

**IN THE HIGH COURT OF MANIPUR**

**AT IMPHAL**

**WP(C) No. 694 of 2024**

***Shri Thingbaijam Naresh Kumar***, aged about 44, S/o (L) Th. Kulabidhu Singh, resident of Sagolband Nepra Menjor Leikai, P.O. & P.S. Imphal, District: Imphal West, Manipur – 795001.

***... Petitioner***

**-Versus-**

1. The State of Manipur through the Commissioner (Education/S), Government of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Director of Education (Schools), Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.

***... Official respondents***

3. Shri Victor Konsam, aged about 39 years, Assistant Engineer, Education Engineering Wing, Education-S Department, Government of Manipur, resident of Khurai Konsam Leikai, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur – 795010.
4. Shri Leishangthem Mahindra Kumar Singh, OBC(M), aged about 40 years, C/o the Director of Education (Schools), Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.
5. Shri MK Thekho John Pao, aged about 54 years, C/o the Director of Education (Schools), Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.

6. Smt. Huidrom Victoria Devi (Gen.), aged about 37 years, C/o the Director of Education (Schools), Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.
7. Smt. Samira Begum (Gen.), aged about 35 years, C/o the Director of Education (Schools), Government of Manipur, Lamphelpat, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.

**... Private Respondents**

**B E F O R E**

**HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

|                          |    |                                                                                                                                                                                                                                                    |
|--------------------------|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the petitioner       | :: | Mr. Kh. Tarunkumar, Sr. Advocate<br>asstd. by Ms. Julekha Khan, Advocate.                                                                                                                                                                          |
| For the respondents      | :: | Mr. S. Nepolean, GA;<br>Mr. H.S. Paonam, Sr. Advocate asstd.<br>by Mr. A. Sushruta, Advocate;<br>Mr. N. Ibotombi, Sr. Advocate asstd.<br>by Mr. Th. Ningtamba, Advocate &<br>Mr. S. Rupachandra, Sr. Advocate<br>asstd. by Mr. Royal Ray, Advocate |
| Date of hearing          | :: | <b>26-08-2025</b>                                                                                                                                                                                                                                  |
| Date of judgment & order | :: | <b>01-09-2025</b>                                                                                                                                                                                                                                  |

**JUDGMENT & ORDER**

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. Julekha Khan, learned counsel appearing for the petitioner; Mr. S. Nepolean, learned GA appearing for the respondents No. 1 and 2, Mr. H.S. Paonam, learned senior counsel assisted by Mr. A. Sushruta, learned counsel appearing for the respondents No. 3, 4 and 5, Mr. N. Ibotombi, learned senior counsel assisted by Mr. Th. Ningtamba, learned counsel appearing for the respondent No. 6 and Mr. S.

[3]

Rupachandra, learned senior counsel assisted by Mr. Royal Ray, learned counsel appearing for the respondent No. 7 .

In this petition, the dispute between the parties is about the fixation of seniority position of the petitioner and respondents No. 3 to 7, who are serving as Assistant Engineers in the Engineering Wing of the Department of Education (Schools). Having been aggrieved by the fixation of his seniority position in the Final Seniority List of the Assistant Engineers of Education Engineering Wing, Department of Education (S), the petitioner filed the present writ petition assailing the Final Seniority List dated 11-09-2024 issued by the Secretariat: Education (S), Department, Government of Manipur.

[2] The facts of the present case are simple and undisputed. For the purpose of engaging against 17 (seventeen) different categories of posts, including 1 (one) post of Executive Engineer and 10 (ten) posts of Assistant Engineers, on contract basis, the State Project Director, SSA State Mission Authority, Manipur, issued a Notification dated 21-02-2011 inviting applications from interested and eligible candidates. In response to the said Notification, the respondents No. 3 to 7 submitted their application forms and the petitioner also submitted his application form applying for both the said two different posts of Executive Engineer and Assistant Engineers.

[3] Upon completion of the selection process, the Principal Secretary (Education-S), Government of Manipur, issued a Notification dated 17-04-2012 notifying the list of selected candidates and also the candidates in the Waiting List for engagement on contract basis. As per the said Notification, the petitioner was selected for the post of Executive Engineer and the mark he obtained is shown as 53.847, however, he was not selected for the post of Assistant Engineer and his name was included in the Waiting List. All the private respondents No. 3 to 7 were selected for the posts of Assistant Engineers. As per the said Notification, the merit position and the marks scored by the respondents No. 3 to 7 and the petitioner are as under:-

**“ASSISTANT ENGINEER (CIVIL) – LIST OF SELECTED CANDIDATES**

**UN-RESERVED**

| SL. NO. | NAME OF THE CANDIDATE            | ROLL NO. | CAT.    | SCORE  |
|---------|----------------------------------|----------|---------|--------|
| 1.      | KONSAM VICTOR SINGH              | 9/IE     | GEN     | 62.871 |
| 2.      | KHWAIRAKPAM SACHIDANANDA         | 3/BISH   | SC      | 60.122 |
| 3.      | HELIYA KEISHAM                   | 10/IE    | GEN     | 57.943 |
| 4.      | LEISHANGTHEM MAHINDRAKUMAR SINGH | 926/TBL  | OBC (M) | 57.698 |
| 5.      | NARENGBAM LIVINGSTONE SINGH      | 34/SPO   | OBC(M)  | 56.994 |

**OBC MEITEI**

| SL. NO. | NAME OF THE CANDIDATE   | ROLL NO. | CAT.   | SCORE  |
|---------|-------------------------|----------|--------|--------|
| 1.      | MOIRANGTHEM ROMEN SINGH | 50/SPO   | OBC(M) | 55.977 |

**SCHEDULED TRIBE**

| SL. NO. | NAME OF THE CANDIDATE | ROLL NO. | CAT. | SCORE  |
|---------|-----------------------|----------|------|--------|
| 1.      | MEIRINGMEI MAKUTHUI   | 27/SPO   | ST   | 51.767 |
| 2.      | M.K. THEKHO JOHN PAO  | 1/SPT    | ST   | 49.901 |
| 3.      | VICTOR KAMEI          | 63/SPO   | ST   | 47.621 |

**ASSISTANT ENGINEER (CIVIL) – WAITING LIST****UN-RESERVED**

| W/L NO. | NAME OF THE CANDIDATE | ROLL NO. | CAT. | SCORE  |
|---------|-----------------------|----------|------|--------|
| 1.      | HUIDROM VICTORIA DEVI | 60/SPO   | GEN  | 56.588 |
| 2.      | SAMIRA BEGUM          | 12/SPO   | GEN  | 55.049 |

**OBC-MEITEI**

| W/L NO. | NAME OF THE CANDIDATE   | ROLL NO. | CAT     | SCORE  |
|---------|-------------------------|----------|---------|--------|
| 1.      | THIGBAIJAM NARESH KUMAR | 61/SPO   | OBC (M) | 53.509 |

**SCHEDULED TRIBE**

| W/L NO. | NAME OF THE CANDIDATE      | ROLL NO. | CAT | SCORE  |
|---------|----------------------------|----------|-----|--------|
| 1.      | KAIGOULAL KIPGEN           | 200/SPT  | ST  | 47.382 |
| 2.      | DANGMEI GAIGAMLONG R. NAGA | 30/SPO   | ST  | 43.929 |

[4] Consequent upon their selection, the petitioner was appointed as Executive Engineer while the respondents No. 3 to 7 were appointed as Assistant Engineers on contract basis and the period of their contract service was extended from time to time. After about four years from the date of their initial appointment and while they were serving on contract basis, the State Government created substantive posts in the rank of Executive Engineer and Assistant Engineers and against the newly created posts, the services of the petitioner and nine other incumbents including the respondents No. 3 to 7 were regularised as Assistant Engineers by issuing an order dated 16-12-2016. At para. 5 of the said order, it is mentioned that the seniority of the employees whose services have been regularised shall be determined later on. It is on record that

[6]

no one including the present petitioner and the respondents No. 3 to 7 challenged either their initial appointment on contract basis or the regularisation of their service as Assistant Engineers under the aforesaid order dated 16-12-2016 issued by the Commissioner (Education-S), Government of Manipur and they all accepted such appointments without any objection or protest.

[5] After about eight years from the date of their regularisation as AE, the Secretariat: Education Department issued a Notification dated 29-07-2024 notifying the Tentative Inter-se Seniority List of Assistant Engineers of Education Engineering Wing under Education-S Dept., Government of Manipur inviting claims and objections. The Inter-se Seniority position of the 10 (ten) Assistant Engineers were fixed on the basis of the marks obtained by them at the time of their selection for appointment as Assistant Engineers on contract basis. In the said Tentative Seniority List, the name of the petitioner is placed at Sl. No. 5, the name of the respondent No. 3 at Sl. No. 1, the name of the respondent No. 4 at Sl. No. 2, the name of the respondent No. 5 at Sl. No. 7, the name of the respondent No. 6 at Sl. No. 3 and the name of the respondent No. 7 at Sl. No. 4.

[6] After considering the claims and objections submitted in connection with the said Tentative Seniority List, the Commissioner, Education (S), Government of Manipur, issued a Notification dated

11-09-2024 notifying the Final Seniority List of Assistant Engineers of the Education Engineering Wing, Department of Education (S), Government of Manipur. In the said Final Seniority List, the name of the petitioner is placed at Sl. No. 6, the respondent No. 3 at Sl. No. 1, the respondent No. 4 at Sl. No. 2, the respondent No. 5 at Sl. No. 3, the respondent No. 6 at Sl. No. 4 and the respondent No. 7 at Sl. No. 5. Having been aggrieved, the petitioner challenged the said Final Seniority List by filing the present writ petition.

[7] Mr. Kh. Tarunkumar, learned senior counsel appearing for the petitioner submitted that the petitioner was initially selected and appointed as Executive Engineer on contract basis and he rendered service as Executive Engineer on contract basis for a period of about four years. It has also been submitted that at the time of issuing the regularisation order dated 16-12-2016 regularizing the services of the petitioner as well as the respondents No. 3 to 7 as Assistant Engineers, the name of the petitioner was placed at Sl. No. 1 in the said order, therefore, while fixing the inter-se seniority of the petitioner and the respondents No. 3 to 7, seniority position of the petitioner should be placed above the respondents No. 3 to 7. The senior counsel further submitted that as there was no selection process or comparative merit of the nine Assistant Engineers, including the petitioner and the respondents No. 3 to 7 at the time of their regularisation as Assistant

Engineers, the inter-se seniority of the said nine Assistant Engineers whose services were regularized by the said order dated 16-12-2016 should be based on their personal age.

Alternatively, it has also been submitted by the learned senior counsel that as the petitioner was initially appointed to the higher post of Executive Engineer on contract basis and rendered service as Executive Engineer for about four years before his regularisation as AE and as the petitioner was placed at Sl. No. 1 in the regularisation order of the petitioner and the respondents No. 3 to 7, the petitioner is entitled to be placed above the private respondents No 3 to 7 at the time of fixation of their Final Inter-se Seniority.

[8] Mr. Kh. Tarunkumar, learned senior counsel further submitted that the methodology or criteria adopted by the Selection Committee at the time of consideration for selection of the candidates and for preparation of their Merit List or rather for awarding marks was never notified or made known to the candidates and as such, fixation of the inter-se seniority of the petitioner and the respondents No. 3 to 7 on the basis of the marks obtained by them at the time of selection process for appointment as AE on contract basis is arbitrary and unreasonable and should not be permitted.

[9] It has also been submitted by Mr. Kh. Tarunkumar, learned senior counsel that placing of the respondent No. 5 at Sl. No. 3 in the

Final Seniority List is not at all permissible in law as he secured only 49.901 marks as reflected in the Tentative Seniority List dated 29-07-2024 and that even if the petitioner is in the Waiting List, he secured more marks than the respondent No. 5 and therefore, his name must be placed above the respondent No. 5 if the inter-se seniority is fixed on the basis of the marks obtained by them.

In support of his contentions, the learned senior counsel cited the following case laws:-

**1. (2024) 2 SCC 1 “Tej Prakash Pathak & ors. Vs. Rajasthan High Court & ors.”** wherein it has been held as under:-

*“35. The discernible ratio in K. Manjusree is that the criterion for selection is not to be changed after completion of the selection process, though in absence of rules to the contrary the Selection Committee may fix minimum marks either for written examination or for interview for the purposes of selection. But if such minimum marks are fixed, it must be done before commencement of selection process. This view has been followed by another three-Judge Bench of this Court in Ramesh Kumar v. High Court of Delhi wherein the law on the issue has been summarised thus: (SCC p. 109. para 15)*

*“15. ... in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce.”*

*“51. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise*

*its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation.”*

*"52. Thus, in our view, the appointing authority/recruiting authority/ competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/ examiner/interviewer is taken by surprise.”*

*"53. The decision in K. Manjusree does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.”*

**2. 2024 SCC OnLine SC 2316 “Salam Samarjeet Singh Vs. High Court of Manipur at Imphal & anr.”** wherein it has been held as under:-

*“31. In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview. Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules. The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended Rules is clearly violative of the substantive legitimate expectation of the petitioners. It also*

***fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India.”***

[10] Rebutting the contention made on behalf of the petitioner, Mr. S. Nepolean, learned GA submitted that at para. 7 of the Notice dated 21-02-2011 advertising one post of Executive Engineer and 10 posts of Assistant Engineers for appointment on contract basis, it was clearly notified that the State Project Officer, Sarva Shiksha Abhiyan State Mission Authority, Manipur, shall have authority to prescribe minimum percentage of marks in relevant qualifying exam and based on such percentage, the shortlisted candidates only may be called for assessment in Selection Board Meeting. The learned GA further submitted that the procedure for selection and system for giving marks to each and every candidates was determined by the competent authority as notified above and that uniform marking system was applied to all the candidates. As none of the candidates, including the present petitioner, challenged or questioned the selection process or the initial appointment of the respondents No. 3 to 7, the petitioner has no right to contend that the selection process or the system of giving marks is not permissible in law and that such contention made on behalf of the petitioner be rejected outright.

[11] Mr. S. Nepolean, learned GA also submitted that the authorities have determined and fixed the inter-se seniority of the nine Assistant Engineers, including the petitioner and the respondents No. 3

to 7 and whose services were regularised by a common order dated 16-12-2016, on the basis of the marks obtained by them at the time of their initial selection for appointment as Assistant Engineers on contract basis and the same is permissible in law since it was only the comparative merit of the disputing parties. The learned GA further submitted that the petitioner was regularised as Assistant Engineer due to the fact that the post held by him as Executive Engineer on contract basis was a promotional post of Assistant Engineer and that the petitioner instead of continuing on contractual basis as Executive Engineer choose to be regularised as Assistant Engineer and as such, the service rendered by him as Executive Engineer on contract basis cannot be taken into account for the purpose of fixing seniority in the substantive post of Assistant Engineer.

In support of his contention, the learned GA cited the following case laws:-

1. **(1994) 6 SCC 301 “Chairman, Puri Gramya Bank & anr. Vs. Ananda Chandra Das & ors.”** wherein it has been held as under:-

*“2. This appeal arises from the judgment of the High Court of Orissa in OJC No. 1007 of 1988, dated 4-3-1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the*

*Selection Board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board had prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."*

**2. (2007) 1 SCC 405 "Suresh Chandra Jha Vs. State of Bihar & ors."** wherein it has been held as under:-

**"3. Background facts in a nutshell are as follows:**

*In response to the advertisement for appointment to the post of Assistants in Dr. Joggnath Mishra Institute for Technology (a private institution hereinafter referred to as "the Institute"), the appellant and several others applied for the said post. After selection at a test conducted, five persons were appointed and the appellant was one of them. The appellant was appointed vide order dated 18-7-1981 and was given six weeks' time from the date of issue of the letter to report for duty to the office of the General Secretary, Mithila Vikas Sansthan, Laheriasarai, Darbhanga, Director of the Institute at Darbhanga. In case of Respondent 8, P.K. Choudhary, the appointment letter was dated 22-7-1981 and he joined on the same day. The appellant who claims to have received the appointment letter on 23-7-1981, in fact, joined on 24-7-1981. At this juncture, it is to be noted that though in the appeal, challenge was made to the appointment of Respondent 7, the same was not pressed. On the basis of Section 5(2) of the Act and in purported exercise of powers under Section 5(3) of the Act, Respondent 8 was retained in service while the appellant was not retained. The appellant questioned correctness of the procedure adopted. When there was no positive response, the writ petition was filed before the Patna High Court which was allowed by the learned Single Judge. It was noted by the learned Single Judge*

*that the order dated 31-1-1991 issued by the State Government absorbing in service of some of the respondents was contrary to law. It was noted that the procedure of determining as to who had joined the college earlier was wrong. It was pointed out that admittedly selection was on 18-7-1981 and six weeks' time was granted for joining. Merely because of fortuitous circumstances, Respondent 8 joined earlier that cannot be a ground to make him senior to the appellant, though in the merit list prepared the appellant was ranked 20 while Respondent 8 was ranked 43. The learned Single Judge accepted the stand. In the appeal filed by Respondent 8, different view was taken by the Division Bench. It was held that the seniority is to be reckoned on the basis of the date of joining. According to the High Court the logic of last come first go was applicable and, therefore, the appellant who has joined later was to be treated as junior to Respondent 8."*

*"4. Learned counsel for the appellant submitted that the view taken by the Division Bench is clearly contrary to law. If there are no rules governing the field, it is the placement in the merit list which is determinative and not the date of joining. It is accepted that no rules had been framed and, therefore, the merit as appearing in the rank list has to be taken."*

*"5. In response, learned counsel for the respondent submitted that right from 1981, Respondent 8 has worked and he having joined earlier has to be treated as senior to the appellant."*

*"6. There is no dispute that the appellant was ranked higher to Respondent 8. There is also no dispute that in the appointment letter the appellant was given six weeks' time to join. Merely because Respondent 8 joined earlier that did not in any way affect the merit placement."*

*"7. This Court in Chairman, Puri Gramya Bank v. Ananda Chandra Das held as follows: (SCC p. 301, para 2)*

*"2. This appeal arises from the judgment of the High Court of Orissa in OJC No. 1007 of 1988, dated 4-3-1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On comparative evaluation of the respective merits of the candidates for*

*direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."*

*"8. Since there was no rule in operation, obviously the ranking in the merit list was to decide the respective seniority. The ratio in Chairman, Puri Gramya Bank case has full application to the facts of the case. The appellant's claim that he was to be treated as senior to Respondent 8 was rightly accepted by the learned Single Judge. Unfortunately, the Division Bench did not address itself to the specific question and has placed undue stress on Respondent 8 having joined earlier."*

[12] Mr. H.S. Paonam, learned senior counsel appearing for the respondents No. 3 to 5 submitted that as against nine advertised posts of Assistant Engineers (Civil), nine candidates have been recommended for appointment against the said nine advertised posts under different category as per the reservation rules. Out of the nine selected candidates, five candidates were recommended under the Un-reserved category reflecting their respective score for determining merit, one candidate in OBC(M) category and three candidates in Scheduled Tribe category and that these nine candidates could be considered as the candidates recommended for appointment in order of merit. It has also been submitted that two candidates have been kept in the Waiting

List under the Un-reserved category and one candidate under the OBC(M) category and two candidates under the Scheduled Tribe category Waiting List. It has been submitted that the two recommended candidates at Sl. Nos. 2 and 3 under the Un-reserved category did not joined services and the recommended candidates at Sl. No. 5 under the same category although joined service initially subsequently left as he have been appointed in another Department and thus, the candidates from the Waiting List under the Un-reserved category were given appointment against the available vacant posts.

**[13]** The learned senior counsel submitted that the aforesaid two candidates who have been appointed from the Waiting List are the respondents No. 6 and 7 in the present writ petition and that as the petitioner was never appointed as Assistant Engineer but opted for joining as Executive Engineer, the respondents No. 3, 4 and 5 who have been appointed earlier to the respondents No. 6 & 7 and the petitioner, are placed above the said petitioner and the respondents No. 6 and 7 in the Final Seniority List. The learned senior counsel further submitted that the writ petitioner having been never appointed to the post of Assistant Engineer in terms of the advertisement, his regularisation to the post of Assistant Engineer itself was an illegal regularisation and his claim for placing his name higher in the seniority list by virtue of his having been

appointed to the post of Executive Engineer, which is altogether a different cadre, is not supported by any legal provision.

[14] Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 6 submitted that in the order dated 16-12-2016 issued by the Government, nothing is mentioned therein that the regularisation of the contract services of the petitioner and respondents No. 3 to 7 was in order of merit. According to the learned senior counsel, the said regularisation was not on the basis of any merit and that at para. 5 of the said regularisation order dated 16-12-2016, it is clearly provided that seniority of the employees whose services have been regularized shall be determined later on. According to the learned senior counsel, the claim made by the petitioner that he should be placed above the respondents No. 3 to 7 in the Final Seniority List is without any substance or merit and the same is liable to be rejected.

[15] It has also been submitted by the learned senior counsel that as the petitioner has never raised any objection or challenged the proceeding of the Selection Committee for selection of candidates for appointment as Assistant Engineers on contract basis pursuant to the Advertisement dated 21-02-2011, the petitioner has no right or locus to question or to submit that preparation of the merit list or awarding of marks by the Selection Committee is bad in law and that the inter-se

seniority of the selected candidates cannot be determined on the basis of the merit list prepared by the Selection Committee.

Mr. S. Rupachandra, learned senior counsel appearing for the respondent No. 7 endorsed the submission made by Mr. S. Nepolean, learned GA and the submission made by Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 6.

[16] I have heard at length the rival submission advanced by the learned counsel appearing for the parties and also gone through the materials available on record. The undisputed facts in the present case are as under:-

- (i) Pursuant to a Notice dated 21-02-2011 advertising various posts including one post of Executive Engineer and ten posts of Assistant Engineers for appointment on contract basis, the petitioner and the private respondents applied for the said posts. In fact, the petitioner applied for both the posts of Executive Engineer and Assistant Engineers and the petitioner was selected against the post of Executive Engineer and he was appointed as Executive Engineer on contract basis. However, the petitioner was not selected for the post of Assistant Engineer and his name was kept in the Waiting List.

All the respondents No. 3 to 7 were selected against the posts of Assistant Engineers and the relative merits of the petitioner and the respondents No. 3 to 7 based on the marks secured by them are as under:-

| Sl. No. | Name                             | Marks obtained | Remark     |
|---------|----------------------------------|----------------|------------|
| 1.      | Konsam Victor Singh              | 62.87          | R3         |
| 2.      | Leishangthem Mahindrakumar Singh | 57.69          | R4         |
| 3.      | Huidrom Victoria Devi            | 56.58          | R6         |
| 4.      | Samira Begum                     | 55.04          | R7         |
| 5.      | Thingbaijam Naresh Kumar         | 53.50          | Petitioner |
| 6.      | M.K. Thekho John Pao             | 49.90          | R5         |

- (ii) While the petitioner was serving as Executive Engineer on contract basis and the respondents No. 3 to 7 were serving as Assistant Engineers on contract basis, their services were regularized by the Government against the newly created posts of Assistant Engineers with immediate effect by issuing an order dated 16-12-2016. In the said order, it was provided that the seniority of the employees shall be determined later on.
- (iii) No one including the petitioner and the respondents No. 3 to 7 raised any objection or questioned their initial appointment on contract basis or challenged their regularisation against the posts of Assistant Engineer and they accepted such initial

appointment on contract basis and their regularisation as Assistant Engineers.

- (iv) The stand taken by the State Government is that the inter-se seniority of the petitioner and the respondents No. 3 to 7 have been fixed or determined on the basis of the marks obtained by them in the selection process for their appointment as Assistant Engineers on contract basis.

[17] Taking into consideration the above undisputed facts and circumstances of the present case, this court considered the rival submissions advanced by the learned counsel appearing for the parties. The contention made on behalf of the petitioner that as he was initially appointed as Executive Engineer on contract basis and as his name appeared at Sl. No. 1 in the regularisation order, his name should be placed above the respondents No. 3 to 7 in the Final Seniority List is not supported by any principle of law and as such, this court is not inclined to be persuaded by such submissions. The submission made on behalf of the petitioner that as the regularisation of the services of the petitioner and the respondents No. 3 to 7 was not based on any inter-se merit, the fixation of their inter-se seniority should be on the basis of their personal age cannot also be accepted by this court for the simple reason that the authorities maintained a Merit List of the petitioner and the respondents No. 3 to 7 which was prepared at the time of their initial appointment.

In the absence of any challenge being made by the petitioner about the validity and legality of the proceedings of the Selection Committee for selection and recommendation of the candidates for appointment as Assistant Engineers on contract basis pursuant to the Advertisement dated 21-02-2011, this court is not inclined to entertain and accept the contention made on behalf of the petitioner that the fixation of the inter-se seniority of the petitioner and the respondents No. 3 to 7 cannot be fixed or determined on the basis of the marks obtained by them as the methodology or criteria for preparing the merit list was never made known to them or notified by the authorities.

**[18]** The contention made on behalf of the petitioner that the placement of the respondent No. 5 above the petitioner and the respondents No. 6 and 7 in the Final Seniority List, even though he obtained less mark than the petitioner and the respondents No. 6 and 7, is arbitrary and impermissible in law has some force and this court is inclined to accept the same. If the stand taken by the Government that the inter-se seniority of the petitioner and the respondents No. 3 to 7 were based on the marks obtained by them is accepted, the placement of the respondent No. 5 above the petitioner and the respondents No. 6 and 7, who got more marks than the respondent No. 5, is not acceptable and impermissible in law.

[19] This court cannot also persuade itself to agree with the submission made on behalf of the respondent No. 5 that as the respondent No. 5 was appointed earlier than the respondents No. 6 and 7 by virtue of the reservation policy and as the petitioner was never appointed as Assistant Engineer, the respondent No. 5 is entitled to be placed above the petitioner and respondents No. 6 and 7 in the Final Seniority List. It is to be pointed out that the fixation of Inter-se Seniority List of incumbents who were regularized on the same day by the same order has to be fixed on the basis of their inter-se merit and not on the basis of the date of their joining services. It is also a settled law that while fixing the inter-se seniority of incumbents who were appointed or regularized on the same date, the authorities cannot adopt two yardstick at the same time, such as the date of joining service and inter-se merit of the incumbents, while fixing their inter-se seniority. In this regard, it may be relevant and gainful to refer to the judgment rendered by the Hon'ble Apex Court in the case of **“Manoj Parihar & ors. Vs. State of Jammu & Kashmir & ors.”** reported in **(2022) 14 SCC 72** wherein the Hon'ble Apex Court after referring to a number of its earlier judgment held at para. 29 of the judgment as under:-

*“29. Thus, the principle of law discernible from all the aforesaid decisions of this Court is that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter se seniority among those recruited. To put it in other words, the roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be*

*appointed on the same date, irrespective of when they joined their posts. The position of law as discussed above could be said to be prevailing even while the High Court of Jammu & Kashmir decided by a Full Court Resolution to determine the seniority on the basis of roster points.”*

[20] In view of the undisputed facts and circumstances of the present case and for the findings and reasons given hereinabove, this court is of the considered view that it will meet the ends of justice to issue the following directions:-

- (i) The impugned Final Seniority List dated 11-09-2024 of the Assistant Engineers of Education Engineering Wing in the Education (S), Department, Government of Manipur, is hereby quashed and set aside so far as it concerns the placement of the respondent No. 5 at Sl. No. 3 of the said Seniority List and above the names of the respondents No. 6, 7 and the petitioner;
- (ii) The respondent No. 1 is hereby directed to rectify the said impugned Seniority List by placing the name of the respondent No. 5 below the name of the respondents No. 3, 4, 6, 7 and the petitioner and to re-publish a fresh Final Seniority List;
- (iii) The whole process for notification of a fresh Final Seniority List of Assistant Engineers as indicated above should be completed by the respondent No. 1 as early as possible and not later than one month from today.

[24]

With the aforesaid directions, the present writ petition is disposed of.

**JUDGE**

**FR / NFR**

*Devananda*