

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Manipur, Meghalaya, Tripura
Mizoram and Arunachal Pradesh)

IMPHAL BENCH

1. WRIT PETITION(C) NO.1086 OF 1999

Shri Toijam Joy Singh
S/o T. Mani Singh of Wangkhei Thangjam Leirak
P.O. & P.S., Imphal East District, Manipur.

..... PETITIONER

1. The State of Manipur through
Commissioner(Commerce & Industries)
Government of Manipur.

2. The Director of Commerce & Industries
Govt. of Manipur.

3. Shri W. Kirtichand Singh

4. Smt. A. Bilashini Devi

5. Shri N. Bhabananda Singh

6. Shri A.K. Dwijamani Singh

7. Smt. R.K. Nutanbala Devi

8. Shri Thongkhemang

9. Shri S. Namsadai Kamei

10. Shri Athiso Mao

11. Shri Ksh. Joychandra Singh

12. Shri W. Shridambi Singh

13. Shri Y. Borajaoba Singh

14. Shri Th. Heramot Singh

15. Shri W. Gopimohon Singh

16. Shri Ch. Ashokumar Singh

17. Shri Woll ong Jonah

18. Shri L. Ginzatun

19. Shri Haokhosei Guite

20. Shri Kh. Kundo Singh

21. Shri M. Manihar Singh

22. Shri H. Shyamkumar Singh

23. Shri S. Ranbir Singh
24. Smt. M. Lalashanti Devi
25. Shri Jelkhamthang Guite
26. C. Dinah
27. Shri Th. Khogen Singh
28. Shri Ksh. Sova Singh.

(Respondents No.3 to 28 are working as Supervisors in the Directorate of Commerce and Industries, Govt. of Manipur and notices upon them to be served through Respondent no.2.)

..... Respondents.

2. WRIT PETITION(C) NO.977 OF 1999

1. Okram Indramani Singh
S/o O. Ibopishak Singh of
Yumnam Leikai
P.O & P.S., Imphal

2. Keisham Nilamani Singh
S/o K. Ibomcha Singh of
Yaiskul Police Lane
P.O. & P.S. Imphal

..... Petitioners

-vrs-

1. The State of Manipur
through the Chief Secretary
Government of Manipur.

2. The Commissioner/Secretary(DP)
Govt. of Manipur.

3. The Commissioner/Secretary
(Commerce & Industries),
Govt. of Manipur.

4. The Director of Commerce &
Industries, Govt. Of Manipur.

5. Shri Dominic Khameng
at present working as Development
Officer(DIC) on ad hoc basis.

6. Shri A. Budhibanta Singh
at present working as Assistant
Director of Industries(Planning)
on ad hoc basis.

7. Shri W. Kritichand Singh
at present working as Development
Officer(DIC) on ad hoc basis.

8. Shri A.S. Vangai
at present working as
Development Officer(DIC)
On ad hoc basis.

9. Smt. Y. Bidyabali Devi
at present working as
Development Officer(DIC) on ad hoc basis.

10. Shri L. Gourahari Singh
at present working as
Development Officer(DIC) on ad hoc basis.

11. Smt. A. Bilashini Devi
at present working as
Development Officer(DIC) on ad hoc basis.

12. Shri K. Indramani Singh
at present working as
Assistant Director of Industries.

.... Respondents.

3. WRIT PETITION(C) NO.818 OF 2000

1. Shri Maibam Manihar Singh
S/o M. Nipamacha Singh of
Hiyanglam Mayai Leikai
P.O. Wabgai, P.S. Kakching
District Thoubal

2. Smt. N. Latashanti Devi
W/o Dr. L. Krishnamangol Singh of
Singjamei Okram Leikai
P.O. & P.S. Singjamei
District Imphal West

3. Shri Thoudam Khogendra Singh
S/o late Th. Thoiba Singh of
Singjamei Chanam Pukhri Mapal
P.O. & P.S. Singjamei
District Imphal West.

..... PETITIONERS

-vrs -

1. The State of Manipur through
the Commissioner/Secretary
(Commerce & Industries)
to the Govt. of Manipur.

2. The Director of Commerce & Industries

Government of Manipur.

3.Mr.Ksh. Joykumar singh
S/o Ksh. Mani Singh of Haobam Marak Irom Leikai
Imphal West District.

4.Mr. Akoijam Dwijamani Singh
s/o late AK. Nilamani Singh of
Wangkhei Tokpam Leikai
Imphal East District.

5.Mr. Waikhom Shridhambi Singh
s/o W. Shyamsunder Singh of
Chinga Makha Chanam Pukhri Mapal
Imphal West District.

6.Mr. Thokchom Heramot Singh
S/o Th. Abhiram Singh of
Singjamei Makha Liwa Road
Ahongsangbam Leikai,
Imphal West District.

7.Mr. Yumnam Borajaoba Singh
s/o (late) Y. Angahal Singh of
Thangmeiband Hijam Leikai
Imphal West District.

8.Mr. R.K. Nutanbala Devi
D/o R.K. Sanahal Singh of Uripok Gopalji Leikai
Imphal West District.

9.Mr. N. Bhabananda Singh
S/o N. Chandramani Singh of
Wahenbam Leikai
Imphal West District.

10.Mr. Thongkhenmang Samte
S/o Khankam Samte of
Churachandpur,
Churachandpur District, Manipur.

11.Mr. A. Budhibanta Singh
S/o (late) A. Indramani Singh of
Sagolband Nepra Menjor Leikai
Imphal West District, Manipur.

12.Mr. Waikhom Kritichand Singh
S/o W. Janaki Singh of
Chanam Pukhri Mapal
Imphal West District, Manipur.

13.Mr. Ch. Ashokumar Singh
S/o Ch. Sachindrakumar Singh of
Brahmapur Chungkham Leikai
Imphal East District.

.....

Respondents.

4.WRIT PETITION(C) NO.1558 OF 2000

1.Shri Kangabam Indramani Singh
S/o (L) K. Babu Singh of
Sagolband Moirang Leirak,
P.S. & P.S. Imphal
District Imphal West, Manipur.

2.Shri Keisham Imobi Singh
S/o (L) K. Nabakishore Singh of
Yaiskul Police Lane
P.S. & P.O. Imphal
District Imphal West, Manipur.

..... Petitioners.

- vrs -

1. .The State of Manipur represented by
Secretary of Commerce & Industries
Govt. of Manipur.

2.The Commissioner of Commerce & Industries
Govt. of Manipur.

3.The Director of Commerce & Industries
Govt. of Manipur.

4.Shri A. Budhibanta Singh
of Sagolband Nepra Menjor Leikai
P.O. & P.S. Imphal
Imphal West District., Manipur.

5.Shri A. Kirtikumar Sharma
of Naoremthong, P.O. & P.S. Lamphel
Imphal West District.,Manipur.

6.Shri W. Kirtichand Singh of
Chanam Pukhri Mapal
P.O. & P.S. Singjamei, Imphal West District,
Manipur.

7.Shri N. Bhabananda Singh of
Waheng Leikai, P.O & P.S. Imphal
Imphal West District,Manipur.

8.Shri Ak. Dwijamani Singh
Wangkhei Tokpam Leikai
P.O. Imphal, P.S. Porompat
Imphal East District, Manipur.

9.Smt. R.K. Nutanbala Devi
of Waheng Leikai, P.O & P.S. Imphal
Imphal West District,Manipur.

10.Shri Thawnkhenmang Samte of
Churachandpur, P.O & P.S. Churachandpur
Churachandpur District, Manipur.

11. Shri Ksh. Joychandra Singh of
Kwakeithel Laishram Leikai\
P.O. & P.S. Lamphel
Imphal. West District, Manipur.

12. Shri W. Shridhambi Singh
of Chanam Pukhri Mapal, P.O & P.S. Singjamei
Imphal West District, Manipur.

13. Shri Y. Borajaoba Singh
of Thangmeiband, P.O & P.S. Lamphel
Imphal West District.

14. Shri Th. Heramot Singh of
Chanam Pukhri Mapal, Irom Leikai
P.O & P.S. Singjamei,
Imphal West District, Manipur.

.... Respondents.

5. WRIT PETITION(C) NO.261 OF 2001

1. Mr. Nongthombam Manihar Singh
S/o (L) N. Ibochouba Singh of
Keirao Bitra Awang Leikai
P.O. Imphal ,B. P.O. Irilbung, P.,S. Singjamei
Imphal East District, Manipur.

2. Mr. Mayanglambam Ajitkumar Singh
S/o (L) M. Achanba Singh of
Thangmeiband Lourung Purel Leikai
P.O. & P.S. Imphal,
Imphal West District, Manipur.

3. Smt. Ningombam Memcha Devi
W/o Thoudam Khogendra Singh of
Singjamei Makha Awang Sorokhaibam Leikai
Daoji School Leirak
P.O & P.S. Singjamei
Imphal West District.

4. Mr. Sairem Robindro Singh
S/o (L) S. Gulamchand Singh
Of Sagolband Tongbram Leikai
P.O. Imphal, P.S. Lamphel
Imphal West District, Manipur.

5. Smt. Ngangbam Bilashini Devi
D/o Ng. Bira Singh of
Bramhapur Aribam Leikai
P.O. Imphal, P.S. Singjamei
Imphal East District, Manipur.

6. Mr. Samukcham Ibohal Singh
S/o (L) S. Iboyaima Singh of
Khagempalli Panthak
P.O. & P.S. Imphal

Imphal West District, Manipur.

7. Mr. Takhellambam Ibomcha Singh
S/o (L) T. Dhananjoy Singh of
Keinou Thongkha, P.O. Nambol
P.S. Bishenpur
District Bishenpur, Manipur.

8. Mr. Aheibam Harichoron Singh
S/o A. Dhaballo Singh of
Heirangoithong Bazar Aheibam Leirak,
P.O & P.S. Singjamei,
Imphal West District, Manipur.

9. Mr. Khumallambam Meghabarna Singh
S/o Kh. Manao Singh of Khongman Zone-II West
P.O. Imphal, P.S. Singjamei, Imphal East District,
Manipur.

..... Petitioners.

-vrs-

1. The State of Manipur represented by
Secretary/Commissioner, Commerce and
Industries, Govt. of Manipur.

2. The Director of Commerce and Industries,
Govt. of Manipur.

.... Respondents.

BEFORE
THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Petitioners	::	1. Mr. H.S. Paonam, Advocate 2. Mr. Niranjan Singh, Advt. 3. Mr. Anando Singh, Advt. 4. Mr. N. Jotendro Singh, Advocate 5. Mr. L. Shyam Singh, Advt.
For the Respondents	::	1. Mr. N. Kotiswor, Advocate 2. Mr. R.S. Reisang, G.A.
Date of hearing	::	16.08.2005
Date of Judgment & Order	::	23.08.2005

JUDGMENT AND ORDER

1. By these writ petitions, 5(five) in number, the writ petitioners are assailing the final combined inter se seniority list of eligible persons holding feeder posts for promotion to the post of Development

Officer(DIC)/A.D.I(SSl)/(Plg)/(DIC) as per the existing recruitment rules basing on the date of eligibility for promotion vide office Memorandum No.IND/DTE/ESTT-1992/88, Imphal the 28th August, 1989. As these writ petitions are challenging the same inter se seniority list under the said office Memorandum dated 28.8.1989, it would be convenient not only for the parties but also for this court to take up these writ petitions jointly for disposal by a common judgment and order. Accordingly these writ petitions were heard jointly for disposal by a common judgment and order. However, the fact of each of the writ petitions would be mentioned at the appropriate stage of this common judgment and order.

2. The brief of the cases, stated in brief which would suffice for effective decision of these writ petitions are that the post of Development Officer(DIC) is equivalent to the post of Assistant Director of Industries and are governed by the same recruitment rules. In supersession of all the rules in this regard and in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Manipur makes the Rules called “ the Industries Department, Manipur (Asstt. Director SSI/P&S/DIC/Development Officer(DIC) Recruitment Rules, 1988” vide Notification No.1/4/87-RR/DP, Imphal the 21st June, 1988. According to the said Recruitment Rules, 1988, the following posts are feeder posts for promotion to the post of D.O/A.D.I:

1. Community Project Officer;
2. Extension Officer (Ind)
3. Development Officer(KVI);
4. Supervisor(DIC);
5. Superintendent(H/C);
6. Superintendent(SSl);
7. Superintendent(H/L);
8. Superintendent of Training Centre;
9. Inspectors (with 5(five) years regular service in the case of graduates and 15 years regular service in the case of non-graduates in the grade)
10. Progress Assistants with 10(ten) years regular service in the case of graduates and 15(fifteen)years regular service in the case of non-graduates in the grade;
11. V.I.O/Supervisor(C&B) with 12(twelve) yrs. regular service in the case of graduates and 17(seventeen) yrs. regular service in the case of non-graduates in the grade.

3. The petitioner no.1 of W.P(C) No.1558 of 2000 was initially appointed as Progress Assistant in the Directorate of Industries, Govt. of Manipur on ad hoc basis under the order of the Govt. of Manipur dated 15.9.1978 for a period of 3(three) months and the terms of his ad hoc appointment had been extended from time to time till his ad hoc service was regularized in the year 1981. Petitioner no.2 of W.P(C) NO.1558 of 2000 was initially appointed as Sub-Inspector(Statistics) in the Industries Deptt., Govt. of Manipur on ad hoc basis against the clear vacant post for a period of 6(six) months or till the regular appointment is made vide order of the Govt. of Manipur dated 1.7.1978. Thereafter his ad hoc service was regularized on the recommendation of Class-III DPC held on 22.1.1982 to the post of Sub-Inspector(Statistics) vide order of the Director being No.B-27/IND/78(Pt), Imphal the 1st March, 1982. Later on the post of Sub-Inspector(Statistics) was redesignated as Inspector(Statistics) w.e.f. 1.7.1988 vide orders of the Director, Manipur being No.IND/DTE/ESTT-4/88 (Pt), Imphal, the 13th December, 1989. The case of the petitioners in W.P(C) No.1558 of 2000 is that the post of Progress Assistant and Inspectors(Statistics) are the feeder posts for promotion to the post of D.O. and A.D.I. under the said Recruitment Rules dated 21.6.1988. But the Director of Industries while preparing the impugned final combined inter se seniority list of all eligible persons holding feeder posts for promotion to the post of D.O(DIC)/A.D.I(SSi)/Plg/DIC) dated 28.8.1989 as per the existing recruitment rules on the basis of date of eligibility for promotion, names of the petitioners who are not only holding the feeder posts but also eligible for promotion to the posts of D.O./A.D.Is. under the said recruitment rules dated 21.6.1988 were not included in the impugned combined inter se seniority list. Being aggrieved, the writ petitioners filed W.P(C) No.1558 of 2000 for quashing the impugned combined inter se seniority list dated 28.8.1989 and further directing the respondents/ authority concerned to prepare the seniority list in accordance with the relevant recruitment rules and to include their names in the combined seniority list.

4. The petitioner nos. 1,2,3,4,5,7 and 8 of W.P(C) No.261 of 2001 were initially appointed as Economic Surveyors in the Directorate of Industries, Govt. of Manipur on ad hoc basis against clear vacant posts on the recommendation of the DPC in its meeting held on 28.12.1979 to 4.1.1980 vide order No.DIC-8/IND/78 Imphal, 10th January 1980. The petitioner nos. 6 and 9 of W.P(C) No.261 of 2001 were initially appointed as Field Organizer (Cottage) in the Directorate of Industries, Govt. of Manipur against the clear

vacant post on the recommendation of the DPC held on 28.12.1979 to 4.1.1980 vide order of the Govt. of Manipur being No.DIC-8/IND/78 dated 10.8.1980. The term of ad hoc appointment of the petitioners of W.P (C) No 261 of 2001 had been extended from time to time till their services in their respective posts had been regularized on the recommendations of a Class-III DPC held on 22.1.1982 vide orders of the Director of Industries, Govt. of Manipur being No.16-27/IND/78(FS), Imphal the 31st March, 1982. Further case of the petitioners is that they had completed the qualifying services for promotion to the post of D.O./A.D.I under the said recruitment rules dated 21.6.1988, but their names are not included in the impugned final combined inter se seniority list prepared under the Memorandum dated 28.8.1989. As such being aggrieved, they filed the writ petition W.P(C) No.261 of 2001 for quashing the impugned final combined inter se seniority list published on 28.8.1989 and to direct the respondents to prepare a fresh seniority list by including their names.

5. Petitioner nos. 1 and 2 of W.P(C) No. 818 of 2000 were initially appointed as Supervisor(Marketing) on ad hoc basis and the petitioner no.3 was also appointed on ad hoc basis as Supervisor(Technical) vide orders of the Director of Industries being No.DIC-8/IND/78 Imphal, the 9th September, 1980 for a period of 6(six)months w.e.f. 10.7.80 or till the posts are filled up on regular basis whichever is earlier. The terms of their ad hoc appointment were also extended from time to time till their ad hoc services were regularized in their respective posts on the recommendation of the DPC vide orders of the Governor of Manipur being No.53/MISC/79. IND(Pt), Imphal the 11th November, 1983. Their case in W.P(C) No.818 of 2000 is that the said impugned seniority list under the office Memorandum dated 28.8.1989 is required to be set aside inasmuch as all the Supervisors(Credit) are placed enbloc above all the Supervisors such as Supervisors(Marketing), Supervisor(Tech) in the Directorate of Industries.

6. Petitioner nos. 1 and 2 of W.P(C) No.977 of 1999 were appointed initially as Extension Officer(Industries) in the Directorate of Industries, Govt of Manipur on ad hoc basis under the orders of the Director of Industries being No.B-1073/IND/79(P) Imphal the 17.7.1979 for a period of 3(three) months or till the posts were filled up on regular basis and the terms of their ad hoc appointment had been extended from time to time and as such they continued to serve as Extension Officer(Industries) on ad hoc basis without any break till their ad hoc services had been regularized under the orders of the Govt. of Manipur being No.60/48/78-IND(Pt), Imphal the 30th August, 1986 w.e.f.

24.5.1986. In the writ petition W.P(C) No.977 of 1999, the writ petitioners are challenging the ad hoc appointment of the private respondents under the orders of the Govt. of Manipur being No.4/10/98-IND Imphal the 1st March, 1999 and order being No.8/24/92-IND, Imphal, the 9th July 1999 for appointing them as D.O(DIC) and Asstt. Director of Industries(Planning) in the Industries Department, Govt. of Manipur for a period of 6(six) months on the main grounds that the impugned seniority list under the said office Memorandum dated 28.8.1989 is illegal and arbitrary inasmuch as the names of the private respondents had been wrongly included in the impugned seniority list dated 28.8.1989 and also that the regularization of ad hoc services of the private respondents under the order of the Govt. of Manipur dated 11.11.1983 is illegal. The further case of the petitioners in W.P(C) No.977 of 1999 is that as the order of the Govt. of Manipur dated 11.11.1983 for regularizing ad hoc service of the private respondents is illegal, the private respondents cannot be treated as regular Supervisors: but in W.P(C) No.977 of 1999, there is no prayer for quashing the said order of the Govt. of Manipur dated 11.11.1983 for regularizing ad hoc services of the private respondents as Supervisors.

7. Petitioner, Shri Toijam Joy Singh, of W.P(C) No.1086 of 1999 was regularly appointed on direct recruitment to the post of Inspector(Planning & Survey) on the recommendation of Class-III DPC held on 22.11.1982 to 3.12.1982 under the orders of the Director of Industries being No.P-27/IND/82(Pt-I), Imphal the 24th January, 1983. The private respondents, i.e. respondents 3 to 28, were initially appointed as Supervisor(DIC) on ad hoc basis for a period of 6(six) months on the recommendation of the DPC in its meeting held on 28.12.1979 to 4.1.1980 under the orders of the Director of Industries being No.DIC-8/IND/78 Imphal, the 10th January, 1980.

8. While the private respondents of the W.P(C) No.1086 of 1999 were working as Supervisor in the Directorate of Industries, Govt.of Manipur on ad hoc basis, the Governor of Manipur in exercise of the powers conferred by proviso to Article 309 of the Constitution of India makes the rules: (1) Industries Department (DIC), Manipur (Supervisor/Marketing) Recruitment Rules, 1982; (2) Industries Department (DIC), Manipur Supervisor(Credit) Recruitment Rules, 1982; (3) Industries Department(DIC),Manipur Supervisor Recruitment Rules(Infra) Recruitment Rules, 1982 and (4) Industries Department(DIC), Manipur Supervisor(Technical) Recruitment Rules, 1982 vide different notifications having the same date, i.e. Imphal the 1st June, 1982. The copies of the said Recruitment Rules for the different posts of Supervisors

are available at Annexure A/12 colly to the writ petition. From the bare perusal of the said Recruitment Rules for the Supervisor dated 1.6.1982, the post of Supervisors is a Class-II post and the recruitment to the said post, i.e. Supervisor, are within the purview of the Manipur Public Service Commission. The further case of the petitioners in W.P(C) No.1086 of 1999 is that after framing the said recruitment rules for the post of Supervisor by the Governor of Manipur in exercise of his powers conferred by proviso to Article 309 of the Constitution of India the recruitment to the post of Supervisor could only be made on the recommendation of Class-II DPC associated with the Manipur Public Service Commission inasmuch as the post of Supervisor is a Class-II post and also recruitments to the post of Class-II post in the service of the Govt. of Manipur are admittedly within the purview of the Manipur Public Service Commission. But the Governor of Manipur by exercising his powers conferred under Article 162 of the Constitution of India in derogatory or/ in violation of the law, i.e. the said recruitment rules for the post of Supervisor dated 1.6.1982, had issued the order being No.53/MISC/79-IND(Pt) Imphal the 11.11.1983 for treating the ad hoc services of the private respondents as regular service. The petitioners further state that as the said order of the Govt. of Manipur dated 11.11.1983 is illegal and arbitrary, the private respondents cannot be treated as regular Supervisors and as such their names cannot be included in the impugned combined final inter se seniority list dated 28.8.1989.

9. The private respondents of the W.P(C) INo.1086 of 1999 also filed their affidavit in opposition. In their affidavit in opposition, it has been stated that their initial ad hoc appointments were made after the said posts of Supervisors were advertised through Employment Exchange and after holding a proper and competent DPC and as such their ad hoc appointments were regular in nature though their appointments are said to be on ad hoc. The Govt. of Manipur issued the said order dated 11.11.1983 for treating their services on regular basis in the peculiar facts and circumstances of the case and also after applying the minds of the petitioners. The private respondents further state in their affidavit-in-opposition that the petitioner is making a belatedly false statement and also that their regular appointments cannot be disturbed after the lapse of 16(sixteen) years of notification of the said order of the Govt. of Manipur dated 11.11.1983. In the affidavit-in-opposition of the of the state respondents filed in W.P(C) No.1086 of 1999, it has been mentioned that the said order of the Govt. of Manipur dated 11.11.1983 for treating the services of the private respondents as regular service was issued after taking a policy decision of the State Government, but the state respondents neither mentioned the particulars of the

said policy decision nor produced any copy of the policy decision for regularization of ad hoc services of the government employees in violation of the law, i.e. the recruitment rules framed under Article 309 of the Constitution for the concerned post(s). But in W.P(C) No. 1086 of 1999, no prayer is made for quashing or setting aside the said order of the Govt. of Manipur dated 11.11.1983, and such being situation the petitioners are collaterally challenging the order of the Govt. of Manipur dated 11.11.1983 while praying the main relief in W.P(C) No.1086 of 1999 for a direction to the state respondents, i.e. respondent nos. 1 and 2 to finalise and publish the combined seniority list by reviewing the impugned combined seniority list under the Memorandum dated 28.8.1989 in view of the inclusion of the names of the private respondents who are not regular employees and also omission of other incumbents holding the feeder post to the post of D.O./A.D.I mentioned in the said recruitment rules dated 21.8.1988.

10. The learned counsel for the petitioner of W.P(C) No.1086 of 1999 for substantiating the case of the petitioner that the said order of the Govt. of Manipur dated 11.11.1983 is illegal, had placed reliance on **R.N. Nanjundappa –vrs – T. Thimmiah & Anr, reported in (1972) 1 SCC 409**. In that case, the Apex Court held that Article 162 and Article 309 of the Constitution of India operate in different areas and when the Govt. acted under Article 309 of the Constitution of India, the Govt. cannot be said to have acted also under Article 162 in the same breath. Therefore, the Government in exercising its powers under Article 162 cannot cover the area where the Article 309 operates. In other words, the Govt. cannot exercise its power under Article 162 for regularizing or appointing an employee in violation of the rules framed under Article 309 of the Constitution of India. Paras-23,26 and 34 of **SCC in R.N. Nanjundappa –vrs – T. Thimmiah & Anr.(Supra)** are quoted hereunder:

“23. It was contended on behalf of the State that under Article 309 of the Constitution the State has power to make a rule regularizing the appointment. Shelter was taken behind Article 162 of the Constitution and the power of the Govt. to appoint. No one can deny the power of the Govt. to appoint. If it were a case of direct appointment or if it were a case of appointment of a candidate by competitive examination or if it were a case of appointment by selection recourse to rule under Article

309 for regularization would not be necessary. Assume that rules under Article 309 could be made in respect of appointment of one man but there are two limitations. Article 309 speaks of rules for appointment and general conditions of service. Regularization of appointment by stating that notwithstanding any rules the appointment is regularized strikes at the root of the rules and if the effect of the regularization is to nullify the operation and effectiveness of the rules, the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore, the relevant rules at the material time as to promotion and appointment are infringed and the impeached rule cannot be permitted to stand to operate as a regularization of appointment of one person in utter defiance of rules requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.”

“26. The contention on behalf of the State that a rule under Article 309 for regularization of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the present case the rule which regularized the appointment of the respondent with effect from February 15, 1958, notwithstanding any rules cannot be said to be in exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Govt. acted under Article 309 the Govt. cannot be said to have acted also under Article 162 in the same breath. The two articles operate in different areas. Regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularization did

not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode or recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

“34. The contention of the State that there were no rules and that the Govt. was free to appoint the respondent is wrong. There were 1975 rules which spoke of appointment by competitive examination or by selection or by promotion. Even if specific rules of recruitment for such services were not made the rules as to appointment by competitive examination or selection or by promotion was there. Article 162 does not confer power of regularization. Article 162 does not confer power on the government to make rules for the recruitment or conditions of service. There can be rule for one person or one post but rules are meant for recruitment and conditions of service. Rules are not for the purpose of validating an illegal appointment or for making appointments or promotions or transfers. Rules under Article 309 are for the purpose of laying down the conditions of service and recruitment. Therefore, the regularization by way of rules under Article 309 in the present case by stating that notwithstanding anything in the rules the appointment of the respondent was being regularized was in itself violation of the rules as to the appointment and as to cadre and also as to the proper selection. If the respondent were to be appointed by direct recruitment, there should have been advertisements. Then

others would have opportunity of applying. That would be proper selection.”

11. The learned counsel for the petitioner also placed reliance on **B.N. Nagaranjan & Ors. – vrs –State of Karnataka and Ors., reported in (1979) 4 SCC 507** which followed the ratio laid down in **R.N. Nanjundappa –vrs – T. Thimmiah & Anr (supra)**. The learned counsel had specially drawn the attention of the court to para-25 of SCC in **B.N. Nagaranjan & Ors. – vrs – State of Karnataka and Ors.,(supra)** which reads as follows:

“25. Apart from repelling the contention that regularization connotes permanence, these observations furnish the second reason for rejection of the argument advanced on behalf of the promotees and that reason is that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. The regularization order was made long after the Probation Rules, the Seniority Rules and the Recruitment Rules were promulgated and could not therefore direct something which would do violence to any of the provisions thereof. Regularisation in the present case, if it meant permanence operative from November 1, 1956, would have the effect of giving seniority to promotees over the direct recruits who, in the absence of such regularization, would rank senior to the former because of the Seniority Rules read with the Probation Rules and may in consequence also confer on the promotees a right of priority in the matter of sharing the quota under the Recruitment Rules. In other words, the regularization order, in colouring the appointments of promotees as Assistant Engineers with permanence would run counter to the rules framed under Article 309 of the Constitution of India. What could not be done under the three sets of Rules as they stood, would thus be achieved by an executive fiat. And such a course is not permissible because an act done in the exercise of the executive power of the Government, as already stated, cannot override rules framed under Article 309 of the Constitution.”

13. The learned counsel appearing for the petitioner also further submitted that the appointment to the posts should be according to the rules and as such the said orders of the government of Manipur for regularizing the service of the private respondents should be issued according to the rules, i.e. Recruitment Rules for the posts of Supervisor dated 1.6.1982, whereunder the recruitment to the post of Supervisor should be on direct recruitment on the recommendation of Class-II DPC associated with the Manipur Public Service Commission. But in the present case, the said order of the Govt. of Manipur dated 11.11.1983 was issued in violation of the law. In this regard the learned counsel appearing for the petitioner placed reliance on **V. Sreenivasa Reddy & Ors., -vrs- Govt. of A.P. & Ors., reported in 1995 Supp. (1) SCC 572.** Paras-16 and 21 of SCC in **V. Sreenivasa Reddy & Ors., -vrs- Govt. of A.P. & Ors. (Supra)** are quoted as follows:

“16. **In Keshav Chandra Joshi – vrs – Union of India** the seniority was to be counted from the date on which appointment was made to the post in accordance with the rules. The previous temporary service should be considered to be fortuitous. In **Union of India v. S.K. Sharma** this court held that the approval of the UPSC for continuation in ad hoc post for the purpose of granting pay and allowances would not amount to regular appointment and ad hoc services cannot be counted for determining seniority by the selection by PSC vide **Vijay Kumar Jain v. State of M.P.** In **Keshav Chand. Joshi** case this Court held that employee would become a member of service only from the date of his appointment according to rules. In **A.N. Sehgal v. Raje Ram Sheoran** this Court held that where statutory rules link seniority with confirmation seniority cannot be fixed according to length of service and confirmation to a post borne on the cadre is a condition to get seniority. In **State of W.B. v. Aghore Nath Dey** it was held that if ad hoc service is followed by regular service, the benefit of ad hoc service is not admissible if the appointment was in violation of rules. In **D.N. Agrawal v. State of M.P.** it was held that seniority cannot relate back to the date of temporary appointment.”

“21. It was reiterated in Keshav Chandra Joshi case and it is common experience that it is a vicious circle that initially Governments impose ban on recruitment and make

massive ad hoc appointments deforms the rules giving a go-by to make recruitment in accordance with the rules and then resort to regularization of such appointments exercising the power under Article 320(3) proviso or Article 162 to make them the members of the service. This practice not only violates the mandates of Articles 14 and 16 but also denies to all eligible candidates, their legitimate right to apply for and stand for selection and get selected. In *State of Orissa v. Sukanti Mohapatra and J.& K Public Service Commission v. Dr. Narinder Mohan* it was held that appointments made in violation of recruitment rules violate Articles 14 and 16. Therefore, as stated earlier, the Administrative Tribunal has rightly expressed unhappiness on the exercise of the power by the State Government by resorting to proviso to clause (3) of Article 320 to make massive departure to make recruitment in accordance with the Rules. We agree with Sri Guru Raja Rao, the learned counsel for PSC candidates that the PSCs must be made more functional and its efficacy be streamlined appointing people of eminence, experience and competence with undoubted integrity to recruit the candidates in accordance with rules for appointment to the posts and back-door entry by nepotism be put an end. Free play of exercise of the power under proviso to clause (3) of Article 320 would undermine the efficacy of constitutional institution i.e. PSCs. Be that as it may, we have to consider whether the regularization of the service of the temporary appointees is in accordance with the special rules and the rules vis-à-vis condition (iii) of the Order under GOMs No.413, dated 29.8.1983.”

14. The learned counsel appearing for the petitioner in the W.P(C) NO.1086 of 1999 further contended that there is no provisions for relaxation to the mode of recruitment to the post of Supervisor in the said Recruitment Rules for the post of Supervisor dated 1.6.1982 and the learned counsel also further submitted that under the law power of relaxation of the recruitment rules does not include regularization of ad hoc and stop gap employees by relaxation of the rules . In this regard, the learned counsel referred to the decision of the Apex Court in **Suraj Prakash Gupta & Ors – vrs – State of J & K. and Ors, reported in**

(2000)7 SCC 561. Paras-28 and 29 of SCC in Suraj Prakash Gupta & Ors – vrs – State of J & K. and Ors (Supra) read as follows:

“28. The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment. In *Keshav Chandra Joshi v. Union of India* the Rule permitted relaxation of the conditions of service and it was held by the three-Judge Bench that the Rule did not permit relaxation of Recruitment Rules. The words “may consult PSC” were, it was observed, to be read as “shall consult PSC” and the Rule was treated as mandatory. In *Syed Khalid Rizvi v. Union of India* (SCC at p.603) decided by a three-Judge Bench, a similar strict principle was laid down. The relevant Rule – Rule 3 of the Residuary Rules (see p. 603, para 33) in that case did permit relaxation of the “Rules”. Even so, this Court refused to imply relaxation of Recruitment Rules and observed: (SCC pp 603-04, para-33)

“The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to rules. The former cannot be relaxed.”

“29. Similarly, in *State of Orissa v. Sukanti Mohapatra* it was held that though the power of relaxation stated in the rule was in regard to “any of the provisions of the rules”, this did not permit relaxation of the rule of direct recruitment without consulting the Commission and the entire ad hoc service of a direct recruit could not be treated as regular service. Similarly, in *M.A. Haque (Dr) v. Union of India* it was held that for direct recruitment, the rules relating to recruitment through the Public Service Commission could not be relaxed. In *J & K*

Public Service Commission v. Dr. Narinder Mohanit was held that the provisions of the J&K Medical Recruitment Rules could not be relaxed for direct recruitment. The backdoor direct recruitments, could not be permitted. (See also Arundhati Ajit Pargaonkar (Dr) v. State of Maharashtra.) In Surinder Singh Jamwal (Dr) v. State of J & K this Court directed the direct recruits to go before the Public Service Commission. Decisions cited for promotees distinguishable.”

15. The learned counsel for the petitioner of W.P(C) No.1086 of 1999 strenuously submitted that the long passage of time cannot change the nature of the said order of the Govt. of Manipur dated 11.11.1983, which is stated to be illegal for the reasons submitted by him in the above paras and in this regard, he referred to the decision of the Apex Court in **State of M.P. & Anr. –vrs – Dharam Bir, reported in (1998) 6 SCC 165**. Paras-26, 27 and 31 of SCC in **State of M.P. & Anr. –vrs – Dharam Bir (Supra)** read as follows:

“26. Whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointment. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service.”

“27. Applying these principles to the instant case, since the respondent, admittedly, was appointed in an ad hoc capacity, he would continue to hold the post in question in that capacity. On the promulgation of Rules, therefore, the post of Principal which he was holding could not be treated to have been filled up on regular basis and had to be treated as vacant. In order to make regular appointment by promotion on that post, the eligible

candidates were considered and the respondent, not possessing the required educational qualification, was not found fit or suitable for the post of Principal and was consequently directed to be appointed on regular basis as Vice-Principal as he was found suitable only for that post principally for the reason that he did not possess a Degree or Diploma in Engineering.”

“31. The plea that the Court should have a “human approach” and should not disturb a person who has already been working on this post for more than a decade also cannot be accepted as the courts are hardly swayed by emotional appeals. In dispensing justice to the litigating parties, the courts not only go into the merits of the respective cases, they also try to balance the equities so as to do complete justice between them. Thus the courts always maintain a human approach. In the instant case also, this approach has not been departed from. We are fully conscious that the respondent had worked on the post in question for quite a long time but it was only in ad hoc capacity. We are equally conscious that a selected candidate who also possesses necessary educational qualification is available. In this situation, if the respondent is allowed to continue on this post merely on the basis of his concept of “human approach”, it would be at the cost of a duly selected candidate who would be deprived of employment for which he had striven and had ultimately cleared the selection. In fact, it is the “human approach” which requires us to prefer the selected candidate over a person who does not possess even the requisite qualification. The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.”

16. The rival contention of the learned counsel for the respondents in W.P(C) No.1086 of 1999 is that the writ petitioner cannot collaterally challenge the said order of the Govt. of Manipur dated 11.11.1983 without directly challenging the same and without any prayer for quashing or setting aside the same or filing necessary writ petition for challenging the said order dated 11.11.1983 in the present writ petition. In support of his said contention, the learned counsel appearing for the private respondents had referred to the decision of the Apex Court in **Panjak Bhargava & Anr., -vrs – Mohinder Nath & Anr., reported in AIR 1991 SC 1233**. In that case, the Apex Court held that the doctrine of collateral challenge will not apply to a decision which is valid ex-hypothesis and which has same presumptive existence, validity and effect in law. Such a decision can be invalidated by the right person in the right proceedings brought at the right time, but the doctrine of collateral challenge will be available where there is lack of inheritant jurisdiction. In order to further re-inforce his submissions, the learned counsel of the private respondents also referred to the decisions of the Apex Court in **Dr. Ku. Nilofar Insaf – vrs – State of M.P. and Ors., reported in AIR 1991 SC 1872** wherein the Apex Court also took the similar view that the regularity or validity of order must be directly challenge and got set aside in an independent proceedings. To permit a collateral attack on them in other proceedings, there will be beset that problems and complications or a far reaching magnitude. The learned counsel for the private respondents also placed a heavy reliance for substantiating his case that doctrine of collateral challenge shall not be applicable in the present writ petitions for challenging the said order of the Govt. of Manipur dated 11.11.1983 in the present writ petitions on the decision of the Apex Court in **Dhurandhar Prasad Singh – vrs – Jai Prakash University & Ors., reported in AIR 2001 SC 2552**. Para 21 of SCC in **Dhurandhar Prasad Singh – vrs – Jai Prakash University & Ors (Supra)** reads as follows:

“21. Thus the expressions “void and voidable” have been subject-matter of consideration on innumerable occasions by Courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction

against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same as declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

17. From the above discussions, this court is of the considered view that the orders of the Govt. of Manipur dated 11.11.1983 was issued by the Govt. of Manipur by exercising the powers conferred under Article 162 of the Constitution of India by covering an area where the Article 309 operates. And in other words, the said order of the Govt. of Manipur dated 11.11.1983 was issued in violation of the law inasmuch as procedures prescribed in the law have not been followed in issuing the order dated 11.11.1983. Such being the situation, the order dated 11.11.1983 had been issued illegally even if the Govt. of Manipur has the power to issue the order for regularizing the ad hoc service of the private respondents. By applying the principle of law laid down by the Apex Court in the cases cited above regarding the applicability of the doctrine of collateral challenge of an order by not filing an independent proceeding/writ petition for setting aside the concerned order in an another proceeding in which the effect of the concerned order is discussed, this court is of the considered view that doctrine of collateral challenge is not applicable in the present case inasmuch as there is no complete absence of power of the Govt. of Manipur for regularizing the ad hoc services of the private respondents and as such an

independent proceeding directly challenging the order dated 11.11.1983 for setting aside of the same is required. However, in the peculiar facts and circumstances of the present case, it is left to the state respondents to issue necessary orders after taking into consideration of all the points discussed in this common judgment and order in respect of the said order of the Govt. of Manipur dated 11.11.1983.

18. From the above discussions, it is clear that admittedly names of the writ petitioners of W.P(C) No.1558 of 2000, W.P(C) No.818 of 2000 and W.P(C) No.261 of 2001 holding the feeder posts for promotion to the post of D.O. and A.D.I under the said recruitment rules dated 21.6.1988 are not included in the impugned final inter se seniority list dated 28.8.1989.

19. After taking into consideration of the submissions of the learned counsel of all the parties and keeping in view of the law laid down by the Apex Court and for the reasons discussed above, this court is of the considered view that the interference to the impugned seniority list dated 28.8.1989 is called for. Accordingly, the impugned seniority list dated 28.8.1989 is hereby quashed and the state respondents are directed to prepare the seniority list by following the rules mentioned above as expeditiously as possible preferably within a period of 3(three) months from the date receipt of this common judgment and order. It is also further directed that the state respondents should file up the post(s) of D.O. and A.D.I. on regular basis after finalizing the seniority list on regular basis so as not to allow the private respondents of the W.P(C) No.977 of 1999 to hold the promotional posts for an indefinite period on ad hoc basis on the lame excuse of non-finalisation of the seniority list.

20. To the extent mentioned above, these writ petitions are allowed. Considering the peculiar facts and circumstances of the entire writ petitions, I make no order as to costs.

JUDGE

FR/NFR

