

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

W.P.(C) No. 594 of 2022

Chabungbam Thoibisana Devi, aged about 54 years old, D/o Late Chabungbam Ibotombi of Keishampat Leimajam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur – 795 001.

.... Petitioner

- Versus -

1. The State of Manipur represented by its Commissioner (Law), Law & Legislative Affairs Department, Government of Manipur, Secretariat, P.O. & P.S. Imphal West District, Manipur – 795001.
2. The Deputy Secretary (Law), Law & Legislative Affairs Department, Government of Manipur, Secretariat, P.O. & P.S. Imphal West District, Manipur – 795001.
3. The Director of Prosecution, Directorate of Prosecution, Lamphelpat, P.O. & P.S. Imphal West District, Manipur – 795001.

.... Official Respondents

4. R.K. Bhuvaneshwari Devi, aged about 52 years old, W/o Thigom Mangi Singh, a permanent resident of Sagolband Tera Sapam Leirak, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795001.
5. Akoijam Bobby Singh, aged about 48 years old, S/o A.K. Shaymkishore Singh, a permanent resident of Wangkhei Koijam Leikai, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur – 795001.
6. Hagzamo Tonsing, aged about 48 years old, S/o T. Thongzathang, a permanent resident of Dorcas Road, Dorcas Veng, New Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur – 795128.

7. Shri Khangembam Mohen Singh, aged about 48 years old, S/o (Late) Kh. Gouri, a permanent resident of Chingmeirong Mamang Leikai, P.O. Porompat & P.S. Lamphel, Imphal East District, Manipur.
8. Leimapokpam Bimol Singh, aged about 45 years old, S/o L. Mangi Singh, a permanent resident of Athokpam Mayai Leikai, P.O. & P.S. Thoubal, Thoubal District, Manipur – 795138.
9. Khodram Anupama Devi, aged about 44 years old, D/o (Late) Kh. Suresh Singh, a permanent resident of Kwakeithel Bazar, Opposite Kwakiethel Girls High School, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
10. Thounaojam Bandana Devi, aged about 43 years old, W/o M. Okendro Singh, a permanent resident of Heirangoithong Makha Mutum Leirak, P.O. & P.S. Singjamei, Imphal West District, Manipur – 795008.

.... Private Respondents

W.P.(C) No. 600 of 2022

Lamneichong Haokip, aged about 51 years old, W/o Sheikhohao Kipgen of Tuipaijang Village, P.O. & P.S. G. Sapormeina, Kangpokpi District, Manipur – 795129 present residing at National Game Village, Mary Kom Complex, Zone – 3, P.O & P.S. Lamphel, Imphal West District, Manipur.

...Petitioner

- Versus -

1. The State of Manipur represented by its Commissioner (Law), Law & Legislative Affairs Department, Government of Manipur, Secretariat, P.O. & P.S. Imphal West District, Manipur – 795001.

.... Official Respondent

2. R.K. Bhubaneshwari Devi, aged about 52 years old, W/o Thigom Mangi Singh, a permanent resident of Sagolband Tera Sapam

- Leirak, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795001.
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.... *Private Respondents.*

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

For the petitioners : Mr. S. Biswajit, Senior Advocate &
 W. Sanatomba, Advocate
 Mr. Serto T. Kom, Advocate

For the respondents : Mr. Niranjana Sanasam, Govt. Advocate
Ms. Ayangleima, Advocate

Date of hearing : 03.10.2025

Date of Judgment &
Order : **23.12.2025**

JUDGMENT & ORDER **(CAV)**

[1] Heard Mr. S. Biswajit, learned senior counsel and Mr. Serto T. Kom, learned counsel appearing for the petitioners; Mr. Niranjana Sanasam, learned Government Advocate appearing for the State and Ms. Ayangleima, learned counsel appearing for private respondents.

[2] The annexures mentioned in this judgment are from the writ petition WP(C) No. 594 of 2022 for easy reference. Since both these writ petitions pertain to the same impugned order, they are being disposed of by this common judgment. Factual matrix of the case in a nutshell is that the present petitioners were initially appointed as Assistant Public Prosecutor -cum- Assistant Government Advocate on contract basis for a period of 1 (one) year vide order dated 20.12.2005 issued by Secretary (Law), Government of Manipur (Annexure – A/1) wherein the petitioners appeared at Sl. No. 2 & Sl. No. 3 and services of the petitioners were extended from time to time by the competent authority till December, 2016 (Annexure – A/2). Regarding appointment of the said post, the Secretary (Law), Government substantiated through Local Newspaper (Naharolgi Thoudang) vide publication dated 03.01.2006 (Annexure – A/3) whereby reporting that the afore-referred appointment

did not suffer from any irregularity as the recruitment was conducted through an advertisement inviting applications from eligible advocates either through All Manipur Bar Association or Law Department, Government of Manipur.

[3] Vide order dated 02.12.2016 issued by the Secretary (Law), Government of Manipur (Annexure – A/4), the petitioners were appointed on regular basis along with 13 (thirteen) others by regularizing their past contract services and on the very same day, 6 (six) other APP-cum-AGA were also made regular appointment by regularizing their past contract services. In the said appointment order, the petitioners in W.P.(C) No. 594 of 2022 and W.P.(C) No. 600 of 2022 were placed at Sl. No. 1 & Sl. No. 2 respectively and as per the decisions made by the State Cabinet dated 04.08.2016 and 07.11.2016. The order was also made as one time measure which was issued by the Department of Personal & Administrative Reforms (Personal Division), Government of Manipur dated 22.11.2026.

[4] The Deputy Secretary (Law), Government of Manipur, vide notification dated 13.09.2021 (Annexure – A/5) wherein the petitioners appeared at Sl. No. 4 & Sl. No. 6 in W.P.(C) No. 594 of 2022 and W.P.(C) No. 600 of 2022 respectively, issued a tentative seniority list of APP(District)-cum-AGA (District) whereby calling any claims and objections to the said list. Thereafter, a final seniority list was published vide notification dated 23.11.2021 whereby the petitioner was placed at Sl. No. 10 & Sl. No. 11 in W.P.(C) No. 594 of 2022 and W.P.(C) No. 600 of 2022 respectively (Annexure – A/6).

[5] In this regard, learned counsel appearing for the petitioners submits that the petitioners were initially appointed on contract basis on 20.12.2005 and made regularization on 02.12.2016. However, without any reason, the petitioners in W.P.(C)

No. 594 of 2022 and W.P.(C) No. 600 of 2022, were placed at Sl. No. 10 & Sl. No. 11 respectively which are below the batches of APPs appointed in the years 2007, 2009 and 2010.

[6] Being aggrieved by the said seniority list, the petitioners challenged the same by filing a writ petition i.e. W.P.(C) 895 of 2021 before the High Court and the said writ petition was allowed vide order dated 01.06.2022 (Annexure – A/7) upholding the regularization of the petitioners made by the Secretary (Law), Government of Manipur dated 02.12.2016. Operative portion of the order passed in the afore-referred writ petition is reproduced herein below:

"In terms of the proposal made by the learned A.G., Manipur, the respondents are directed to finalize the Final Seniority List of Assistant Public Prosecutor (District) -cum- Assistant Government Advocate (District), Manipur in the Office of the Public Prosecutor (District), Manipur within a period of two months from the date of receipt of a copy of the order of this Court. Thereafter, promotion to the post of Addl. Public Prosecutor (District)-cum-Additional Government Advocate (District) in the Office of Public Prosecutor (District), Manipur shall be made within a period of 3 (three) months in accordance with the prevailing Recruitment Rules when the vacancies arose.

It is also made clear that the promotional post to the post of Addl. Public Prosecutor (District)-cum-Additional Government Advocate (District) in the Office of Public Prosecutor (District) shall not be filled up by way of any other method except in terms of the directions passed by this Court."

In pursuance of the order passed in the afore-referred writ petition, vide notification dated 08.06.2022(Annexure – A/8), the Deputy Secretary (Law), Government of Manipur set aside and quashed the seniority list dated 23.11.2021. As per the said notification whereby calling claims and objections, if any, from the concerned on or before 22.06.2022, the petitioners filed their objection against the tentative seniority list wherein the petitioners in W.P.(C) No. 594 of 2022 and W.P.(C) No. 600 of 2022 appeared at Sl. No. 9 & Sl. No. 10 respectively.

[7] The learned senior counsel appearing for the petitioners further submits that without considering the judgment & order dated 01.06.2022 passed in W.P.(C) No. 895 of 2022 and also the objection filed by the petitioners, vide notification dated 22.07.2022 (Annexure – A/10), the Deputy Secretary (Law), Government of Manipur published a final seniority list wherein the petitioners appeared at Sl. No. 10 & Sl. No. 11 well below her colleagues who are junior to both of them, which is impugned in the present writ petition. The impugned notification reads as follows:

"GOVERNMENT OF MANIPUR
SECRETARIAT : LAW & LEGISLATIVE AFFAIRS DEPARTMENT

NOTIFICATION
Imphal, the 22 July, 2022

Subject: Final Seniority List of Asst. Public Prosecutor (District)-cum-Asst. Government Advocate (District), Manipur in the office of Public Prosecutor (District), Manipur.

No.GAP-3/5/2021-SEC-LAW Whereas, the Hon'ble High Court of Manipur has directed to State Government to finalize the final seniority list of Asst. Public Prosecutor (District)-cum-Asst. Government Advocate (District), Manipur in office of the Public Prosecutor (District), Manipur within a period of two months from the date of receipt of copy of the order of Hon'ble High Court in the order dated 01-06-2022 passed in WP(C) No. 2 of 2019 with WP(C) No. 896 of 2018 with MC(WP(C)) No. 137 of 2022 with MC(WP(C)) No. 138 of 2022 with MC(WP(C)) No. 139 of 2022 with MC(WP(C)) No. 89 of 2019 with WP(C) No. 5 of 2020 with MC(WP(C)) No. 132 of 2022 with WP(C) No. 895 of 2021 (Ch. Thoibisana Devi & Anr-vs-State of Manipur);

2 Whereas, the tentative seniority list of Asst. Public Prosecutor (District)-cum-Asst Government Advocate (District), Manipur has been published under this Department's Notification of even number dated 13.09.2021 inviting therein claims or objections from all concerned,

3 Whereas, all the claims and objections in respect of st. no. 01 to 13 received in this regard were examined and considered including obtaining of comment/view along with additional submission by holding person to person meeting with the Whit Petitioners which were held at different timings from 14.07.2022 (09:30 am) to 15.07.2022 (09:30 am);

4 Whereas, the Asst. Public Prosecutor (District)-cum-Asst. Government Advocate (District), Manipur from sl. no. 14 to 18 in the list had not submitted

any claims and objections and that their appointment was on the recommendation of MPSC in the recruitment year of 2018 on merit.

5. And after detailed examination and consideration, it is hereby notified for information of all concerned, the final seniority list of Asst. Public Prosecutor (District)-cum-Asst. Government Advocate (District), Manipur in the Office of Public Prosecutor (District), Manipur as in ANNEXURE appended herewith.

Sd/-
(Henry Alemo Francis)
Deputy Secretary (Law),
Government of Manipur

ANNEXURE
Notification No. GAP-3/5/2021-SEC-LAW
Imphal, 22nd July, 2022

FIAL SENIRITY LIST OF ASST. PUBLIC PROSECUTOR (DISTRICT)-CUM-ASST. GOVERNMENT ADVOCATE (DISTRICT), MANIPUR IN THE OFFICE OF PUBLIC PROSECUTOR (DISTRICT), MANIPUR

Sl. No.	Name	Date of appointment on regular basis	Date of birth	Remarks
1.	Smt. <i>RK</i> Bhubaneshwari Devi	02.12.2016	01.02.1969	Initially engaged on contract basis by selection through open recruitment process
2.	Shri Akijam Bobby Singh	-do-	05.03.1973	-do-
3.	Shri Hangamoi Tonsing	-do-	01.05.1973	-do-
4.	Shri Khangembam Mohen	-do-	10.02.1974	-do-
5.	Shri Leimapokpam Bimol Singh	-do-	01.02.1976	-do-
6.	Miss Khomdram Anupama Devi	-do-	24.12.1977	-do-
7.	Smt. Thounaojam Bandana Devi	-do-	01.03.1978	-do-
8.	Shri Khuman Cheirakpam Basanta Singh	-do-	01.01.1963	-do-
9.	Shri Mutum Ajitkumar Singh	-do-	01.02.1963	-do-
10.	Smt. Chabungbam Thoibisana Devi	-do-	01.03.1967	-do-
11.	Smt. Lamneichong Haokip	-do-	01.03.1971	-do-

12.	<i>Smt. Meitankeishangbam Jamuna Devi</i>	<i>-do-</i>	<i>01.03.1971</i>	<i>-do-</i>
13.	<i>Smt. Rakhi Golmei</i>	<i>-do-</i>	<i>01.03.1977</i>	<i>-do-</i>
14.	<i>Smt. Phuritsabam Chaoba Devi</i>	<i>21.12.2018</i>	<i>01.03.1983</i>	<i>Appointed vide Order No. 7/52/2018-GA/L dated 21.12.2018 on recommendation by MPSC vide their letter No. 7/6/2018-MPSC (DR) dated 15.10.2018</i>
15.	<i>Smt. Kangjam Malemnganbi Chanu</i>	<i>-do-</i>	<i>01.04.1991</i>	<i>-do-</i>
16.	<i>Shri Hrangao Rozhemai</i>	<i>-do-</i>	<i>01.03.1985</i>	<i>-do-</i>
17.	<i>Smt. Mayanglambam Vidhyalaxmi Devi</i>	<i>-do-</i>	<i>30.03.1986</i>	<i>-do-</i>
18.	<i>Shri K.S. Pamreiso</i>	<i>-do-</i>	<i>15.10.1988</i>	<i>-do-</i>

*Sd/-
(Henry Alemo Francis)
Deputy Secretary (Law),
Government of Manipur"*

Being aggrieved by the afore-referred notification, the petitioners filed the present writ petition challenging the same. It is evident from the earlier final seniority list dated 23.11.2022, those persons appearing at Sl. No. 1, 2, 3, 5, 6 and 7 were initially appointed on 26.11.2009. Furthermore, the one appearing at Sl. No. 4 was initially appointed on 17.02.2010. By any standard, the present petitioners ought to be above those persons at Sl. No. 1, 2, 3, 4, 5, 6 & 7. Even if age is the standard to be used, then the petitioners (whose date of birth is 01.03.1967) must be placed well above those persons appearing at Sl. No. 1, 2, 3, 4, 5, 6 and 7.

[8] Furthermore, it has been submitted by the learned counsel for the petitioners that the respondent authority made the impugned notification in violation of principle of equality guaranteed under Article 14 and 16 of the Constitution of India.

The mandate of Article 14 and 16 demands that determination of seniority to be based on some principles, which are justice and fair. The said seniority list prepared by the respondent authority placed the petitioners below the batches of APPs junior to both of them are in and of itself discriminatory and arbitrary.

[9] The learned counsel appearing for the petitioners also submits that since the appointment has been made by following the constitutional scheme of public employment, it is entitled to due consideration while conferring benefits of service condition including seniority. Hence, in the impugned final seniority list dated 22.07.2022, the indication “Initially engaged on contract basis by execution of agreement” against the petitioners is grossly wrong and it should be “Initially engaged on contract basis by selection through open recruitment process” and therefore, the petitioners would be placed at Sl. No. 1 & Sl. No. 3. Therefore, the present writ petition has been filed with a prayer for giving direction to the respondent authority to maintain the order/sequence as shown in the regularization order No. 7/13/2015-GA/L(B) dated 02.12.2016 and set aside the impugned notification dated 22.07.2022.

[10] In respect of W.P.(C) No. 594 of 2022, learned senior counsel appearing for the petitioner has made written submission on behalf of the petitioner.

A. SCOPE AND GROUNDS OF CHALLENGE

The impugned seniority list published vide notification dated 22-07-2022 (**AT ANNEXURE A/7**) is being challenged *inter alia* on the following grounds:

1. Arbitrary placement of the petitioner below her juniors and consequent violation of Articles 14 and 16 of the Constitution of India.

The impugned final seniority list has inexplicably placed the present petitioner—who was appointed as APP-cum-AGA on a contractual basis as far back as 2005—below her peers who entered service only in 2009 on an

identical contractual footing. This inversion of seniority is not merely illogical; it is manifestly arbitrary and fundamentally inconsistent with established principles of fairness in public service. It is crucial to underscore that the services of both the petitioner and her peers were subsequently regularized by the Government vide order dated 02-12-2016 (**AT ANNEXURE A/4**). The regularization order itself speaks unequivocally: the petitioner's name appears at the very top of the list, a placement that unmistakably demonstrates that the Government had consciously recognized the petitioner's longer and uninterrupted tenure of contractual service while determining the relative standing of the APPs-cum-AGAs at the time of regularization. The order and the sequence reflected therein are neither accidental nor cosmetic; they constitute a deliberate administrative determination acknowledging the petitioner's seniority. The respondent authority cannot now attempt to rewrite history by ignoring the regularization order and substituting it with an entirely new and inconsistent basis for seniority. Such an act not only disturbs a settled position but also undermines the binding effect of a government order that has neither been appealed against nor modified by any competent court of law, and has therefore attained finality.

Furthermore, even if one were to assume for the sake of argument that past contractual service is to be disregarded altogether and seniority is to be determined strictly by reference to the regularization order dated 02-12-2016, the petitioner's name still appears at the top of that list. By any lawful metric—whether by reckoning past contractual service or by using the regularization order as the baseline—the petitioner's rightful place is at the top of the seniority list. Significantly, even if age were to be adopted as an additional criterion to resolve any supposed tie in seniority, the petitioner is demonstrably the oldest among her peers and, on that ground as well, is entitled to precedence over the others. The impugned seniority list's departure from all these settled and objective standards—past service, the sequence in the regularization order, and even the criterion of age—renders it patently arbitrary, irrational, and violative of Article 14. It reflects a blatant arbitrary exercise of power and a failure to adhere to the most basic tenets of fairness and equality, and is thus unsustainable in law.

2. Arbitrary, irrational and whimsical distinction of categories and consequent violation of Articles 14 and 16 of the Constitution of India.

The impugned final seniority list impermissibly carves out two artificial categories of employees within the very same cadre and grade on the ostensible ground that their initial appointments were contractual in different forms. Such a distinction is plainly irrational, manifestly arbitrary, and unsustainable in law. Once the Government, by its regularization orders, ratified the entirety of their past contractual service and accorded them the same substantive status, there remained no lawful basis to resurrect the nature of their initial engagement as a ground for differential treatment. The respondent authority cannot now rewrite history or employ shifting yardsticks to deny parity in seniority to officers who stand on an

equal footing in every material respect. Any such attempt amounts to a blatant violation of Articles 14 and 16 and an affront to the rule of law.

3. The complete disregard and non-consideration of the judgment and order dated 01-06-2022 passed by this Hon'ble High Court in WP(C) No. 895 of 2022.

It may be poignant to note that this is second round of litigation with regard to the issue of seniority amongst the APPs-cum-AGAs. In the earlier round of litigation raised in WP(C) No. 895 of 2022, a coordinate bench of this Hon'ble High Court was pleased to set aside and quash the earlier final seniority list. Moreover, the Ld. AG at the relevant time submitted that the Department was willing to undertake another exercise for reconsideration of the final seniority list. Consequently, the said writ petition was allowed by the Hon'ble High Court vide judgment and order dated 01-06-2022 thereby allowing the prayer of the petitioner to maintain the order/sequence reflected in the regularization order dated 02-12-2016 (**AT ANNEXURE A/4**). This judgment and order nor regularization order has been appealed or challenged before any court of law and has attained finality and therefore, deserves to be followed in letter and spirit by the respondent authority. Hence, any departure therefrom amounts to a clear disregard of judicial mandate and strikes at the root of administrative fairness and the rule of law.

B. POSITION OF LAW IN FAVOUR OF THE PETITIONER

Determination of seniority

The settled principles of law laid down by the Hon'ble Supreme Court on the determination of seniority are as follows:

1. In the cases of ***A.K. Subrman and Ors. Vs. Union of India and Ors.***¹, it has been held by the Supreme Court that in the absence of statutory seniority rules, seniority is to be determined on the basis of length of service in the grade as well as in an equivalent grade.
2. In the case of ***Rudra Kumar Sain and Ors. Vs. Union of India and Ors.***², the Supreme Court observed "20. In the service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be 'stop gap or fortuitous or purely ad hoc'. In this view of the matter, the reasoning and basis on which, the appointment of the promotes in the Delhi Higher Judicial Service in the case at hand was held by the High Court to be 'fortuitous/ ad hoc/ stop gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous".

¹ (1975) 1 SCC 319

² AIR 2000 SC 2808

3. In the case of **G.S. Lamba and Ors. VS. Union of India and Ors.**³, the Supreme Court observed that in the absence of any valid principle of seniority, continuous officiation in the cadre, grade service will provide valid principle for seniority.
4. In the case of **Narender Chadha and Ors. Vs. Union of India and Ors.**⁴, the Supreme Court referred to the case of D.R. Nim Vs. Union of India (AIR 1967 SC 1301), wherein it has been observed that when an officer has worked for a long period for nearly 15 to 20 years in a post and had never been rebutted, his continuation in the office cannot be held to be a temporary or stop gap arrangement even though the order of appointment may state so and in such circumstances, entire period of officiation has to be counted for seniority.
5. In the case of **Desoola Rama Rao and Anr. Vs. State of Andhra Pradesh and Ors.**⁵, the Supreme Court observed that in the absence of any seniority rules, length of service is the basis of fixing inter-se-seniority.
6. In the case of **S.N. Dhingra and Ors. Vs. Union of India and Ors.**⁶, the Supreme Court, referring to the Constitution Bench's Judgment in Rudra Kumar Sain and others (supra), observed that continuous length of service should be the basis for inter-se-seniority.
7. In the case of **D.P. Das Vs. Union of India and Ors.**⁷, the Supreme Court, referred to the case of M.B Joshi and others Vs. Satish Kumar Pandey and others, reported in AIR 1993 SC 267, wherein it has been laid down that in the absence of any specific rules, seniority amongst persons holding similar post in the same cadre has to be determined on the basis of length of service and not on any other fortuitous circumstances. In the case of D.P. Das (supra), the Supreme Court observed that, if no rule is prescribed for determination of seniority, the guide line following from the executive instruction may be accepted in order to evolve a just policy, for determination of seniority.

In view of the above principles laid down by the Apex Court, it is clear that in the absence of any service rule, uninterrupted length of service rendered by an appointee in a grade is required to be taken as the criteria for fixing his seniority. The service of the appointees made de hors the service rules cannot be taken into consideration to fix the seniority over the appointees, who are appointed as per the service rules. It is also settled law that the seniority of an incumbent, appointed as per the service rules, is to be counted from the date of his appointment and not according to the date of his confirmation. However, if the initial appointment is not made following the service procedure, but the incumbent is allowed to continue in the post interruptedly till regularization of his service in accordance with the rules, the period of officiating service is required to be counted.

³ (1985) 2 SCC 604

⁴ (1986) 2 SCC 157

⁵ AIR 1988 SC 857

⁶ AIR 2001 SC 1535

⁷ AIR 2011 SC 2947

C. REBUTTAL

The so-called distinction sought to be drawn between officers in the very same cadre merely on the pretext that the petitioner's initial contractual appointment was irregular is not only arbitrary but patently unsustainable in law. This contrived ground collapses under the weight of the contemporaneous press statement issued by the then Law Department itself, published in the newspaper, which categorically affirmed that the appointments to the post of APP were publicly advertised and that no irregularity whatsoever tainted the selection process. When the appointing authority's own public declaration disproves the allegation of irregularity, the respondents cannot now be permitted to invent a justification to deny the petitioner parity in seniority. (**AT ANNEXURE A/3**).

[11] WRITTEN ARGUMENT WITH CITATION ON BEHALF OF THE PETITIONER WP(C) No. 600 of 2022:

1. Prayer in the Writ petition :

The petitioner is praying for quashing the Notification/Final Seniority List of Assistant Public Prosecutor (District)-Cum-Asst. Govt. Advocate(District), Manipur dt. 22-7-2022 at Annexure-A/10 of the Writ petition. (at page 41 of the writ petition).

2. Grounds :

A. Petitioner was appointed earlier than all the private Respondents in the post of APP(District)-Cum- Asst. Govt. Advocate(Dist.) Manipur:

(i) Initial appointment of the petitioner by an order dt. 20-12-2005 at Annexure-A/1 of the petition (at page 19 of the petition).

The Clarification of Law Secretary in the Local Paper Naharolgi Thaodang at Annexure-A/3 (at page 21 & 22 of the writ petition) that recruitment of 3 APPS including the petitioner, were made after advertisements made and published in the various Local papers.

(ii) Initial appointment of the Respondents reflected by the Annexure of the Notification 23-11-2021 at Annexure-A/6 (at page 28-30 of the writ petition).

Sl.No.	Respondent No.	Date of Initial Appointment
1.	2, 3, 4, 6, 8	26-11-2009
2.	5	17-2-2010
3.	7	05-1-2010

B. In the Regularisation order dt. 2-12-2016 at Annexure-A/4 (at page 23 of the writ petition) in respect of the petitioner and all the Private Respondents, the

petitioner is rightly placed at Sl.No. 2 above all the Private Respondents (at Sl.No. 5,6,7,8,9, 10 & 11).

C. The act of the Respondent No.1 is arbitrary and illegal in view of the following facts and grounds :-

(i) **No Reason and Reconsideration of Seniority Position :**

The impugned order is being issued **without any reason** and **reconsideration** against the undertaking made by the Ld. A.G. Manipur reflected in the order dt. 01-06-2022 passed by this Hon'ble Court in W.P.(C)No.2 of 2019, W.P.(C)No.896 of 2018, W.P.(C) No.5 of 2020 and W.P.(C)No.895 of 2021 (at **page 32**, of the petition), wherein the similar previous Final Seniority 23-11-2021 (at page 28 of the petition) was set aside (at **page 34 and 35** of the writ petition).

No reason is being assigned by the Govt. for issuing the Final Seniority list of APP(District)-Cum- Asst. Govt. Advocate(Dist.) Manipur, without any change from the previous Final Seniority list dt. 23-11-2021 (already quashed).

(ii) **Petitioner treated differently:**

Though the petitioner and the Private Respondents were similarly engaged on contract basis and regularized by the same order dt. 2-12-2016 (at page 23 of the petition) the Private Respondents were differently treated to march over the petitioner in the Final Seniority list.

(iii) **Non consideration of the length of service:**

That the Respondent No.1 has failed to consider the length of service of the petitioner which qualifies her to be above all the private Respondents in the seniority list of the APP(District)-Cum- Asst. Govt. Advocate(Dist.) Manipur, in view of the law laid down by the Apex Court in a Catena of cases, **that in the absence of binding rule of seniority, the length of continuous service is valid principle of seniority**. In the present case also, there is no Rule for consideration seniority of contract employees.

CITATIONS:

1. **G.P. Doval - Vs- Chief Secretary, Govt. of U.P.** reported in **(1984) 4 SCC 329** Para 15 is reproduced hereunder :

" 15 Now if there was no binding rule of seniority it is well-settled that length of continuous officiation prescribes a valid principle of seniority. The question is from what date the service is to be reckoned ? It was urged that any appointment of a stop-gap nature or pending the selection by Public Service Commission cannot be taken into account for reckoning seniority. In other words, it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration. **We find it difficult to accept this bald and wide submission. Each case will depend**

upon its facts and circumstances. If a stop-gap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. **At any rate, there is no justification for two persons selected in the same manner being differently treated.** That becomes crystal clear from the place assigned in the seniority list to petitioner No. 1 in relation to respondent No. 7. In fact if once a person appointed in a stop-gap arrangement is confirmed in his post by proper selection, his past service has to be given credit and he has to be assigned seniority accordingly unless a rule to the contrary is made. That has not been done in the case of all the petitioners. The error is apparent in the case of petitioner 1 and respondent No. 7. These errors can be multiplied but we consider it unnecessary to do so. **In fact a fair rule of seniority should ordinarily take into account the past service in the stop-gap arrangement is followed by confirmation.** This view which we are taking is borne out by the decision of this Court in *Baleshwar Dass and Ors. etc. v. State of U.P. and Ors. etc.*, wherein this Court observed that the principle which has received the sanction of this Court's pronouncement is that 'officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts.' It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. Admittedly, that has not been done and the seniority list is drawn up from the date on which the approval/selection was made by the Public Service Commission in respect of each member of the service, which is clearly violative of Art. 16, and any seniority list drawn up on this invalid basis must be quashed.

2. Nirmal Kumar Choudhary & Ors.—Vs- State of Bihar & Ors

1988(Supp) SCC 107 para 4 is reproduced hereunder:

"4. It is a well-settled position in law that seniority would ordinarily depend upon length of service subject, of course, to rules holding the field. That view has been taken by this Court in several cases and it is unnecessary to refer to all of them. In *A. Janardhana v. Union of India & Ors.*, [1983] 2 SCR 936 the situation was somewhat the same as here. The Court found that the method adopted for fixing seniority overlooked the character of appointments and pushed down persons validly appointed below others who had no justification to be given higher place. At page 960 of the Reports, the Court observed:

"It is an equally well recognised canon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or the length of service or the date of

entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the tests of Article 16."

We may also refer to a very recent decision of this Court in *K.S. Vora & ors. v. State of Gujarat & Ors.*, [1987] 4 Judgment Today 179. The High Court recorded a finding that there is no applicable rule in the matter of fixing inter se seniority in a situation of this type. In the absence of rules, the more equitable way of preparing the combined gradation list would be to take the total length of service in the common grade as the basis for determining inter se seniority. We would like to add that in regard to the Supervisors (now called Junior Engineers) serving in the three wings there is no dispute of the grade being the same. While we do not agree with the High Court that confirmation should be the basis and would substitute it by the length of service test, we would uphold the direction that in fixing the combined gradation list the inter se seniority of the incumbents in their respective departments would not be disturbed. Even if this be the test, the gradation list as published by Government has to be modified. We would accordingly confirm the conclusion of the High Court that Annexures 1 1, 11/1, 12, 13, 13/1, 15 and 16 should be quashed and a fresh combined gradation list has to be published. We have altered the test for fixing the seniority inter se generally but we have approved the direction of inter se seniority in their own departments to be respected. The respondent-State and its officers are directed to prepare and publish the fresh combined gradation list keeping the aforesaid directions in view."

3. Sudhir Kumar Atrey –Vs- Union of India & Ors

(2022)1 SCC 352 Para 17 is reproduced hereunder:-

"17. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary."

4. Maneka Gandhi – Vs – Union of India

(1978) 1 SCC 248 Para 7 is reproduced hereunder:

"7 Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned Within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.

P. Royappa v. State of Tamil Nadu & Another (1) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. **In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch.** Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes, at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "right and just and

fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

5. Kumari Shrilekha Vidyarthi & Ors – Vs- State of U.P. & Ors.

(1991)1 SCC 212 para 35 & 36 is reproduced hereunder :

"35 It is now too well-settled that **every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution** and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

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

[12] Mr. Niranjan Sanasam, GA for the State respondents has submitted that the petitioners were engaged as APP-cum-AGA on contract basis on payment of Rs. 150/- per day subject to the execution of Contract Agreement vide order no.

7/45/2003-GA/L dated 20.12.2005 and there is no advertisement and Selection Test/DPC for the engagement of the said APP -cum-AGA. It is pointed out that private respondents were appointed as APP-cum-AGA after issuing proper notification and hence they have been placed above the petitioners in the final seniority list.

[13] Ld. counsel of the State respondent further submitted that the govt. has regularized the contract service of 20 (twenty) APP-cum-AGA vide order No. 7/13/2015-GA/L(B) and No. 7/13/2015-GA/L(C) dated 02.12.2016 by a cabinet decision as a policy decision and not a matter of right. Further, the list in the regularization order was randomly set and not on the basis of merit and there is no such mention of merit in the regularization order.

[14] The Ld. counsel of the respondent also submitted that in WPC No. 895 of 2021 the Hon'ble Court directed to finalize the final seniority list within 2 (two) months and in pursuance of the said order, the govt. had notified the final tentative seniority list on 22.07.2022 vide notification No. GAP-3/5/2021-SEC-LAW. And such was notified after detailed examination and consideration of all the claims and objections received with regard to the tentative seniority list issued vide notification No. GAP-3/5/2021-SEC-LAW dated 08.06.2022.

[15] The Ld. GA has further submitted that the **Hon'ble Supreme Court in Civil Appeal No. 7002 of 2004 (D.P. Das vs Union of India)** has laid down that for the determination of seniority of the officers who were recommended on the same date, age is the only valid and fair basis where the merit wise position of the persons who were directly recruited could not be ascertained. This department had prepared the seniority list accordingly and keeping in view the claims and objections received.

[16] Ms. Ayangleima, Id. counsel of the private respondents has adopted the submission of the State respondents and submits that there is no illegality in the final seniority list prepared by the State Government.

[17] This Court has considered the materials on record, the submissions made at bar and the case laws cited by the parties.

[18] The short issue involved in the present case is the determination of seniority of contract employees appointed in different years, but regularized on the same day when the rule is silent in this regard.

[19] It is the settled principle of law that the seniority of direct recruits in a common examination is based on the merit list of the recruitment examination, unless differently specified by the relevant rules. If contract employees appointed in different years are regularized on the same day, the contract employees appointed in the earlier years will be senior to those appointed later on. This principle shall be followed in absence of any contrary provided under the rules. It may be noted that the recruitment to the post of APPs-cum-AGAs is through direct recruitment and as a corollary, the regularization of contract employees in the cadre of APP-cum-AGA will also be direct recruitment.

[20] It will be relevant to refer to the following case law with regard to seniority in case of direct recruits.

(i) Sudhir Kumar Atrey v. Union of India, (2022) 1 SCC 352

17. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary.

(ii) Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604

47. It is also well settled that in the absence of rules governing seniority an executive order may be issued to fill up the gap. Only in absence of the rule or executive instruction, the court may have to evolve a fair and just principle which could be applied in the facts and circumstances of the case.

[21] From the above decisions, it is clear that in case of appointments in different years, the initial date of appointment will be a good consideration for determining seniority. In absence of any rules and/or execution instructions, it will be appropriate for the courts to evolve a fair mechanism to decide the seniority of persons appointed on different dates, but regularized on the same day. In the case in hand, there is no specific rule for determining seniority of persons appointed on contract on different dates, but regularized on the same day. Besides, there is no executive instructions in this aspect. The action of the State respondents giving preference to contract employees appointed on later dates is arbitrary, unreasonable and not supported by any rules or instructions from the competent authority. The same is in contravention of the direction of this Court in order dated 01.06.2022 passed in WP(C) No. 2 of 2019 and connected matters where similar seniority list of APP-cum-AGA was set aside with a direction to decide afresh.

[22] In the circumstances, the impugned seniority list of APP-cum-AGA dated 22.07.2022 issued by Deputy Secretary (Law), Government of Manipur is set aside. Writ petitions are allowed and Misc cases are closed. Interim order, if any, merges with the final order. Seniority as reflected in the order dated 02.12.2016 of regularization shall be the final seniority list of APP-cum-AGA as the same has been in order of years of initial appointment. In other words, the petitioners herein shall be placed at serial number 1 & 2 of the new seniority list. Other incumbents will be placed in order of merit as per the years of recruitment. No cost.

JUDGE

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