

GAHC020002472022



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

**Case No. : WP(C)/92/2022**

NAGALAND ASSEMBLY SECRETARIAT STAFF ASSOCIATION(NASSA)  
AND 3 ORS  
KOHIMA, NAGALAND

2: SMTI. JENNY NDANG  
ADDITIONAL SECRETARY  
NLA  
NAGALAND  
KOHIMA

3: SHRI. KEWEPE KAPFO  
JOINT SECRETARY  
NLA  
NAGALAND  
KOHIMA

4: SMTI. KEDOVINO PESEYIE  
JOINT SECRETARY  
NLA  
NAGALAND  
KOHIMA

VERSUS

THE SPEAKER, NAGALAND LEGISLATIVE ASSEMBLY, AND ANR  
SECRETARIAT, NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY  
NAGALAND LEGISLATIVE ASSEMBLY  
NLA  
SECRETARIAT  
NAGALAND  
KOHIMA

3:KHRUOHITUONUO RIO  
ADDITIONAL SECRETARY (TRANSPORT)  
NAGALAND LEGISLATIVE ASSEMBLY

**Advocate for the Petitioner** : C. T. JAMIR, SR. ADV

**Advocate for the Respondent Nos.1 & 2:** MR.T. B. JAMIR

**Advocate for Respondent No.3** : MR. TAKA MASA SR.ADV

**BEFORE**  
**HON'BLE MR. JUSTICE L.S. JAMIR**  
**HON'BLE MR. JUSTICE KAKHETO SEMA**

**Date : 24-4-2024**

**JUDGMENT & ORDER (CAV)**

*(L.S. Jamir, J)*

Heard Mr. C.T. Jamir, learned Sr. counsel assisted by Mr. I. Im-chen, learned counsel for the petitioners. Also heard Mr. T.B. Jamir, learned counsel for the respondent Nos. 1 and 2 and Mr. Taka Masa, learned Sr. counsel assisted by Mr. Arenlong and Mr. Sentilong, learned counsels for respondent No.3.

2. The present writ petition has been filed by the petitioner No.1 who is the Nagaland Assembly Secretariat Staff Association (NASSA) and the petitioner Nos. 2, 3 and 4 are the officers of the Nagaland Legislative Assembly. They are aggrieved by the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service 3<sup>rd</sup> Amendment) Rules 2022 (Rules of 2022 in short) and the present writ petition has been filed with the following prayers:

*"In the premises aforesaid, it is most respectfully prayed that your Lordships may be pleased to admit the petition, call for the records, issue Rule calling upon the respondents to show cause as to why a writ of mandamus*

*or any other appropriate writ/order or direction should not be granted: and upon cause/causes being shown, be pleased to make the Rule absolute in the following terms.*

*To quash and set aside the impugned Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of service 3<sup>rd</sup> Amendment) Rule, 2022."*

3. Mr. C.T. Jamir, learned Sr. counsel for the petitioners submits that the bone of contention in the present writ petition is with regard to the amendment of the Rules of 2022 effected by the Notification dated 18.5.2022 which came into effect on 18.5.2022. By the Rules of 2022, the principal rule of the Nagaland Legislative Assembly Secretariat (Recruitment and Condition of Service) Rules 1999 was amended. He submits that some members of the NASSA had earlier approached this Court by way of W.P.(C) 323/2021 assailing the Office Memorandum dated 1.11.2021 by which the respondent No.1 directed for re-structuring of the cadre of the upgraded post of Additional Secretary, Transport held by the respondent No.3 by encadrering the same to the Third schedule-A from Third Schedule-D of the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1999 as amended in 2012. Upon such encadrement, the respondent No.3 was to be accommodated against the substantive post of Addl. Secretary subject to availability of vacant post. In the said writ petition the Notification dated 1.11.2021 was also put under challenge by which upon the restructuring and encadrement through the Office Memorandum dated 1.11.2021, the service of the respondent No.3 was regularized as Addl. Secretary (Transport) against the sanctioned post of Addl. Secretary, Nagaland Legislative Assembly with effect from the forenoon of 01.11.2021. The said writ petition was disposed of by judgment and order dated 12.5.2022 by which the Memorandum dated 01.11.2021 and the Notification dated

01.11.2021 were found to be unsustainable and set aside. However, liberty was granted to the respondent authorities for considering the restructuring of the various posts under the Assembly Secretariat to be done in accordance with the relevant provisions of law any by taking into consideration the rights and interest of all stakeholders.

4. It is submitted that the present Commissioner & Secretary (respondent No.2) was appointed as the Secretary, Nagaland Legislative Assembly by the Governor of Nagaland vide Notification dated 21.12.2019 w.e.f the forenoon of 02.01.2020 for a period of 5 months. The respondent No.2 on completion of the said period was reverted back to the parent Department by Notification dated 27.05.2020. Thereafter, on retirement from his regular service of Lok Sabha, the Governor again re-appointed the respondent No.2 to the post of Commissioner & Secretary on contract basis for a period of 2 years by order dated 06.06.2020 with effect from 01.06.2020 till 31.05.2022.

5. The learned Sr. counsel for the petitioner submits that the petitioner No.1 had submitted a representation to the respondent No.1 on 23.06.2020 requesting for filling up the post of Secretary/Addl. Secretary, implementation of cadre review and amendment of Service Rules. The petitioner No.1 thereafter submitted three different representations on 21.04.2022 before the respondent No.1 praying for promotion of the staffs, objecting the extension of service of the respondent no.2 on contract basis and against the merger of General Cadre with other Cadre in the Nagaland Legislative Assembly Secretariat. Another representation dated 09.05.2022 was also made by the petitioner No.1 reiterating its earlier representation dated 21.04.2022.

The learned Sr. counsel for the petitioners submits that the respondent No.2 issued a Circular dated 30.09.2020 to review the existing service conditions of Officers and staffs of the Nagaland Legislative Assembly Secretariat and to present a report to the respondent No.1 on or before 28.02.2021. Another Circular dated 03.10.2020 was also issued by the respondent No.2 to review the existing service conditions of Officers and staff of the Nagaland Legislative Assembly Secretariat and to submit its report by 31.03.2021. Thereafter, by Office Memorandum dated 10.11.2020, the respondent No.2 modified the earlier Circular dated 03.10.2020 by adding additional members. Further by another Office Memorandum dated 24.3.2022 and in continuation of the earlier Circular dated 30.09.2020 and Office Memorandum dated 10.11.2020, the respondent No.3 along with another person was also included as part of the Cadre Review/Service Rules Amendment Committee and the said Committee was directed to submit its report before 30.06.2022.

**6.** While the matter rest thus, the respondent No.2 issued a Notification dated 18.05.2022 amending the Service Rules in exercise of powers conferred under clause (3) of Article 187 of the Constitution of India with immediate effect. The learned Sr. counsel submits that despite constituting a Committee to look into the cadre review and the service conditions, the respondent authorities proceeded to amend the Service Rules without waiting for the report of the Committee and without considering the rights and interest of the stakeholders. He submits that the Rules of 2022 had inserted Rule 9(d) with the sole motive to accommodate the respondent No.3. It is also submitted that Rule 9(d) of the Rules of 2022 defeats the very purpose and intent of section 3 (1) of the Nagaland Retirement from Public Employment

(second amendment) Act, 2009 wherein it is provided that a person in public employment shall hold office for a terms of 35 years from the date of joining public employment or until he attains the age of 60 years whichever is earlier. He submits that the Nagaland Retirement from Public Employment (second amendment) Act,2009 is applicable to all the employees of the Nagaland Government including the Nagaland Legislative Assembly.

7. The learned Sr. counsel also submits that the amended Rules of 2022 has made the judgment and order dated 12.5.2022 passed in W.P.(C) 323/2021 redundant and ineffective. He submits that amendment of Rule 10(a) and (b) was a repetition of the earlier Office memorandum dated 01.11.2021 and the Notification dated 01.11.2021 which were set aside by the learned Single Judge. The learned Sr. counsel also submits that Rule 7 (B) of the Rules of 2022 is tailored made to suit the interest of certain individuals by inserting the word "or equivalent, in the Assembly Secretariat". It is submitted that there is no substantive post in the relevant Service Rules equivalent to the rank of Addl. Secretary except making the post of Officer on Special Duty to the Speaker in the rank of Addl. Secretary. The post of Officer on Special Duty is to be filled up only by the stenos in terms of the Notification dated 06.11.2017 which also clearly indicates that the said post is meant only for stenos barring inter-transferability of cadres. He submits that Rules of 2022 suffered from anomalies and discrepancy and the official respondents should have waited for the report of the Cadre Review/Service Rules Amendment Committee to arrive to a finding. However, the respondents proceeded to amend the Rules in a capricious and discreet manner causing prejudice to the stakeholders. The entire exercise of amending the Rules is wholly ar-

bitrary, illegal and discriminatory in nature and the same was done without taking into consideration the rights and interest of all the stakeholders as directed by the learned Single Judge by order dated 12.05.2022 in W.P.(C) 323/2021. He, therefore, submits that the Rules of 2022 should be quashed and set aside.

8. It is further submitted that the Rules of 2022 not only gave the respondent No.3 to be a part of general cadre in the rank of Addl. Secretary and by amending the third schedule-A has made the respondent No.3 eligible to be promoted to the post of Secretary. By the Rules of 2022, the rights of the petitioners to be considered for promotion is greatly affected inasmuch as the private respondent No.3 is allowed to hold the post in a general cadre even though the status of her service is only ex-cadre post and at the same time making her eligible to hold the post of Secretary by virtue of her upgraded status as Addl. Secretary.

9. Mr. T.B. Jamir, learned counsel for respondent Nos. 1 and 2 has raised the issue on maintainability with regard to the legal status of the petitioner No.1 on the ground that no documents has been annexed in the writ petition to indicate that the petitioner No.1 is a registered Association. He submits that in the absence of any documents to indicate that the petitioner No.1 is a registered Association, the same amounts to suppression of facts and on this ground alone the writ petition deserves to be dismissed. To substantiate his case, he has relied on the following cases:

**1. Retd. Armed Forces Medical Association and Others vs Union of India and Others**, reported in **(2006) 11 SCC 731**; and

**2. K.D. Sharma vs Steel Authority of India Limited and Others**, reported in **(2008) 12 SCC 481**.

**10.** He submits that in a writ petition filed under Article 226 of the Constitution, not only facts but evidence in proof of such facts are required to be pleaded and annexed. However, except for the statement that the petitioner No.1 is a registered Association, no documents have been annexed to prove the fact. He submits that in the affidavit-in-reply filed by the petitioners replying to the issue of maintainability raised by him, the petitioners have annexed a copy with regard to the Certificate of Registration which was done on 15.03.1988 under the Registration of Societies Act, 1860 as amended by Registration of Societies (Nagaland First Amendment) Act, 1969. He submits that under the Societies Registration (Nagaland Third Amendment) Act, 2009 a certificate of registration shall remain valid for a period of two years from the date of issue before the commencement of this Act and shall be valid for two years from the date of commencement of the said Act. He also submits that the certificate of registration shall be renewed within 3 (three) months from the date of expiration of the validity period and societies which fail to renew its registration shall be de-registered from being a society after expiration of 3 (three) months from the date of expiration of validity period. He therefore, submits that there is no document to indicate that the registration of the petitioner No.1 Association was renewed and therefore though it was registered in the year 1988, as there is no renewal, the society stands de-registered and therefore, the petitioner No.1 has suppressed material facts before this Court stating that the petitioner No.1 is a registered Association. As the petitioner No.1 has not approached this

Court with clean hands, therefore from its very conduct, it is clear that the petitioner No.1 is not honest and dishonesty should not be permitted to bear fruits.

**11.** Thirdly, the learned counsel for respondent Nos.1 and 2 has raised the issue on the maintainability of the present writ petition on the ground of *locus standi* of the petitioners. He submits that the challenge made in the writ petition is not a policy decision or an order issued under Article 162 of the Constitution of India but it is a legislation/rule framed under Article 187(3) of the Constitution which is akin to the proviso to Article 309 of the Constitution of India. Therefore, when this Court examines the validity of the Rules of 2022, the petitioners should have the locus to challenge the same. He submits that a piece of legislation can be challenged on the ground of legislative competence and on grounds of violation of fundamental rights. However, in the present case, the Rules of 2022 is not challenged on the ground of legislative competence but only on the ground of violation of fundamental rights. Further, in the present case, the petitioner Nos. 2,3 and 4 who are in the rank of Joint Secretary and above are not members of the Association and therefore, the members of the Association are from the grade of Deputy Secretary and below and therefore, to establish the locus and for this Court to examine the vires of the amended Rules of 2022, the petitioners must first satisfy how their fundamental rights are violated by the Rules of 2022 so as to give the locus to challenge the Rules.

**12.** Fourthly, the learned counsel for the respondent Nos. 1 and 2 takes a preliminary objection with regard to the validity of the affidavit in the writ petition. It is submitted that issues are decided based on

pleadings and evidence which are supported by evidence and therefore, a proper and valid affidavit is the foundation of the case. However, the affidavit accompanying the present writ petition is filed on behalf of the all the petitioners, by an entity, which is not accepted in the eye of law. He further contends that apart from the affidavit being filed by a non entity, even a false statement has been made in paragraph 2 of the affidavit wherein it is stated that the statements made in paragraph 1 of the writ petition is "true to my knowledge" which is a false statement and therefore, the affidavit should not be accepted as a valid and proper affidavit.

**13.** Coming to the merit of the case, the learned counsel for respondent Nos.1 and 2 submits that with regard to amendment of Rule 6, the petitioners have failed to satisfy this Court that the amended Rules of 2022 infringes the rights of the petitioners. The petitioners are all regular members of the Nagaland Legislative Assembly and the petitioners are completely silent as to why the fundamental rights have been infringed by the said amendment. With regard to the amendment of Rule 9, it is submitted that Rule 9(d) provides for short time contractual engagement and it is the case of the petitioners that section 3 (1) of the Nagaland Retirement from Public Employment (second amendment) Act,2009 and the Office memorandum dated 15.03.2012 has been infringed. He submits that the Office Memorandum dated 15.03.2012 does not impose a total ban of re-employment of the retired employee and in fact the Office Memorandum lays down the procedure as and when re-employment of retired employee can be resorted to by the Department. Therefore, it cannot be said that the service Rules of 2022 is violative of Office Memorandum dated

15.03.2012. In any case, the said Office memorandum dated 15.03.2012 cannot override the statutory rules. He also submits that re-employment of a retired personnel is within the executive power of the State Government and attributing ulterior motive in amending the service rules cannot make the same unconstitutional.

**14.** The learned counsel for the respondent Nos. 1 and 2 submits that in the Nagaland Legislative Assembly Secretariat there are different wings but for promotion to the post of Joint Secretary and above, there is promotional avenue only for the General Wing to which the petitioners belong. By the amended Rule 10, a meeting point of different cadres has been made at the level of Joint Secretary so that there are promotional avenues for all the wings. All members in the Secretariat service in the Nagaland Legislative Assembly irrespective of the wings to which they belong have a right to be considered for promotion and therefore, taking into consideration the interest of all stakeholders the meeting point has been provided at the level of Joint Secretary. Therefore, providing for a meeting point at the level of Joint Secretary, no fundamental/constitutional rights of the petitioners has been infringed. It is also submitted that the post of Secretary in the Assembly Secretariat can be compared to the post of Chief Secretary of the Civil Secretariat and as per Rule 3, the Assembly Secretary is independent of the financial and administrative control of the Government and is under the Superintendence and control of the Speaker. Further, Rule 7 provides that the Secretary exercise full control over the officers and staff of the Assembly Secretariat and shall be responsible for functioning of the Secretariat. Accordingly, the duty and responsibility discharged by the Secretary, Assembly Secretariat can be

compared/equate to the post of Chief Secretary, in the Civil Secretariat who is responsible for functioning of the Civil Secretariat. The Secretary of the Assembly Secretariat is also Secretary of all Assembly committee as per Rules of Procedure and Conduct of Business in the Nagaland Legislative Assembly. Therefore, the Secretary, Assembly secretariat requires absolute confidence of not only the Speaker but also the ruling dispensation for smooth functioning of not only the Assembly Secretariat but also in the conduct of business in the Nagaland Legislative Assembly. Therefore, the amended Rule 12 provides that the Secretary shall be appointed on the recommendation of the Speaker in consultation with the Chief Minister. The post of Additional Secretary is equally important and a responsible post and therefore taking into consideration the responsibility discharged by the Secretary and Additional Secretary in the Assembly Secretariat and in the interest of the Nagaland Legislative Assembly, Rule 12 was accordingly amended.

**15.** The learned counsel for the respondent Nos. 1 and 2 submits that the amended Rules of 2022 provides a meeting point for all cadres at the level of Joint Secretary and even if there are gap in the hierarchy, such gap can be filled up on executive instructions. Therefore, questioning the rationality of a decision, the petitioners are questioning the wisdom of the law makers which is not permissible. Further, merely because there is some gap in the hierarchy of post in other cadres, no fundamental rights of the petitioners have been violated which calls for intervention of this Court and he places reliance on the following cases:

**1. *Sant Ram Sharma vs State of Rajasthan and Others*** reported in ***AIR (1967) SC 1910***; and

**2. *Maharashtra State Board of secondary and Higher secondary Education and Another vs Paritosh Bhupeshkumar Sheth and Others*** reported in ***(1984) 4 SCC 27***.

**16.** It is submitted that the main grievance of the petitioners is that the Service Rules has been amended without waiting for the report of the Cadre Review Committee and therefore, the amendment of the Service Rules is violative of the judgment and order dated 12.05.2022 passed in W.P.(C) No.323/2021. He submits that Service Rules is amended in exercise of powers under Article 187(3) of the Constitution and therefore, the report of the Cadre Review Committee is not a pre condition for exercise of powers under Article 187(3) of the Constitution. He submits that despite the Cadre Review Committee being constituted as early as 30.09.2020, the Committee failed to make recommendation for revision of the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules 1999 and therefore, in order to ensure smooth and effective functioning of the Nagaland Legislative Assembly Secretariat, the Service Rules have been amended keeping in mind the rights and interest of all stakeholders including the larger interest of the Nagaland Legislative Assembly Secretariat. He submits that re-structuring of cadre is within the exclusive domain of the employer and therefore, consent is not necessary. He places reliance on the following cases:

**1. *Union of India vs Pushpa Rani and Others*** reported in ***(2008) 9 SCC 242***; and

**2. *The State of Jammu and Kashmir vs Shri Triloki Nath and others*** reported in ***(1974) 1SCC 19***.

**17.** The learned counsel for the respondent Nos. 1 and 2 responding to the ground taken by the petitioner that the amendment has been done in violation of the judgment and order dated 12.05.2022 passed in W.P.(C) 323/2021 submits that by the judgment and order dated 12.05.2022 liberty was granted to the respondent authorities for considering the restructuring of various post under the Assembly Secretariat which would otherwise shall be done only in accordance with the relevant provisions of law and by taking into consideration and rights of all the stakeholders. Accordingly, the Service Rules have been amended as per Article 187(3) of the Constitution of India and restructuring has been done after taking into consideration the interest of all stakeholders by providing a meeting point at the level of Joint Secretary, thereby providing promotional avenues for all the wings. He accordingly, submits that by the amendment the defects pointed out by this Court has been removed and removing such defects is within the legislation competence. He places reliance on the following cases:

- 1. *State of T.N vs Arooran Sugars Ltd* reported in *(1997) 1 SCC 326*;**
- 2. *M/s Ujagar prints and others vs Union of India and others* reported in *(1989) 3 SCC 488*; and**
- 3. *Dr. Ashwani Kumar vs Union of India and another* reported in *(2020) 13 SCC 585*.**

**18.** The learned counsel for the respondent Nos. 1 and 2 submits that rights to be considered for promotion is a constitutional right and therefore even those officers serving in other cadre/wings has a right to be considered for promotion to the post of Secretary/Additional

Secretary. Prior to the Rules of 2022, only those serving under the General Wing and whose interest the petitioners are representing were eligible for promotion to the post of Additional Secretary/Secretary. The Rules of 2022 has addressed the issues on stagnation in other cadres/wings in the Nagaland Legislative Assembly and thereby fulfilling the constitutional mandate by ensuring there is no discrimination among cadres/wings in the Nagaland Legislative Assembly from the level of Joint Secretary for promotion to the post of Additional Secretary/Secretary. Therefore, the contention of the petitioners that the Rules of 2022 has been tailored made for the benefit of certain individuals is wholly incorrect and in fact the petitioners are expected to support the Rules of 2022 for bringing parity amongst all cadres/wings from the level of Joint Secretary and thereby providing equal opportunity to all for promotion to the post of Additional Secretary/Secretary. He places reliance on the following case:

***Senior Divisional Commercial Manager & Ors vs Stalls Welfare Association & Anr.*** reported in ***(2016) 16SCC 101.***

**19.** The learned counsel for the respondent Nos. 1 and 2 lastly submits that the power of the Governor under Article 187(3) is legislative in character and when there is a challenge in the constitutional validity of an enactment, it can be challenged only on two grounds namely, legislative competence and violation of fundamental rights. Therefore, this Court should not examine the decision making process unlike in award of contract. The Rules of 2022 is not challenged on the ground of legislative competence and the petitioners have failed to show as to how their fundamental rights or constitutional rights have been violated by the amendment of the Rules. He places reliance on the following cases:

- 1. Assam Sachivalaya Sesa Santha and Ors vs Secretary, Assam Legislative Assembly and Ors** reported in **1999 (3) GLT 320;**
- 2. State of A.P and others vs McDowell & Co and others** reported in **(1996) 3 SCC 709;**
- 3. G.C. Ranungo vs State of Orissa** reported in **(1995) 5 SCC 96;** and
- 4. State of Madhya Pradesh vs Rakesh Kohli and another** reported in **(2012) 6 SCC 312.**

**20.** Mr. Taka Masa, the learned Sr. counsel for the respondent No.3 while endorsing the submissions made by the learned counsel for the respondent Nos. 1 and 2 also raised the issue on maintainability on the ground that the petitioner No.1 is not a registered Society. He also submits that the deponent who swore the affidavit in the writ petition was not authorized by the members of the Nagaland Assembly Secretariat Staff Association to file the present writ petition but he has been authorized only by the General Secretary of the Nagaland Assembly Secretariat Staff Association and the petitioner Nos. 2, 3 and 4. Therefore, there is clear suppression of material facts and the petitioners have approached this Court with unclean hands and therefore, on this ground alone, the writ petition deserves to be dismissed.

**21.** The learned counsel on merits of the case submits that the Nagaland Legislative Assembly (Recruitment and condition of Services) 1966 came into force w.e.f 11.02.1964 and there was no distinction in the service in original Service Rules and all members were treated as one. Thereafter, in exercise of power under Article 187(3) of the Constitution of India, the Nagaland Legislative Assembly Secretariat (Recruitment and condition of Services) 1999 came into force

w.e.f.17.11.1999. Thereafter, in exercise of residuary powers conferred by Rule 21 of the Rules of 1999, the Service Rules was amended by Notification dated 23.02.2005. Rule 10(b) of the amended Rules provides that irrespective of relativity of posts, there shall be no inter-transferability between the various schedules in the event of similar scales between the cadres. He submits that the first amendment vide Notification dated 23.02.2005 and the 2<sup>nd</sup> amendment vide Notification dated 21.08.2012 was amended by the Speaker without legislative competency inasmuch as the Service Rules can be amended only by the Governor in exercise of the power under Article 187(3) and not by the Speaker under residuary powers under the Service Rules. He therefore, submits that the first amendment of 2005 and the 2<sup>nd</sup> amendment of 2012 is unconstitutional and *void ab initio* and accordingly places reliance on the following case:

***State of Manipur & Ors vs Surya and Anr* reported in (2022) SCC online 130.**

The learned Sr. counsel submits that the learned Single Judge in W.P.(C) 323/2021 by judgment and order dated 12.05.2022 has accordingly held that the first amendment of 2005 and the 2<sup>nd</sup> amendment of 2012 is without legislative competency and accordingly, the same is void ad initio. Accordingly, the learned Single Judge had given the liberty for restructuring the Service Rules in accordance with the relevant provisions of law and by taking into consideration the rights and interest of all the stakeholders. Therefore, to cure the defects as pointed out by the learned Single Judge, the Governor by exercising the power under Article 187(3) had enacted the Rules of 2022. He also submits that the counsel for the petitioner has fairly conceded that the writ petitioners have no challenge against the competency to

make Rules. The learned Sr. counsel for the respondent No.3 submits that the respondent No.3 and the petitioner No.2 were recruited through an advertisement dated 20.12.1995. Thereafter, the respondent No.3 was appointed by Notification dated 1.10.1996 to the post of Assistant Transport Officer (Class-II Gazetted). However, by the Service Rules of 1999, 2<sup>nd</sup> schedule, the respondent No.3 is to maintain a separate cadre and therefore, being aggrieved, the respondent No.3 made several representations against the same. The respondent No.3 also filed W.P.(C) No. 20/2020 and by order dated 9.7.2021, the said writ petition was disposed of directing the respondent No.1 to dispose of the representation by a speaking order. In compliance, the respondent No.1 issued the order dated 13.10.2021 treating the respondent No.3 as originally belonging to the general cadre in the post of Additional Secretary. Thereafter, the office memorandum dated 1.11.2021 and the Notification dated 1.11.2021 restructuring the service and regularizing the respondent No.3 in the general cadre was issued which was however set aside by the learned Single Judge in W.P. (C) 323/2021 by judgment and order dated 12.5.2022.

**22.** The learned Sr. counsel also submits that the respondent No.3 was promoted/upgraded to the post of Sr. transport Officer by order dated 30.10.2014 and to the post of Joint Secretary by order dated 30.11.2017. The respondent No.3 was thereafter promoted to the post of Addl. Secretary by order dated 30.11.2019. It is submitted that the petitioner No.2 and the respondent No.3 were appointed through the same recruitment process in the same grade in general cadre. Therefore, in order to ensure parity and avoid discrimination, the post of respondent No.3 in the Transport wing was upgraded on

the same day the petitioner No.2 was promoted. Further, the respondent No.3 was given other duties besides the duties concerning the transport wing and likewise the writ petitioners were also given duties of the transport wing which would indicate that there was no distinction made over the years for officers of different schedules.

**23.** The learned Sr. counsel for respondent No.3 submits that there are no specific averments that the petitioners are aggrieved by the amended Rules of 2022 and in the writ petition, a blanket challenge has been made against the same. The principles of separation of powers provide that the Court can examine the legality and validity of the legislature of the Government action and not the wisdom behind the legislative measures or relative merits or demerits of the Government actions. Further, the amended Rules of 2022 has cured the defects pointed out by the learned Single Judge and ensured that there is no distinction of cadres above the level of Joint Secretary. Therefore, the action of the official respondents was not in circumvention or violation of the judgment and order dated 12.5.2022 passed in W.P.(C) 323/2021. He further submits that it is well within the competency of the State to change the Rules relating to a service and alter or amend the same. There is no right in any employee of the State that rules governing conditions of his or her service should be forever the same as the one when he entered the service for all purposes and Government servants have no right to challenge the authorities of the State to amend, alter and bring into force new rules. He places reliance on the following case:

***Union of India and others vs S.Maadasamy and another*** reported in **(2019) 6 SCC 674.**

He further submits that the Notification dated 18.5.2022 provided for a right to be considered for promotion of the petitioner has not been taken away. Rather, it is provided an equal level playing field for all officers and staff from all the 8 (eight) schedules under the Rules without any favour and discrimination. Therefore, adopting the submission of the learned counsel for the respondent Nos. 1 and 2 both on preliminary objection as well as on merit, he submits that the present writ petition has no merit and should be dismissed.

24. Mr. C.T. Jamir, learned Sr. counsel for the petitioners replying to the issue of maintainability raised by the respondent Nos. 1 and 2 as well as by the respondent No.3 submits that the petitioner No.1 is a registered Association till date inasmuch as no order has been passed de-registering the Association. He also submits that the President has been authorized by the members of the Association to file the present writ petition and therefore, the affidavit is valid and accordingly, the respondents can raise no voice against the said affidavit particularly when the petitioner's Association has authorized the President to swear the affidavit and places reliance on the following cases:

- 1. *Asangla T Aier vs Thungdeno Mozhui and Ors* reported in **2021 (2) GLT 710;****
- 2. *Charulata Behera vs Pravati Parida and others* reported in **(2015) 4 SCC 30;** and**
- 3. *Akhil Bharatiya Soshid Karamchari Singh vs Union of India and Others* reported in **AIR 1981 SC 298.****

25. We have considered the submissions made by the learned counsel for the parties. We have also perused the records placed by the learned counsel appearing for the respondent Nos.1 and 2.

**[MAINTAINABILITY OF THE WRIT PETITION]**

26. We first intend to consider the issue of maintainability raised by the learned counsel appearing for the respondent Nos. 1 and 2 and the private respondent No.3. Paragraph 1 of the present writ petition clearly indicates that the petitioner No.1 is a registered Association known as the Nagaland Assembly Secretariat Staff Association. The issue raised by the respondents that the petitioner No.1 is not a registered Association has been considered by this Court.

After the issue was raised, the petitioners have filed an affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.1 wherein the Certificate of Registration dated 15.3.1988 is annexed as Annexure-I. The certificate of registration indicates that the petitioner's Association was registered pursuant to section 3 of the Registration of Societies Act 1860 as amended vide Registration of Societies(Nagaland first Amendment) Act,1969. Section 3 A (1) of the Societies Registration (Nagaland Third amendment) Act 2008 provides that certificate of registration issued under section 3 shall remain valid for a period of two years from the date of issue before the commencement of the Act and shall be valid for two years from the date of commencement of this Act. Further, section 3 A (5) provides that a society which fails to renew its registration shall be de-registered from being a society at the expiration of 3 months from the date of expiration of the validity period. There is no doubt that the petitioners Association was registered on 15.3.1988 however, there is no indication that the said registration of the petitioners No.1 Association was renewed in terms of section 3A (5) of the Societies Registration (Nagaland Third amendment) Act 2008. The submission of the learned counsel for the petitioners that no order has been issued de-register-

ing the registration of the petitioners Association has been considered by us. However, we are of the considered opinion that despite no orders being passed de-registering the petitioner No.1 Association, the petitioners Association would be deemed to have been de-registered by operation of law.

It is also important to note that certificate of registration dated 15.3.1988 was annexed in the affidavit-in-reply against the affidavit-in-opposition of the respondent No.1 only after the issue of maintainability with regard to the registration of the petitioner No.1 Association was raised. No documents were annexed in the writ petition to indicate that the petitioner No.1 Association has a valid registration. There is a distinction between a pleadings under the Code of Civil Procedure and a writ petition or a counter affidavit. While in a plaint a written statement of facts and not evidence are required to be pleaded, in a writ petition or in a counter affidavit not only facts but also evidence have to be pleaded and annexed. In the present case, the petitioners brought on record the certificate of registration of the petitioner No.1 Association only after the issue on maintainability was raised by the respondents.

**27.** The issue of suppression of facts raised by the learned counsel for the respondents has also been considered by us.

We have considered the pleadings made in the writ petition. After coming to the conclusion that the petitioner No.1 Association is not a registered Association, we are of the view that the petitioners have suppressed materials facts before this Court by stating that they are a registered Association or that the registration has not been renewed. The Court cannot grant any reliefs to parties who come to the

Court with unclean hands. We are therefore, of the view that the writ petition filed by the petitioners is liable to be dismissed on this issue.

In the case of K.D. Sharma (supra), the Hon'ble Supreme has held as under:-

*34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.*

*38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".*

We, therefore, have no hesitation to come to the conclusion that the petitioners have suppressed materials facts before this Court by not stating that the petitioner No.1 Association is already de-registered and therefore, they have no *locus standi* to maintain the writ petition.

**28.** With regard to the issue of validity of the affidavit filed by the petitioners accompanying the present writ petition, we have noticed that in paragraph 1 of the affidavit, it is stated that the petitioner No.1 is the President of the Nagaland Assembly secretariat Staff Association and that he has been authorized by the Secretary of the Association and the petitioner Nos. 2,3 and 4 to swear the affidavit on their

behalf. Litigations are decided on the basis of pleadings and evidence which are supported by affidavit. A proper and valid affidavit is thus the foundation of the case super structure which is adjudicated upon by the Court. If the affidavit is found to be defective or if the affidavit suffers from basic foundation it is bound to effect the structure. Affidavit plays a vital role in dispensation of justice and cannot be taken lightly. Filing of affidavit is not an empty formality. In the said affidavit filed by the petitioners, what we have noticed at paragraph 1 is that the President has been authorized only by the Secretary of the Association as well as the petitioner nos. 2, 3 and 4. There is no indication in the affidavit that the petitioner No.1 has been authorized by the members of the Nagaland Assembly Secretariat Staff Association to swear the affidavit on their behalf. We are, therefore, of the view, that on this count too, the present writ petition is not maintainable.

**[MERITS OF THE CASE]**

**29.** The Nagaland Legislative Assembly (Recruitment and Conditions of Service) Rules 1966 was repealed by the Nagaland Legislative Assembly (Recruitment and Conditions of Service) Rules 1999 as amended in 2012 (Rules of 1999 in short), which came into force w.e.f. 17.11.1999. The post of Assistant Research Officer (ARO) and Assistant Committee Officer (ACO) came to be mentioned for the first time in the Rules against the third schedule. It is also seen that the post of ACO and Assistant Research Officer (ARO) have been mentioned together in the Third Schedule while the post of Assistant Transport Officer (ATO) has been placed separately. In other words, the post of ACO and ARO has been placed in the General Wing wherein the incumbent holding the said post can rise to the rank of

Secretary by promotion. In so far as the post of ATO is concerned there appears to be no scope of promotion beyond ATO.

**30.** The Rules of 1999 was amended vide Notification dated 23.2.2005 which came into force with immediate effect. Under the said amendment, the post of ATO and also Deputy Transport Officer (DTO) has been placed under Third Schedule-C whereas the post of ACO and ARO have been placed against Third Schedule-A which is the General Wing. Thereafter, the Rules of 1999 was amended by Notification dated 21.3.2012 by the Speaker in exercise of powers conferred by Rule 22 of the Rules of 1999. The said amendment came into force w.e.f. the date of the Notification i.e 21.8.2012 and Rule 10 (a) and 10(b) came to be inserted. Thereafter, the respondent No.1 issued the Office memorandum dated 1.11.2021 whereby direction was issued for restructuring of the cadre of the upgraded post of Addl. Secretary TPT held by the respondent No.3 by encadring the same to the Third Schedule-A from Third Schedule-D of the Rules of 1999. Consequently, the respondent No.2 issued a Notification dated 1.11.2021 regularising the service of the respondent No.3 to the post of Addl. Secretary, Nagaland Legislative Assembly.

**31.** Being aggrieved with the Office Memorandum dated 1.11.2021 and the Notification dated 1.11.2021, some of the employees of the Nagaland Legislative Assembly filed a writ petition being W.P.(C) 323/2021. The said writ petition was disposed of by judgment and order dated 12.5.2022 setting aside the Office memorandum dated 1.11.2021 and the Notification dated 1.11.2021 as unsustainable in law. However, liberty was granted to the official respondents for considering restructuring of various post under the Assembly Secretariat which should otherwise only be done in accordance with

the relevant provisions of law and by taking into consideration the rights and interest of all the stakeholders.

**32.** Consequently, a Cadre Review Committee was constituted vide Circular dated 30.9.2020. By another Circular dated 3.10.2020 a Committee of Officers of Nagaland Legislative Assembly Secretariat was constituted to review the existing service conditions of officers and staff of the Nagaland Legislative Assembly Secretariat and to report on the anomalies/stagnation if any, experienced in promotional opportunities by the Nagaland Legislative Assembly Secretariat officers and staff and to make recommendation for revision of the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules 1999 as amended in 2012. By another Office Memorandum dated 10.11.2020, the said Circular dated 3.10.2020 was modified by bringing in 2 officers to the earlier Committee constituted by Circular dated 3.10.2020. Further by Office Memorandum dated 24.3.2022 and in continuation of the earlier Circular dated 30.9.2020 and Office Memorandum dated 10.11.2020 another 2 officers, which also included the respondent No.3 was included as part of the Cadre Review Committee. It is the case of the petitioners that before the Cadre Review Committee could submit its report, the respondent authorities proceed in amending the Rules of 1999 by the Rules of 2022.

**33.** What we have noticed is that the Governor in exercise of powers conferred under Article 187(3) of the Constitution of India enacted the Rules of 2022 which is legislative in nature. The learned Single Judge while quashing the Office Memorandum dated 1.11.2021 and Notification dated 1.11.2021 had given liberty to the official respondents to proceed for considering restructuring of the various

post under the Assembly Secretariat however, should be done in accordance with the provisions of law. In the instant case what is noticed is that the Governor in exercise of powers conferred under Article 187(3) of the Constitution has passed the Rules of 2022. We therefore, see no merits on the submission of the learned counsel for the petitioners that the action of the respondents by enacting the Rules of 2022 is in contravention/violation of the judgment and order dated 12.5.2022 passed in W.P.(C) 323/2021. Further, we are of the view that there was no necessity on the part of the respondents to wait for the report of the Cadre Review Committee.

**34.** The next ground of contention of the learned counsel for the petitioners is that amended rule 9(d) of the Rules of 2022 violates section 3(1) of the Nagaland Retirement from Public Employment (Second Amendment Act) 2009 and the Office Memorandum dated 15.3.2012 which imposes a ban on extension/re-employment of Government servant has been considered by this Court. Section 3(1) of the Nagaland Retirement from Public Employment (Second Amendment Act) 2009 reads as under:-

*"3. (1) Notwithstanding anything contained in any rule or orders for the time being in force, a person in public employment shall hold office for a term of thirty three years from the date of his joining public employment or until he attains the age of fifty seven years whichever is earlier : Provided that in special circumstances, a person under public employment may be granted extension by the State Government upto a maximum of one year;*

*Provided further that the Government may have the cases of all persons under public employment screened from time to time to determine their suitability for continuation in public employment after the attainment of the age of fifty years."*

Further, the Office Memorandum dated 15.3.2012 issued by the Department of P & AR, Government of Nagaland on the subject of ban on extension/re-employment of Government servants reads as follows:-

*"Government of Nagaland  
Personnel and Administrative Reforms Department  
(Administrative reforms Branch)*

No.AR-5/ASSO/98

Dated, Kohima, the 15<sup>th</sup> March, 2012

OFFICE MEMORANDUM

***Sub: Ban on extension/re-employment of Government servants.***

1. *Attention of all concerned is invited to this Department's office Memorandum No.AR-5/ASSO/98(B) dated 26/02/2001 whereby the Government has banned extension of service or re-employment of Government servants who have attained the age of superannuation on completion of 35 years of service or otherwise.*
2. *It is hereby reiterated that no extension of service or re-employment of retired Government employees as Consultant/Adviser or at any level shall be resorted to by the Department without prior clearance of the P & AR Department, which will be considered only on exceptional and very special grounds.*
3. *Any deviations from the laid down instructions will be viewed seriously by the Government.*

*Sd/- LALTHARA*

*Chief Secretary to the Govt. of Nagaland."*

**35.** Section 3(1) of the Nagaland Retirement from Public Employment (Second Amendment Act) 2009 does not prohibit the State from appointing retired Government servants on contract basis. Further, the Office Memorandum dated 15.3.2012 despite issuing ban on extension/re-employment of Government servant, however provides for exceptional cases for consideration with prior clearance from the P & AR Department. Therefore, we are of the considered opinion that Rule 9(d) of the amended Rules of 2022 does not violate section 3(1) of the Nagaland Retirement from Public Employment (Second Amendment Act) 2009 as well as the Office memorandum dated 15.2.2012. The Office Memorandum dated 15.3.2012 does not impose a total ban of re-employment of Government servant and in fact the said Office Memorandum lays down the procedure to be adopted as and when re-employment of Government servant is resorted to by the Department.

**39.** It is well settled principle of law that re-employment of a retired personnel is within the executive power of the State. We also see no ground by which the fundamental and constitutional rights of the petitioner Nos. 2,3 and 4 has been infringed. The challenge has been made to the amendment of Rule 6 by the amended Rules of 2022 on the ground that it infringes the fundamental rights of the petitioners. However, the petitioners are completely silent as to how their fundamental rights have been infringed by the said amendment. When there is a challenge to the vires of the rule there is always a presumption of constitutionality of an enactment therefore, burden is on the petitioners to satisfy the Court that the amended Rules of 2022 infringes their fundamental rights. In the case of **Subramanian Swamy** (supra), the Hon'ble Supreme Court has held as under:-

*"49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognized by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognized and these are (i) discrimination, based on an impermissible or invalid classification and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."*

**40.** The other ground is with regard to the challenge to the amendment of Rule 10 by the amended Rules of 2022. What we have

noticed is that by amendment of Rule 10, the respondents have created a meeting point of different cadres at the level of Joint Secretary so that there is promotional avenues for all the wings. The Rules of 1999 precludes certain wings for further promotion beyond a particular post. However, by the amended Rules of 2022 a level playing field has been created from the level of Joint Secretary by providing an opportunity to all the members of the Nagaland Legislative Assembly Secretariat irrespective of the wings to which they belong to be considered for promotion. Therefore, by providing the level of playing field for all the wings, we see no reasons to interfere with the amendment of Rule 10 by the amended Rules of 2022. In the case of ***Union of India vs Pushpa Rani and Others*** reported in ***(2008) 9 SCC 242***, the Hon'ble Supreme Court has held as under:-

*37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."*

**41.** Further challenge has been made to the amendment of Rule 12 by the Rules of 2022. However, the same pertains to the appointment of Addl. Secretary/Secretary by the Governor on the recommendation of Speaker in consultation with the Chief Minister. We see no reason

as to how the fundamental and constitutional rights of the petitioners are violated by the said amendment.

**42.** Lastly, a challenge has been made to the amendment of Third schedule-A by the amended Rules of 2022. The challenge to the said amendment is also not sustainable on the ground that it is a well settled principle of law that the re-employment of retired person is within the executive power of the State and by such amendment, no fundamental/constitutional rights of the petitioners have been infringed. The Government has the prerogative to alter the terms and conditions of its employees unilaterally and taking their consent is not a pre condition of the validity of the rules of service. In the case of Prafulla Kumar Das and Others vs State of Orissa and Others reported in (2003) 11 SCC 614, the Hon'ble Supreme Court has held as under:-

*"45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted."*

**43.** We have also considered the authorities relied upon by the learned counsel for the petitioners. However, in the facts and circumstances of the present case in hand, we see that the same is not applicable to the present case.

**44.** In view of the discussions made herein above, we are of the considered opinion that the present writ petition is without merit both by way of maintainability and on merits of the case. Accordingly, the writ petition is dismissed. However, with no order as to cost.

Registry is directed to return the records to Shri T.B. Jamir, learned counsel for the respondent Nos.1 and 2 forthwith.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

**Comparing Assistant**