WAIKHOM TONEN MEITEI
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IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.A. No. 6 of 2020

(*Ref:-* W.P. (C) No. 16 of 2020)

Shri Th. Pika Singh, aged about 50 years, S/o Th. Tombi Singh, R/o Khagempalli Panthak, P.O. & P.S. Imphal, Imphal West, Manipur – 795001.

... Appellant/ Respondent No. 2

-Versus-

1. L. Paulungmuan, aged about 49 years old, S/o Late L. Chinthang, R/o Tedim Road, near UBI Churachandpur, P.O. & P.S. Churachandpur, District – Churachandpur, Manipur – 795128.

.... Private Respondent / Writ Petitioner

2. The State of Manipur represented by the Secretary (Public Health Engineering), Government of Manipur, Imphal, Manipur – 795001.

... Official Respondent

-AND-

IN THE MATTER OF:

Ref:- W.P. (C) No. 16 of 2020.

L. Paulungmuan, aged about 49 years old, S/o Late L. Chinthang, R/o Tedim Road, near UBI Churachandpur, P.O. & P.S. Churachandpur, District – Churachandpur, Manipur – 795128.

... Petitioner

-Versus-

1. State of Manipur represented by the Secretary (Public Health Engineering), Government of Manipur, Imphal, Manipur – 795001.

2. Th. Pika Singh, aged about 49 years, S/o Th. Tombi Singh, R/o Khagempalli Panthak, Imphal, Manipur – 795001.

... Respondents

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Appellant/ Respondent	::	Shri N. Jotendro, Sr. Advocate asstd. by M.C. Linthoingambee, Advocate
For the Respondent/ Petitioner	::	Shri Lenin Hijam, Addl. A.G.; Shri Y. Nirmolchand, Sr. Advocate asstd. by Shri U. Augusta, Advocate.
Date of Hearing & Order	::	**19-02-2020**

O R D E R

Kh. Nobin Singh, J

[1] Heard Shri N. Jotendro, learned Senior Advocate assisted by Ms. M.C. Linthoingambee, learned Advocate appearing for the appellant; Shri Lenin Hijam, learned Addl. Advocate General for the respondent No.2 and Shri Y. Nirmolchand, learned Senior Advocate assisted by Shri U. Augusta, learned Advocate appearing for the respondent No1.

[2] The instant writ appeal is directed against the interim order dated 20-01-2020 passed by the learned Single Judge of this Court by which the Government order dated 04-01-2020 allowing the appellant/ private respondent to hold the post of Executive Engineer, Water Supply Maintenance Division No.1, PHED, Manipur (hereinafter referred to as the "**the PHED**") on in-charge basis, has been directed to remain suspended.

[3] The respondent/ writ petitioner was appointed on promotion to the post of Assistant Engineer, PHED, Government of Manipur vide order dated 23-02-2018 and his name is reflected at Sl. No.40 of the

combined seniority list of the Assistant Engineers/ Assistant Surveyor of Works/Engineer Assistants in PHED, Manipur published vide Notification dated 18-11-2019.

[4] On 02-01-2020, the Joint Secretary (PHED), Government of Manipur issued an order appointing the appellant/ private respondent on promotion to the post of Assistant Engineer. From this order dated 02-01-2020, it is clearly seen that the appellant/ private respondent is the junior most Assistant Engineer in the PHED. Immediately after the appellant/ private respondent being promoted to the post of Assistant Engineer, he was allowed to hold the post of Executive Engineer, PHED on in-charge basis vide order dated 04-01-2020 superseding all his seniors including the respondent/ writ petitioner.

[5] Being aggrieved by the said order dated 04-01-2020, the respondent/writ petitioner challenged it by way of WP(C) No.16 of 2020 on the inter-alia grounds that the order dated 04-01-2020 issued by the Joint Secretary, PHED, Government of Manipur allowing the appellant/ private respondent to hold the post of Executive Engineer on in-charge basis, is illegal and not tenable in the eyes of law; that the said order dated 04-01-2020 was issued in violation of the seniority list as the appellant/ private respondent is the junior most Assistant Engineer in the cadre; that the appointment of the appellant/private respondent as the in-charge Executive Engineer, completely ignoring the seniority list, will cause heart burning amongst the Assistant Engineers senior to him and that the

action of the State respondent in issuing the said order dated 04-01-2020 is malafide, unreasonable and illegal.

[6] The appellant/ private respondent being a caveator, filed an affidavit-in-opposition in the writ petition stating that since the respondent/ writ petitioner was posted at Churachandpur, there could be no any grievance by him. The appellant/ private respondent was given the in-charge of the Executive Engineer because he had been in the Maintenance Division Nos.1 and 2 from 1992 to 2016. The appellant/ private respondent was given the in-charge considering his vast knowledge and efficient service. Since the respondent/ writ petitioner is presently posted at Churachandpur, there is no possibility for him to look after the dual charge at the Water Supply Maintenance Division No.1, Imphal. The appointment of the appellant/ private respondent as the in-charge Executive Engineer is neither illegal nor irregular because it has been issued by the competent authority as temporary arrangement keeping in mind the administrative convenience. Since the appellant/ private respondent has already been promoted to the post of Assistant Engineer, his name would be reflected in the seniority list to be published by the competent authority.

[7] The short issue that arises for consideration by this Court in the instant writ petition, is as to whether the appointment of the appellant/ private respondent as the Executive Engineer on in-charge basis without considering the cases of the Assistant Engineers who are senior to him,

can be said to be legally valid. In other words, the issue is whether an officer can be appointed to the next higher post on in-charge basis completely ignoring the seniority list. It may be noted that such an issue has already been decided by this Court in many cases. The first case is the one decided on 15-04-2015 in **Shri Maimo Lukhoi Singh Vs. State of Manipur & ors., WP(C) No.311 of 2015** wherein both the petitioner and the private respondent were working as Assistant Engineers in the Minor Irrigation Department, Government of Manipur and the petitioner was indubitably senior to the private respondent. However, the Under Secretary (MI), Government of Manipur issued an order dated 24-03-2015 transferring/ posting the private respondent as in-charge Executive Engineer which came to be challenged by the petitioner. This Court allowed the writ petition and quashed the order dated 24-03-2015. Paragraph 5 to 9 read as under:

> *"[5] It is submitted by the learned counsel appearing for the petitioner that the impugned order has been issued arbitrarily so as to give undue favour to the respondent No. 3 by allowing him to hold the post of Executive Engineer ignoring the senior namely, the petitioner. The petitioner being senior to the respondent No. 3 ought to have been given an opportunity to work as i/c EE/MID-I and denial of such opportunity would cause heart-burn and frustration not only to the petitioner but to other Assistant Engineer also who is senior to the respondent No. 3. It is further submitted that the impugned order has been issued in violation of the judgment and order dated 28-01-2008 passed by the Hon'ble Gauhati High Court, Imphal Bench in writ petitions being* ***W.P. (C) No. 265 of 2007 and W.P. (C) No. 666 of 2007, Potsangabm Super Singh & ors Vs. State of Manipur & ors.*** *To substantiate his submission, the learned counsel appearing for*

the petitioner has relied upon another judgment and order dated 18-11-2009 passed by the Hon'ble Gauhati High Court, Imphal Bench in ***W.P. (C) No. 358 of 2009, Laitonjam Muhindro Singh & ors. Vs. State of Manipur & ors****.*

On the other hand, the learned counsel appearing for the respondent No. 3 has submitted that though the respondent No. 3 is junior to the petitioner, there is nothing wrong in the impugned order because the respondent No. 3 being a degree holder would become eligible for promotion to the post of Executive Engineer earlier than the petitioner and as an interim arrangement only, the impugned order has been issued. Moreover, since the Assistant Engineer with degree qualification is a class by itself different from that of the Assistant Engineer with diploma qualification and the doctrine of necessity mandates, the respondent No. 3 being more qualified with degree in engineering, has been allowed to hold the charge of Executive Engineer. To substantiate his submission, the learned counsel appearing for the respondent No. 3 has relied upon the following decisions rendered by the Hon'ble Supreme Court and in particular, the judgment rendered in the case of ***Narsingh Prasad Vs. Anil Kumar Jain & ors., reported in (2012) 4 SCC 642****:*

(a) (1997) 3 SCC 103; (b) (1997) 2 SCC 497; (c) AIR 1996 SC 1810; (d) AIR 1958 SC 578 and (e) AIR 1977 SC 251.

The learned counsel appearing for the State respondents supported the submissions made on behalf of the respondent No. 3 and based on the instructions received by way of parawise comments from the respondent No. 2, he further submitted that the respondent No. 3, a more qualified engineer who would be eligible for promotion to the next higher post earlier than the petitioner, is allowed to work as Executive Engineer on look after basis.

[6] It is an accepted principle that in public service, transfer is an

incident of service. The appointing authority has a wide discretion in the matter. In other words, the transfer and posting of its employee is the prerogative of the State Government but it shall be done in accordance with rules or guidelines/ instructions framed for that purpose by the State Government and in the absence of such rules or guidelines, the State Government must act fairly and reasonably. As has been stated in the preceding para, the petitioner is senior to the respondent No. 3 as per the Seniority List published vide O.M. dated 30-07-2014. It appears that the said Seniority List has not been challenged by anyone before any appropriate forum. The impugned order dated 24-03-2015 is silent about the reason as to why the petitioner, being admittedly senior to the respondent No. 3, has not been given an opportunity to work as i/c Executive Engineer. On a query being put to the counsel appearing for the State respondents as to whether there is any rule or guideline governing the manner in which the employee will be allowed to work on look after basis in the higher post, he replied in the negative and if that be so, the general principle that the State Government being an institution must act fairly and reasonably, shall be followed.

[7] In support of their contentions, the counsels appearing for the parties have relied upon the decisions rendered by the Hon'ble Gauhati High Court as well as the Hon'ble Supreme Court. The learned counsel for the petitioner has submitted that the issue involved herein has already been settled by the decisions of the Hon'ble Supreme Court and in particular, the decision rendered in the case of ***Government of Andhra Pradesh & anr. Vs. A.V. Venugopala Rao, reported in (1995) 1 SCC 179*** *wherein the interim arrangement of the Government keeping the seniormost in the provisional list who are eligible for promotion to the post of the Executive Engineer as in charge so as to avoid heart-burning among the officers was the subject matter in issue. The Hon'ble Supreme Court refused to interfere with the interim arrangement holding that the Tribunal was not*

justified in upsetting the interim arrangement which has got a rational and reasonable basis to avoid administrative hardship or heart-burning to the persons who claimed to the posts of respective Executive Engineers, Superintending Engineers and the Chief Engineers as the case may be. Relying upon this decision of the Hon'ble Supreme Court, the Hon'ble Gauhati High Court, Imphal Bench had allowed writ petitions being ***W.P. (C) No. 625 of 2007 and W.P. (C) No. 666 of 2007, Potsangbam Super Singh & ors. Vs. State of Manipur & ors.*** *arising out of identical facts in respect of the same Department namely Minor Irrigation Department, Government of Manipur. In the above two writ petitions, all the petitioners were senior to the respondent No. 3 therein who had been transferred to MID - I as Assistant Engineer with a direction to look after the division as Executive Engineer vide order dated 21-07-2007 and surprisingly, after the said order dated 21-07-2007 having been stayed by the Hon'ble High Court, the State respondents issued another identical order within a period of less than a month. The Hon'ble Gauhati High Court, Imphal Bench held:*

"*17. Reverting back to the facts of the writ petitions, I find least justification to transfer the respondent No. 3 to MID- I and more particularly, giving the charge of the office of Executive Engineer. Neither the learned Government Advocate or the affidavit of respondents No. 1 and 2 could justify such action. It should be made known to the respondents that any order woven with political fabric and blenched with executive biasness can not sustain in the eye of law. Any such limping order would tumble down even before facing the judicial test. Had it been a transfer simpliciter, it could have been presumed that the transfer order was issued in the public interest and without any malice. However, facts and circumstances of the case clearly suggest that it is a malafide transfer. I do not hesitate to hold that the impugned transfer order has violated all cannons and norms of fairness, reasonableness*

and transparency in the executive actions. Bad smell of favouritism and foul play is sneezing out of the impugned order. It is out and out a motivated and biased order. The state respondents also have disregarded the stay order passed in W.P. (C) No. 553 and 555 of 2007."

The Hon'ble High Court not only allowed the said writ petitions but also imposed costs of Rs. 21000/- to be shared equally by the seven petitioners.

Similarly, in the case of ***Laitonjam Muhindro Singh & ors. Vs. State of Manipur & ors, W.P. (C) No. 358 of 2009*** *wherein the respondents No. 4 to 7 who were junior to the petitioners in the cadre of Junior Youth Officer/Coach/ Superintendent of Physical Education etc., were posted and allowed to function as District Youth Affairs & Sports Officers ignoring and overlooking the interest and claim of senior officers in the cadre, the Hon'ble Gauhati High Court, Imphal Bench held:*

"*11. As the issue involved in this case is no longer res- integra in view of various decision passed by this court as well as the Apex Court, this court need not burden itself with further reference to the judgment passed by this court as well as by the Apex Court on the question of appointment on in-charge basis vis-a-vis the seniority position. Mr. Ashang, learned Government Advocate has fairly submitted that in absence of any appeal filed against the order dated 18-05-2009, passed by this court in W.P. (C) No. 827 of 2007 where this court has quashed the order appointing a junior incumbent as DYASO by ignoring the claim of the senior person, the Government is bound by the ratio laid down in the aforesaid judgment and more so because the Department and the post are the same.*

12. In the backdrop of the discussion made above, and upon consideration of the submissions made by the learned counsel appearing for the parties, this court is of the view that

the petitioners have been able to make out a case for interfering with the in- charge appointment of the respondents No. 4, 5, 6 and 7 as DYASO. Accordingly, the impugned order dated 04-01-2006 (Annexure - A/9) and impugned order dated 31-10-2007 (Annexure - A/11) are quashed in so far as the respondents No. 4 and 6 are concerned and the impugned order dated 01-04-2006 (Annexure - A/10) and the impugned order dated 17-02-2008 (Annexure - A/12) are also quashed as unsustainable in law. It is also made clear that if any in-charge appointment is to be made to the post of DYASO in the youth Affairs and Sports Department, Government of Manipur, seniority position of the officers in the feeder post should be strictly observed."

[8] The learned counsel appearing for the respondent No. 3 has relied upon the decision rendered by the Hon'ble Supreme Court in the case of ***Narsing Prasad Vs. Anil Kumar Jain & ors. (Supra)*** *wherein the respondent, Anil Kumar Jain questioned the appointment of the petitioner as Chief Engineer on officiating basis on the inter-alia ground that a seniormost person was to be given charge unless he had any other disqualification. The High Court of Allahabad opined that in the absence of merit selection, a senior most person is entitled to hold the charge unless there is any legal impediment and quashed the order dated 30-09-2011 on an appeal, preferred by way of a petition for special leave to appeal, the Hon'ble Supreme Court held:*

"9. This court had passed an order of status quo relating to promotional posts in certain civil appeals and the said order is till in force. Thus, a regular promotion can not take place and therefore, the direction of the High Court in that regard is untenable. However, as in the interest of the administration, someone has to remain in charge, the employer i.e., the Parishad can choose someone to hold the officiating charge. Regard being had to the sensitive nature of the post and the duties to be performed by the incumbent, we think appropriate to direct that the Selection Committee be constituted by the

Board within a period of four weeks which shall consider the suitability of all the eligible candidates for the purpose of holding the additional charge of the post of Chief Engineer. It is hereby made clear that the decision in favour of any candidate to hold the additional charge would not ensure to his benefit and no claim can be put forth on the said base at the time of consideration for regular promotion."

[9] There is some force in the submission of the learned counsel appearing for the petitioner that decision of the Hon'ble Gauhati High Court, Imphal Bench in the case of ***Potsangbam Super Singh & ors. Vs. State of Manipur & ors. (Supra)*** *would apply to the facts of the present case. The facts of the present case are almost identical to that of the above because both the cases have arisen out of the same Department and the same post. In the said Potsangbam Super Singh case (supra), the order dated 18-08-2007 was held to be malafide and also held to have violated all norms of farness, reasonableness and transparency and the manner in which the order dated 18-08-2007 was issued, had been deprecated by the Hon'ble Gauhati High Court. Since the said order dated 18-08-2007 being found to be contemptuous and malafide, the Hon'ble Gauhati High Court, Imphal Bench imposed costs of Rs. 21,000/- to be paid to the petitioners therein. The law having been laid down by the Hon'ble Supreme Court and the decisions of the Hon'ble Gauhati High Court in particular, the Minor Irrigation Department, Government of Manipur ought to have kept them in mind before the impugned order was issued. Throwing all norms in the wind, the similar act is being repeated in the present case by the Minor Irrigation Department, Government of Manipur and their callous attitude is highly uncalled for. The issuance of the impugned order dated 24-03-2015, despite the existence of the said judgment delivered by the Hon'ble Gauhati High Court, Imphal Bench in respect of this very Minor Irrigation Department, would clearly show that the impugned order was issued with malafide intention so as to favour the respondent No. 3.*

So far as the decision of the Hon'ble Supreme Court in the case of ***Narsingh Prashad's case (supra****), relied upon by the counsel for the respondent No. 3, is concerned, it does not help his case at all rather it helps the case of the petitioner. The order dated 30-09-2011 by which the petitioner therein was allowed to hold the post of Chief Engineer on officiating basis, has not been upheld by the Hon'ble Supreme Court as is evident from the fact that the Hon'ble Supreme Court has directed that the Selection Committee be constituted which shall consider the suitability of all eligible candidates for the purpose of holding the additional charge of the post of Chief Engineer. In other words, the petitioner has been allowed to continue holding the additional charge of Chief Engineer in terms of the status quo granted by the Hon'ble Supreme Court till the Board takes a decision. Other decisions of the Hon'ble Supreme Court relied upon by the counsel for the respondent No. 3 are not applicable to the facts of the present case and hence, are not being referred to herein. The counsel appearing for the State respondents has almost adopted the submissions of the counsel appearing for the respondent No. 3.*

*Thus, considering the rival contentions of the counsels for the parties, this court is of the view that the impugned order dated 24-03-2015 is not sustainable in law and is liable to be set aside and quashed. However, it is made clear that in case an Assistant Engineer is required to be posted in MID-I who can look after the work of Executive Engineer, the senior most Assistant Engineer shall be allowed to be posted, unless there is any legal impediment.***"**

Secondly, in **Shri Rajkumar Nando Singh Vs. State of Manipur & ors., WP(C) No.215 of 2016,** decided on 14-06-2016, wherein the State Government issued an order dated 29-02-2016 appointing the private respondent therein as in-charge Principal, Government Polytechnic completely ignoring the inter-se seniority. The

writ petition was allowed to the extent indicated therein. Paragraph 6 thereof reads as under:

> *"[6]. It has been submitted by Shri R.K. Deepak, learned counsel appearing for the petitioner that the petitioner being senior to the private respondent, he ought to have been given a chance to work as the in-charge Principal and that since the State respondents having failed to do that, their action appointing the private respondent as the in- charge Principal is unjust, unfair and discriminatory and is contrary to the decisions rendered by the Hon'ble Supreme Court and the Hon'ble Gauhati High Court. He has placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of* ***Government of AP & anr. Vs. A.V. Venugopala Rao reported in (1995) 1 SCC 179*** *wherein the Hon'ble Supreme Court upheld the interim arrangement made by the State Government to keep the senior most in the provisional list of respective divisions who are eligible for promotion to the posts of Executive Engineer as in-charge so as to avoid heart-burning among the officers. He has also relied upon the decision rendered by the Hon'ble Gauhati High Court in the case of* ***Mangsatabam Imomacha Singh Vs. State of Manipur reported in 2012 (4) GLT 808*** *wherein the Hon'ble High Court quashed the Government order allowing the private respondent therein, who is junior to the petitioner therein, to hold the post of Chief Engineer on in-charge basis by holding that the law relating to transfer in public employment that as long as a senior officer is available, a junior officer cannot be allowed to hold the charge of a higher post until such post is filled up on a regular basis, is no longer res integra. Shri N. Surendrajit, learned counsel appearing for the private respondent and Shri Y. Ashang, learned Government Advocate have not cited any decision of the Hon'ble Supreme Court or any of the High Courts which has taken a contrary view.*
>
> *Admittedly, as per the inter-se seniority list circulated vide notice dated 29-12-2000 by the Principal, Government*

Polytechnic, the petitioner is senior to the private respondent. The only stand of the State Government as regards the inter-se seniority list is that the authenticity thereof is required to be verified as the same is published by the Principal who is not competent to finalise it. On perusal of the said notice dated 29-12-2000, it is clear that only a provisional inter-se seniority list was circulated to all officers concerned inviting objections, if any, from their end. There is no material on record to show that any officer or for that matter, the private respondent has raised any objection thereto and in the absence of any objection being raised by any concerned officer, the inter-se seniority is as good as the final. According to the State Government, it is the Administrative Department of Technical Education which is competent to finalise the seniority list. But the State Government has not come forward with any reason as to why the seniority list has not been finalised for so long, although it was circulated as late as in the year 2000. The non-finalisation of the said inter-se seniority list in time cannot be attributed to the petitioner."

Thirdly, in the case of **L. Gokulchandra Singh Vs. State of Manipur & ors., WP(C) No.564 of 2018,** decided on 16-08-2018, the issue was as to whether the order dated 30-06-2018 issued by the State respondent transferring and posting the private respondent who was appointed as the Assistant Engineer hardly two years ago and whose name was not even included in the seniority list as the in-charge Executive Engineer superseding his seniors, was legally valid. Relying upon the decision rendered by the Hon'ble Guahati High Court in **T. Thoiba Singh Vs. State of Manipur & ors., WP(C) No.896 of 2007** and that of the Hon'ble Supreme Court in **Government of Andhra Pradesh & anr. Vs. A.V. Venugopal Rao, (1995) 1 SCC 179**, it was contended by the counsel appearing for the petitioner that the dated

30-06-2018 was illegal. While allowing the writ petition, this Court quashed and set aside the order dated 30-06-2018. Paragraph 6 and 7 thereof read as under:

> **"***[6]. Over and above, there are many decisions of the Hon'ble Supreme Court with respect to transfer and posting and there is point of referring to all but suffice it to say that a Government servant has no vested right to remain posted at a place of his choice and that he is liable to the transferred to other places also. An order of transfer cannot be lightly interfered with by the court unless the order of transfer is shown to be an outcome of malafide exercise of power or violative of any statutory provision or passed by an authority not competent to do so. In the present case, the short question that arises for consideration by this Court, is as to whether the impugned order has been issued by the State Government with malafide intention as alleged in the writ petition. A malafide intention is something which cannot be seen with the naked eyes and is to be inferred from the facts and circumstances of a particular case. The State Government being an institution, has no its heart and soul and is manned by the public servants including the elected representatives of the people. A malafide intention is a matter relating to mental state of affairs of persons who are involved in taking the decision. The direction at which the State Government will have to go, depends upon the will, thinking and the policy decision taken by them. The administrative decisions are taken by them within the four walls of the State Government, to which public has no access except through the provisions of the Right to Information Act. The circumstances which are relevant for the purpose of deciding the issue involved here, are as under:*
>
> *(a) The State Government has not brought to the notice of this*

court any guideline or instruction or rule by which an Assistant Engineer can be given the charge of an Executive Engineer and transferred and posted as In-charge Executive Engineer;

(b) *On the recommendation of a DPC, the petitioner along with 20 others were appointed as the Assistant Engineers vide order dated 29/12/2015 but since his appointments was not given retrospective effect from the day i.e., 28//5/1998 on which the petitioner was transferred and posted as the In-charge Assistant Engineer, the petitioner along with 6 Assistant Engineers filed a writ petition being WP(C) No.122 of 2016 praying for grant of retrospective effect wherein this Court vide order dated 9/6/2017 had directed that the petitioners might not be disturbed from their present places of posting;*

(c) *The seniority list of the Assistant Engineer as on 22/4/2017 which consists of 52 Assistant Engineers, was published vide order dated 22/4/2017 issued by the Under Secretary (PHE), Government of Manipur and by then, the private respondent was not yet born in the cadre;*

(d) *The private respondent was appointed as the Assistant Engineer vide order dated 23/2/2018 and hardly, three months later vide order dated 28/4/2018, the private respondent was transferred and posted as In-charge Executive Engineer, although he was not eligible for appointment on promotion to the post of Executive Engineer and no reason for his being transferred and posted as in-charge Executive Engineer was assigned by the State Government;*

(e) *The order dated 28/4/2018 by which the private respondent was transferred and posted as in-charge Executive*

Engineer, came to be challenged by the Assistant Engineers who are senior to the private respondent by way of a writ petition being WP(C) No.386 of 2018 and this Court while issuing notice to the respondents vide order dated 9/5/2018, suspended the order dated 28/4/2018;

(f) *It may be noted that in* ***Takhelmayum Thoiba Singh Vs. State of Manipur & ors., WP(C No.896 of 2007*** *wherein the contention of the State Government was that the transfer being within the power of the State Government in terms of FR 11 and 15, the petitioner therein could not question the impugned order by which he was transferred as OSD to the Directorate of Higher Education, the Hon'ble High Court vide order dated 13/3/2008, rejecting the contention of the State Government, held that as the post of OSD is not transferrable one with the post held by the petitioner, save and except with the prior consent of the petitioner and consent having not been obtained, the transfer order could not be sustained.*

(g) *Despite two court's orders dated 9/6/2017 by which this court directed that the petitioners might not be disturbed from their present places of posting and 9/5/2018 by which the government order dated 28/5/2018 was suspended, being passed by this Court, the State Government deliberately issued the impugned order completely throwing the said court's orders in the wind. The fact that the State Government issued the impugned order, without any botheration thereof, which appears to have been issued only to help the private respondent causing heart burning to his senior Assistant Engineers;*

(h) *The State Government is governed by rule of law and is not above the Constitution of India. It is well settled that a*

discretionary power shall be exercised by the State Government in accordance with certain principles of law on the touchstone of fairness and reasonableness. Article 14 of the Constitution of India is anathema to arbitrariness and strikes at the root of the arbitrary action of the State or its instrumentalists. The impugned order appears to have been issued by the State Government without following any rule because it has failed to bring to the notice of this court any rule regulating the transfer and posting of Assistant Engineers on in- charge basis as Executive Engineers completely ignoring the seniority list which is one of the incidents of service.

[7] From the aforesaid circumstances, it is clearly seen that the issuance of the impugned order is highly unreasonable, arbitrary and malafide. It is nothing but an endeavour to help the private respondent, at any costs, who is one of the junior most Assistant Engineers without showing due respect to the said court's orders and the seniority list and that too, in the absence of any rule regulating the appointment and transferred and posting of Assistant Engineers as in-charge Executive Engineers."

[8] On perusal of the said decisions rendered by the learned Single Judge, this Court is of the view that the instant writ petition can be disposed of in terms thereof. There is no need of multiplying the decisions and it is suffice to say that no officer can be given in-charge to the higher post without considering the cases of the officers who are senior to him. Moreover, it has not been brought to the notice of this Court any material to the effect that the said decisions of the learned Single Judge have been set aside by the Division Bench of this Court or the Hon'ble Supreme

Court. In view of the above, this Court is of the further view that the instant writ petition can be disposed of on merit itself, without the same being allowed to be decided by the learned Single Judge.

[9] After having heard the learned counsels appearing for the parties, the instant writ appeal being devoid of any merit, is dismissed. The writ petition being WP(C) No.16 of 2020 stands allowed and consequently, the order dated 04-01-2020 issued by the State Government is quashed and set aside with no order as to costs.

JUDGE **CHIEF JUSTICE**

FR/NFR

Devananda