer (Electrical) with retrospective effect at par with the similarly situated persons only to favour the some Assistant Engineers (Electrical), who were recruited directly through the Arunachal Pradesh Public Service Commission from 2009 to 2017. The regularization of the officiating services of the petitioners in terms of the impugned order dated 23.06.2022 from the date of DPC would mean the officers who were directly recruited from the year 2009 to 2017 would become seniors to the petitioners who were even not borne in the cadre of Assistant Engineer (Electrical), while the petitioners were working as Assistant Engineer (Electrical) on officiating basis having requisite eligibility on clear vacancies. Therefore, the action of the respondent authorities in issuing the impugned order dated 23.06.2022 regularizing the officiating services of the petitioners as Assistant Engineers (Electrical) from the date of DPC is arbitrary, illegal and actuated with malafide. Therefore, he submits that the respondent authorities may be directed to convene a review DPC and to regularize/promote the petitioners from the date of officiating promotion as Assistant Engineers (Electrical) as has been done in the case of their seniors in the year 2012.

13. Mr. T.T. Tara, learned counsel for the petitioners, in support of his submissions, has placed reliance heavily on the judgment of this Court in the case of **Moli Tatu and 2 Ors. Vs. State of Arunachal Pradesh and Anr. Dated 05.07.2023 in WP(C) 297/2021**. He has further relied on the judgment of Hon'ble Supreme Court, in the case of **Hariharan and Ors. Vs. Harsh Vardhan Singh Rao and Ors.** reported in **2022 SCC OnLine SC 1717** and **Bihar State Electricity Board and Ors. Vs. Dharamdeo Das in Civil Appeal No. 6977/2015 dated 23.07.2024**

14. Mr. L. Perme, learned Standing Counsel, for the respondent nos. 2, 3 and

4, submits that the petitioners were promoted on officiating basis to the posts of Assistant Engineer (Electrical) on certain terms and conditions against the deputation vacancy and direct recruit quota on different dates in the year 2008, 2009, 2010 and 2011. The officiating promotion to the petitioners no. 2 to 7 were against the direct recruit quota, the posts for which the requisition was sent to the Arunachal Pradesh Public Service Commission. Therefore, the petitioners have no right to claim for promotion with retrospective effect. On receipt of the selected list of candidates from the Arunachal Pradesh Public Service Commission, the officiating Assistant Engineers including the petitioner nos. 5, 6 and 7 were reverted back to the original post of Junior Engineer (Electrical), however, they were again allowed to continue as Assistant Engineers (Electrical) on officiating basis on the same day, as there were vacancies of Assistant Engineer (Electrical) posts against the promotion quota existed and available due to retirement/deputation/promotion made from the post of Assistant Engineer (Electrical) to the post of Executive Engineer (Electrical) and creation of new Zonal Electrical Circles, Electrical Division and Electrical Sub-Division.

15. Mr. L. Perme, learned Standing Counsel, submits that several attempts were made to conduct DPC to regularize the entire pending officiating Assistant Engineers (Electrical) on regular interval. However, same could not be materialized due to non-submission of required documents like ACR/APAR/Dossier and Vigilance Clearance and other unavoidable administrative reasons. It is admitted by the Department that due to non-convening of DPC many of the officers are losing their promotional avenues. However, the same cannot be attributed to the Department as it is due to certain unavoidable administrative reasons like non-finalization of inter-se seniority list of Assistant Engineer. The Department in fact had proposed for review DPC to regularize the

services of those officiating promotees as per the Cabinet decision dated 29.06.2022, as the vacant posts of Assistant Engineer (Electrical) were available during the year, 2009, 2010 and 2011 against the promotional quotas accumulated due to superannuation, retirement, promotion, creation of new posts and permanent absorption of officers on deputation by other Departments. However, the competent authority has decided not to review the DPC dated 10.06.2022 pertaining to the petitioners with a reason that the Departmental promotion was held prior to the Cabinet Decision dated 29.06.2022 and if such review DPC is allowed, then many cases of similar nature of other departments may crop up which will resultant into adverse effect to already settled inter-se- seniority position.

16. Mr. L. Perme, learned Standing Counsel, while referring to the affidavit-in-opposition filed on behalf of the Department submitted that between the period 01.04.2008 to 31.12.2012 there were accumulated total 36 (thirtysix) posts of the Assistant Engineer (Electrical). However, as per the record of the minutes of the meeting of the DPC dated 24.07.2012 there were 8 (eight) backlog posts for direct recruitment quota due to conversion of 8 (eight) Direct Recruit quota into promotional quota vide dated 24.02.2008. After taking out 8 (eight) backlog posts for Direct Recruitment, the total vacant posts between the period 01.04.2008 to 31.12.2012 are 28 posts. Therefore, in terms of 50:50 ratio for Direct Recruitment and Promotion as per relevant recruitment rules there were 14 vacant posts each for Direct Recruitment and Promotion Quota between the period 01.04.2008 to 31.12.2012. Therefore, according to the learned Standing Counsel there were 14 (fourteen) clear vacancies for promotional quota between 01.04.2008 to 31.12.2012. He submits that as per DPC dated 24.07.2012, 8 (eight) posts of Assistant Engineer (Electrical) meant for Direct Recruitment quota were converted into promotional quota under one time

relaxation dated 17.03.2008 and as such, those posts were filled up by means of promotion retrospectively i.e. with effect from the dates of officiating promotion i.e. 21.03.2007 and 21.03.2008. Therefore, Mr. L. Perme, learned Standing Counsel submits that though the Department has made an attempt to regularize the service of the petitioners as Assistant Engineer (Electrical) with retrospective effect, however, due to rejection by the Competent Authority, the grievances of the petitioners could not be redressed.

17. Having submitted above, Mr. L. Perme, learned Standing Counsel, submits that the petitioners having been well aware of the terms and condition of their officiating promotion without there being any protest, they now cannot claim for promotion/regularization with retrospective effect from the date of their officiating promotion, as the order of officiating promotion, clearly reflects that the promotion on officiating basis/ad-hoc were either on the vacant post due to deputation or the direct recruitment quota and even otherwise also law is well settled that the effective date of promotion would be from the date of DPC.

18. Mr. D. Panging, learned counsel for the respondent nos. 5 to 24, submits that vide letter dated 21.11.2011 a requisition was sent to the Arunachal Pradesh Public Service Commission for filling up 22 (twenty two) posts of Assistant Engineer (Electrical) by way of direct recruitment. Pursuant to a clarification sought by the APPSC, it is clarified that the 20 (twenty) posts were to be filled up by direct recruitment. There was a backlog of 17 (seventeen) posts that was to be filled up by direct recruitment inasmuch there was excess promotion from the grade of Junior Engineer to the grade of Assistant Engineer exceeding the 50% meant for the promotional quota.

19. He submits that consequent to the receipt of the requisition dated 21.11.2011, the APPSC issued an advertisement dated 23.11.2011 inviting

applications for filling up 20 (twenty) posts of Assistant Engineer (Electrical) under the Department of Power, Government of Arunachal Pradesh. The eligible candidates were required to appear in a written examination followed by a viva-voce test and the last date of receipt of application form by the Commission was up to 12.01.2012. The respondent nos. 5 to 24 being otherwise eligible and interested submitted their applications form along with other eligible candidates and took part in the selection process conducted by the APPSC. Accordingly, consequent to the selection process, the APPSC on the basis of the result of the written competitive examination and viva-voce conducted on 04.04.2013 vide result notification dated 04.04.2013 selected the private respondents and recommended for appointment. Pursuant to the recommendation of the APPSC vide result notification dated 04.04.2013, the private respondents were offered letter of appointment for appointment to the post of Assistant Engineer (Electrical) on 12.07.2013 and after to their acceptance, issued order of appointment to the post of Assistant Engineer (Electrical) vide order dated 18.07.2013. In the meantime before the selection process for appointment of the private respondents were completed, the writ petitioner no.1 Shri Marto Kamgo was appointed as Assistant Engineer on officiating basis vide order dated 27.02.2008 against a vacancy arising out of deputation of one Gumto Ete, Assistant Engineer (E) as Executive Engineer (E&M) in the Department of Hydro Power Development. Thereafter, vide order dated 23.08.2009, the petitioner nos.3 & 4 were promoted on officiating basis as Assistant Engineer (E) against the quota meant for direct recruit and their promotions were to be terminated on selection made by the Arunachal Pradesh Public Service Commission of direct recruits. Likewise, the petitioner no.2 was also promoted on officiating basis vide order dated 16.06.2010 against direct recruitment quota which was already requisitioned to the APPSC and his appointment was also to be discontinued on

selection made by the Arunachal Pradesh Public Service Commission of direct recruits.

20. Mr. D. Panging, learned counsel, submits that while the process of direct recruitment was going on, a Memorandum dated 02.05.2011 was issued by the Under Secretary (Power), Government of Arunachal Pradesh wherein 12 (twelve) Junior Engineers (Electrical) were offered the post of Assistant Engineer (Electrical) on Adhoc basis against the direct recruitment quota including the petitioner nos. 5, 6 & 7. The Memorandum dated 02.05.2011 further provided that the Adhoc promotees shall have no claim for continuation as Assistant Engineer (Electrical) once the APPSC select candidates for appointment to the post of Assistant Engineer (Electrical) and they will be reverted to their substantive appointment as junior Engineer once their appointment is discontinued. Consequent to the acceptance of the offer for appointment as Assistant Engineer (Electrical) on adhoc basis, the Secretary (Power), vide order dated 07.07.2011 was pleased to order officiating promotion on adhoc basis to 11 Junior Engineers (Electrical) including the petitioner nos. 5, 6 & 7. He submits that vide order dated 07.07.2011 it was reiterated that the officiating appointment on adhoc basis shall be against the direct recruitment quota and that they will be reverted to the substantive appointment as Junior Engineer (Electrical) once their appointment is discontinued.

21. Mr. D. Panging, learned counsel submits that just because length of service for consideration for promotion has been completed does not mean that an incumbent has to be promoted to the promotional post and it is prerogative of the government as to when the promotional posts are to be filled up. In any event, in the instant case there were no promotional vacancies when the writ petitioners completed their qualifying length of service for being eligible for consideration for promotion to the next higher post of Assistant Engineer

(Electrical). He submits that perusal of the minutes of the DPC dated 24.07.2012 clearly reveals that there were no promotional vacancies and the state government had accorded one time relaxation for conversion of 8 (eight) posts of Assistant Engineers (Electrical) meant for direct recruits and had recommended the names of 8 (eight) Junior Engineers, namely, Tajong Messar, Nida Makcha, Boku Basar, Moken Loya, Gangtok Bangyang, Kabit Darang, Binge Ete and Phurpa Wangyal for promotion to the post of Assistant Engineer (Electrical) which were actually meant for the direct recruit quota, and had further recommended the name of 3 (three) others for promotion to the post of Assistant Engineer (Electrical). Therefore, the contention of the petitioner that in view of the regularization of 11 (eleven) Assistant Engineers, the petitioners had also submitted various representations for regularization of their officiating promotion is totally misconceived in as much that there were no promotional vacancies and 8 (eight) Junior Engineers (Electrical) were promoted after the conversion of 8 (eight) posts Assistant Engineer (Electrical) which were meant for direct recruit quota and which may not have been permissible under law. Mere existence of the vacancy per se does not create a right in favour of an employee for retrospective promotions.

22. Mr. Panging, learned counsel submits that the notification dated 01.07.2022 is of no help to the writ petitioners in as much the same was issued in respect of officiating/functional promotions against clear vacancies being available in the promotional quota. Evidently, in the instant case, the writ petitioners were either appointed against deputation vacancy or vacancies meant for direct recruits and were to be reverted back to their substantive posts of Junior Engineer once the APPSC conducts a selection process for appointment of direct recruits. The minutes of the DPC held on 24.07.2012 wherein 11 Junior

Engineers (Electrical), who were evidently senior to the writ petitioner reveals that 8 (eight) posts meant for direct recruitment was converted to promotional quota which makes it evident that as on 24.07.2012 there were no posts available under the promotional quota for the writ petitioners to be recommended for promotion.

23. He submits that the respondent No. 5 to 24 were recommended for appointment as Assistant Engineer by the APPSC vide notification dated 04.04.2013. It reveals that there are another 11 (eleven) direct recruit Assistant Engineers who were appointed on various dates from 2009 to 2017 and by this instant writ petition, the writ petitioners are seeking a direction from this Hon'ble Court for their retrospective promotion from the date on which they were given officiating promotion as Assistant Engineer which are earlier to the date on which the said 11 (eleven) direct recruit Assistant Engineers were appointed and any order passed by this Hon'ble Court in this writ petition would cause prejudice to the said 11 (eleven) direct recruit Assistant Engineers, however, the said 11 (eleven) direct recruit Assistant Engineers have not been impleaded as party respondents in the instant writ petition.

24. Mr. Panging, learned counsel submits that private respondents were directly recruited as Assistant Engineers (Electrical) pursuant to a requisition sent dated 21.11.2011 to the APPSC and since records reveals that as on 24.07.2012 there were no promotional vacancies on which the petitioners could have been considered for promotion, there is no question of the petitioners being made senior to the private respondents. He submits that it is no longer res-integra that no person can be promoted with retrospective effect from a date he was not borne in the cadre so as to adversely affect others and the writ petitioners came to be borne in the cadre of Assistant Engineer only with effect from 10.06.2022 and therefore there is no question of any directions granting

retrospective promotion to the writ petitioners. The submission of learned counsel for petitioners is wholly misconceived as it is beyond comprehension as to how someone who has been appointed by not following the relevant rules can be allowed to steal a march over those who have been validly appointed in terms of the relevant rules and therefore the contention that the proposition of law has been ignored by the respondent authorities is totally misconceived and belies all comprehension and is liable to be out rightly rejected. In fact the correct proposition of law is totally contrary to what has been stated on behalf of the petitioners. Therefore, Mr. Panging submits that the writ petitioners are not entitled for any relief and as such present writ petition may be dismissed.

25. Mr. D. Panging, learned counsel, in support of his submissions, has placed reliance on the following judgments of the Hon'ble Supreme Court:-

- i. **State of Bihar vs. Akhoury Sachindra Nath**, reported in **1991 Suppl. 1 SCC 334**.
- ii. **Ganga Vishan Gujrati vr. State of Rajasthan** , reported in **(2019) 16 SCC 28**.
- iii. **Union of India vs. Manpreet Sing Poonam**, reported in **(2022) 6 SCC 105**.

26. Due consideration has been extended to the submissions of the learned counsel for the parties and also perused the materials available on record.

27. Essentially, the grievance of the petitioners is claiming promotion/regularization from the post of Junior Engineer (Electrical) to the post of Assistant Engineer (Electrical) in the Department of Power, Govt. of Arunachal Pradesh, with retrospective effect i.e. from the date of their officiating promotion in the year 2008 to 2011, as the petitioners were promoted on the clear vacancies having eligibility criteria. The basis of the claim is that their seniors were granted the benefit of retrospective promotion from the date of

their officiating promotion in the year, 2012 and the petitioners were promoted on the clear vacancies.

28. The writ petitioners were promoted from the post of Junior Engineer (Electrical) to Assistant Engineer (Electrical) on officiating basis on different dates and years, i.e. the petitioner no. 1 on 27.02.2008, the petitioner no. 2 and 3 on 23.08.2009, the petitioner no.4 on 16.06.2010 and the petitioner no. 5, 6 and 7 on 07.07.2011. The promotion of the petitioner no. 1 was purely on officiating basis against deputation vacancy arising out of deputation of one Shri Gumio Ete, under the Department of Hydro Power Development. The other petitioners were promoted against the quota meant for direct recruitment of Assistant Engineer (Electrical) with clear terms that as and when direct recruits are selected by Arunachal Pradesh Public Service Commission, their appointment shall automatically stands terminated.

29. On consideration of the submission of learned Standing Counsel, it appears that between the period 01.04.2008 to 31.12.2012 there were total 36 (thirty six) posts of Assistant Engineer (Electrical) available. Perusal of the minutes of the meeting of the DPC dated 24.07.2012 reflects that there were 8 (eight) backlog for direct recruitment quota due to conversion of 8 (eight) direct recruit quota to promotional quota. Deducting 8 (eight) backlog posts for direct recruit, the total vacant posts were 28 (twenty eight) posts. Arithmetically, as per relevant Rules, 14 vacant posts each for direct recruit quota and promotion quota were available between the period 01.04.2008 to 31.12.2012. As per DPC minutes dated 24.07.2012, reveals that 8 (eight) posts of Assistant Engineer (Electrical) meant for direct recruit quota were converted into promotional quota under one time relaxation dated 17.03.2008, therefore, those posts were filled up by means of promotion to the seniors of the petitioners with retrospective effect i.e. with effect from the date of officiating promotion i.e. 21.03.2007 and

21.03.2008. In all, on the recommendation of DPC dated 24.07.2012, 11 (eleven) Junior Engineers (Electrical) were promoted to the post of Assistant Engineers (Electrical) who were seniors to the petitioners.

30. It is also revealed from record that vide letter dated 21.11.2011, a requisition was sent to the Arunachal Pradesh Public Service Commission for filling up 22 (twenty two) posts of Assistant Engineer (Electrical) by way of direct recruitment. On a clarification being sought, it was clarified that the 20 (twenty) posts were to be filled up by direct recruitment. There was a backlog of 17 (seventeen) posts that were to be filled up by direct recruitment as there was excess promotion from the grade of Junior Engineer (Electrical) to Assistant Engineer (Electrical) exceeding the 50% posts meant for the promotional quota. The APPSC issued an advertisement dated 23.11.2011 inviting applications for filling up of the said 20 (twenty) posts of Assistant Engineer (Electrical) under the Department of Power, Government of Arunachal Pradesh. Accordingly, consequent to the selection process, the APPSC selected the private respondents and recommended for appointment and were appointed to post of Assistant Engineer (Electrical) vide order dated 18.07.2013. Therefore, the petitioners, except petitioner No. 1, who were promoted on officiating basis as Assistant Engineer (E) against the quota meant for direct recruits, stands terminated and discontinued on selection made by the Arunachal Pradesh Public Service Commission and consequent appointment of direct recruits.

31. Perusal of the minutes of the DPC dated 24.07.2012 clearly go to show that there were no promotional vacancies and the State respondents had accorded one time relaxation for conversion of 8 (eight) posts of Assistant Engineers (Electrical) meant for direct recruits and had recommended the names of 8 (eight) Junior Engineers, namely, Tajong Messar, Nida Makcha, Boku

Basar, Moken Loya, Gangtok Bangyang, Kabit Darang, Binge Ete and Phurpa Wangyal for promotion to the post of Assistant Engineer (Electrical) which were meant for the direct recruit quota, and had further recommended the name of 3 (three) others for promotion to the post of Assistant Engineer (Electrical). Thus, there appears no vacancy for promotion as 8 (eight) Junior Engineers (Electrical) were promoted after the conversion of 8 (eight) posts Assistant Engineer (Electrical) which were meant for direct recruit quota.

32. Needless to observed that on mere completion of length of service for consideration for promotion would not mean that an incumbent has to be promoted to the promotional post and it is prerogative of the government as to when the promotional post is to be filled up. As noted above, in the present case there were no promotional vacancies when the petitioners completed their qualifying length of service for being eligible for consideration for promotion to the next higher post of Assistant Engineer (Electrical). Mere existence of the vacancy may not create an indefeasible right in favour of an employee, but in a given case refusal to consider for promotion without valid reason despite clear vacancy, while allowing an employee to continue on officiating basis would be an arbitrary.

33. There is no manner of doubt that the notification dated 01.07.2022 was issued in respect of officiating/functional promotions against clear vacancies being available in the promotional quota which certainly would apply to the case of petitioners provided there was a clear vacancy. As noted above, the petitioners were either promoted on officiating basis against deputation vacancy or vacancies meant for direct recruits and were to be reverted back to their substantive posts of Junior Engineer (Electrical) once the same are filled up by direct recruits.

34. Having observed the above position, it is difficult to fathom, how the State respondents could submit that there were vacancies available and attempt had been made to have review DPC to consider the grievance of the petitioners for promotion/ regularisation to the post of Assistant Engineer (Electrical) with retrospective effect, however, could not be materialized on the flimsy excuse of not having been approved by the competent authority. If at all, there were clear vacancies and the authorities want to extend benefit to the petitioners, in my view, there would not be any absolute bar to consider the same, of course strictly in accordance with law. However, except the stand of the State respondents in their affidavit, record made available to this Court, does not support and fortifies the said stand, rather is contrary to the same as the minutes of the DPC dated 24.07.2012 wherein 11 Junior Engineers (Electrical), who were admittedly seniors to the writ petitioners were promoted, reveals that 8 (eight) posts meant for direct recruitment were converted to promotional quota coupled with sending of requisition to APPSC culminating into appointment of direct recruits, which makes it evidently clear that as on 24.07.2012 there were no post available under the promotional quota for the petitioners to be recommended for promotion. Admittedly, the petitioners were promoted on officiating basis in the year 2008 to 2011 that too either promoted on officiating basis against deputation vacancy or vacancies meant for direct recruits and were to be reverted back to their substantive posts of Junior Engineer (Electrical) once the same are filled up by direct recruits.

35. It is noticed that the respondent No. 5 to 24 were recommended for appointment as Assistant Engineer (Electrical) by the APPSC and have been appointed pursuant to the advertisement (supra). That apart, there are another 11 (eleven) direct recruit Assistant Engineers (Electrical) who were appointed on various dates from 2009 to 2017, however, they are not impleaded as party

respondents, which would cause prejudice, in the event the relief sought for by the petitioners is granted.

36. Having regard to submission of learned counsel for petitioners that it is a settled position of law that if the initial appointment is not made by following the procedure law laid down by the rules, but the appointee continues in the post uninterrupted, till the regularization of his service accordance with rules, the period of officiating service shall be counted from the date of his appointment not accordingly to date of his confirmation of the service, in my view, is absolutely inapplicable in the present case. The other submission for a direction to promote/regularise the petitioners to the post of Assistant Engineers (Electrical) by following the Next Below Rule is also totally misconceived and fallacious as the Next Below Rule, as rightly submitted by the learned counsel for the private respondents, in service jurisprudence, is a proposition which seeks to ensure that if a junior employee is given promotion without considering his senior, then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted, whereas, no junior to the petitioners have been promoted in the present case. The petitioner have claimed for promotion/regularization on the posts of Assistant Engineer (Electrical) with retrospective effect from the date of their officiating promotion at par with their seniors who have been promoted with retrospective effect in the year 2012 which is not a genuine claim in the facts of the present case.

37. This court is of the firm view that the judgment of this court heavily relied upon by the learned counsel for the petitioners in the case of **Moli Tatu** (Supra) is clearly distinguishable. In that case the petitioners had all the requisite eligibility for promotion in terms of the Recruitment Rules, at the relevant point

of time when they were promoted on adhoc basis. Having been considered that the petitioners being Graduates in Civil Engineering having more than five (5) years regular service in the feeder grade, senior-most APST Junior Engineers and also having passed the Promotional Accounts Examination and falls for consideration as the APST candidates within the 80:20 ratio of Reservation Policy of the State within the promotional quota, this Court has held that the petitioners were entitled to be promoted/regularized by the DPC w.e.f. the date of ad-hoc promotion in view of the fact that there exists clear vacancies and the petitioners were allowed to work continuously on ad-hoc basis due to delay in convening of DPC. In the present case, I have no manner of doubt that the present petitioners have completed their qualifying years of service to be considered for promotion to the post of Assistant Engineer (Electrical) and other eligibility criteria in terms of Rules and there is a delay in convening of DPC, However, the petitioners have failed to demonstrate that there were vacancies available at the relevant point of time, although, the State respondents, vaguely, have made an attempt to show that there were some vacancies which is contrary to the record made available before this court. Thus, the above case, on facts, is totally different and distinct.

38. The case laws relied on by the learned counsel for the parties have been perused. The observations and principles of law enunciated by the Hon'ble Supreme Court, requires no further consideration as the same are settled proposition of law. There would not be any quarrel with the principles of law as enunciated by the Hon'ble Supreme Court. This Court is of the view that any case law would never has an automatic or universal application, much less in the present case in view of the attending facts of the present case. Even a slight difference on facts would make a huge difference in its applicability.

39. Having observed above, nonetheless, a reference may be made to some of the principles of law enunciated by the Hon'ble Supreme Court.

In the case of **Dharamdeo Das (supra)**, the Hon'ble Supreme Court has held that it is no longer *res integra* that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself.

It has been further observed, which is quoted:

“The spirit behind elevating the right for being considered for promotion to a fundamental right is enshrined in the principle of "equality of opportunity" in relation to matters of employment and appointment to a position under the State. Once employed, the employees are entitled for being considered for promotion to the next higher post subject to their satisfying the eligibility criteria, as per the applicable rules. Failure to consider an employee for promotion even after satisfying the eligibility criteria would violate fundamental right. However, a clear distinction has been drawn between the stage of considering an employee for being promoted to taking the next step of recognizing the said right as a vested right for promotion. That is where the line has to be drawn. Stated differently, a right to be considered for promotion being a facet of the right to equal opportunity in employment and appointment, would have to be treated as a fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of India but such a right cannot translate into a vested right of the employee for being necessarily promoted to the promotional post, unless the rules expressly provide for such a situation.

The view that seniority can neither be reckoned from the date when a vacancy arises, nor can it be granted retrospectively unless the service rules specifically provide for such a situation. The promotion to a post should only be granted from the date of the promotion and not from the date on which a

vacancy may have arisen. The retrospective seniority cannot be granted to an employee from the date when he/she was not even borne on the cadre. This principle has been built upon by a line of precedents starting with the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*. The Hon'ble supreme Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime."

40. There would be no dispute to the settled position of law that the mere existence of vacancy per se would not create a right in favour of an employee for retrospective promotion. However, in a given case, if not mere existence of vacancy, in the considered opinion of this Court, when an employee is eligible in all respect in terms of Rules and there are clear vacancies at the time of their officiating/adhoc promotion and if it is only due to delay in convening of DPC by the authorities that would deprive the employee his/her fundamental right to be considered for promotion.

41. Reverting back to the present case, as would reveal from the record, the writ petitioners were either appointed against deputation vacancy or vacancies meant for direct recruits, and as on 24.07.2012 there were no promotional vacancies. Thus, in my view, the petitioners would not be entitled for promotion with retrospective effect, i.e. from the date of their officiating promotion (from 2008 to 2011) and as such no direction can be issued to the respondent authorities to have review DPC, in the facts and circumstances of the present case.

42. In view of what has been discussed and observed herein above, this Court is of the considered opinion that the petitioners are not entitled to be

considered for promotion/regularization with retrospective effect. The relief sought for by the petitioners cannot be granted in the facts of the present case. Thus, the relief sought for is refused.

43. Consequently, writ petition stands dismissed being devoid of merit and disposed, accordingly. However, parties to bear their own costs.

However, considering that the State respondents have taken a stand that there were vacancies and attempt had been made to consider the grievance of the petitioners, although not materialized due to disapproval by the competent authority, dismissal of this writ petition would not preclude the State respondents to have a relook strictly in accordance with law.

JUDGE

Comparing Assistant