

(2016) 03 MAN CK 0002

In the Manipur High Court

Case No : W.P. (C) Nos. 707, 612, 109 of 2015 and 599, 616, 723, 422 and 927 of 2014

Asem Rebika Devi and Others

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 16(1), Article 21, Article 309

Citation : (2016) 03 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : I. Lalitkumar, Sr. Advocate assisted by Th. Rommel, Advocate, B.P. Sahu, Sr. Advocate assisted by Phungyo Zingkhai, Advocate, H.S. Paonam, Sr. Advocate assisted by S. Gunabanta, Advocate, M. Hemchandra, Advocate, Y. Ronelchandra, Advocate, Th. Babita, Adv

Final Decision : Disposed off

Judgement

Kh. Nobin Singh, J.—1. Heard Shri I. Lalitkumar, learned Senior Advocate assisted by Shri Th. Rommel, learned counsel; Shri B.P. Sahu, learned Senior Advocate assisted by Shri Phungyo Zingkhai; learned counsel Shri H.S. Paonam, learned Senior Advocate assisted by Shri S. Gunabanta; Shri N. Ibotombi, learned Senior Advocate assisted by Shri A. Rommel, learned counsel; Shri M. Hemchandra, learned counsel; Shri Y. Ronelchandra, learned counsel and Ms. Th. Babita, learned counsels appearing for the petitioners; Shri Th. Ibohal, learned Advocate General assisted by Shri H. Debendra, learned Govt. Advocate; Shri A. Bimol, learned counsel for the Director of Education (S), Government of Manipur and Shri Samarjit Hawaibam, learned Govt. Advocate appearing for the MPSC.

2. The main subject matter in issue relates to the validity and correctness of the Manipur Education Service Examination, 2014 conducted under the provisions of the Manipur Education Service Rules, 2012 by direct recruitment through open competition as well as through Limited Departmental Competitive Examination in

respect of Grade-II and Grade-III posts. Since all these writ petitions arise out of the similar sets of facts, the same are being considered and disposed of by this common judgment and order.

W.P. (C) No. 707 of 2015:

3.1. By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus directing the respondents therein to declare the result of the Manipur Education Service Examination, 2014 in respect of Grade-III service/post by direct recruitment through the Limited Departmental Competitive Examination within a stipulated period.

3.2. According to the petitioners, the petitioner Nos. 1 and 2 are working as Hindi Matriculate Teacher and Primary Teacher while petitioner Nos. 3 to 5 are working as Graduate Teachers in the Directorate of Education (S), Govt. of Manipur. The respondent No. 3 issued an advertisement dated 23-7-2014 inviting applications from amongst the eligible candidates for appointment of 41 (forty one) posts of Manipur Education Service Grade-III by direct recruitment through Limited Departmental Competitive Examination. The petitioners being eligible for appointment to the said posts, applied for the same and accordingly, admit cards were issued in their favour.

3.3. The preliminary examination of the said Manipur Education Service Grade-III was held on 28-10-2014 and its result was declared on 17-11-2014. A total number of 66 (sixty six) candidates including the petitioners were declared qualified to sit for the Main (Written) Examination which was held on 1-12-2014 and the result thereof was declared on 14-1-2015. The total number of 36 (thirty six) candidates including the petitioners were declared qualified to appear in the viva-voce test which was held from 20-1-2015 to 23-1-2015.

3.4. Despite the process of examination having been completed, the result thereof has not been declared till date. The non-declaration of the result thereof, without any considerable reason and justification, is against the settled principle of law and is arbitrary and discriminatory being violative of Articles 14 and 16 of the Constitution of India. Hence, the present writ petition has been filed by the petitioners to enforce their fundamental rights.

4. No counter affidavit on behalf of the respondents has been filed to contest the instant writ petition for the reason best known to them.

W.P. (C) No. 612 of 2015:

5.1. By the instant writ petition, the petitioners have prayed for directing the respondents to declare the result of the selection process/examination for appointment as Manipur Education Service Grade-III conducted pursuant to the advertisement dated 17-7-2014 and Press Note dated 23-7-2014 issued by the Manipur Public Service Commission.

5.2. According to the petitioners, they are first class and second class Master

Degree holders with B.Ed. qualifications. All the petitioners are excellent in their academic careers and are well qualified for appointment to the post of Manipur Education Service Grade-III (Assistant Inspector of Schools) in the Department of Education (S), Government of Manipur as per the Manipur Education Service Rules, 2012. The Secretary, MPSC vide its advertisement dated 17-7-2014 has invited applications from amongst the eligible candidates for appointment to 41 (forty one) posts of Manipur Education Service Grade-III. After the said advertisement dated 17-7-2014 having been issued, the Secretary, MPSC issued a Press Note on 23-7-2014 inviting applications for various posts in respect of other Departments including 41 (forty one) posts of Manipur Education Service Grade-III for direct recruitment through open competitive examination. The Press Note further invited applications from amongst the eligible candidates for direct recruitment of 27 (twenty seven) posts of Manipur Education Service Grade-II. In response to the said advertisement, the petitioners being qualified and eligible for appointment as Manipur Education Service Grade-III applied for the same and accordingly, admit cards were issued in favour of the petitioners.

5.3. The preliminary examination of the Manipur Education Services Grade-II and III was held on 28-10-2014 and its result was declared on 17-11-2014. The petitioners were declared qualified for appearing in the Main Written Examination which was held on 1-12-2014 and the result thereof was declared on 14-1-2015. The petitioners were declared qualified for appearing in the viva-voce test which was held from 20-1-2015 to 23-1-2015. But the result of the said examination has not yet been declared till date. The non-declaration of the said result has violated the fundamental rights of the petitioners guaranteed under Arts. 14, 16 and 21 of the Constitution of India. Being aggrieved by the inaction on the part of the respondents, the present writ petition has been filed by the petitioners praying for directing the respondents to declare the result of the said examination.

6. No counter affidavit on behalf of the respondents has been filed to contest the instant writ petition for the reason best known to them.

W.P. (C) No. 109 of 2015:

7.1. By the instant writ petition, the petitioners have prayed for quashing the Notification dated 23-1-2015 issued by the Secretary, Manipur Public Service Commission to the extent of non-publication of the result of the selection/examination in respect of the Manipur Education Service Grade-II.

7.2. According to the petitioners, they passed their Master of Arts/Master of Science Examinations from their concerned Universities in different years. The petitioners also duly passed the Degree in Bachelor of Education/Bachelor of Education and Training from various Universities/Institutions in different years. They were initially appointed as the Lecturer of Higher Secondary Schools by the Department of Education (S), Govt. of Manipur and are eligible for appointment as Manipur Education Service Grade-II (Departmental) under the Manipur

Education Service Rules, 2012. The advertisement dated 23-7-2014 was issued by the Secretary, MPSC inviting applications for direct recruitment, through Limited Departmental Competitive Examination, to the post of Manipur Education Service Grade-II. The petitioners being eligible for appointment to the said posts applied to the concerned authority in time. Though the preliminary examination was scheduled to be held on 28-10-2014, the same was actually held on 8-11-2014 and the result thereof was declared on 17-11-2014. The petitioners were found to be qualified for appearing in the Main (Written) Examination which was held on 1-12-2014 and 2-12-2014. The result of the Main Examination was declared on 14-1-2015 and the petitioners were found to be qualified for personality test/interview. The personality test/interview was held on 23-1-2015 and the petitioners, having done well in the test, hoped that the result thereof would be declared soon. A notification dated 23-1-2015 was issued by the Secretary, MPSC informing that although the selection process had completed, no appointment order could be issued in view of the order passed by this court in W.P. (C) No. 616 of 2014. On enquiry, it was found that the said writ petition being W.P. (C) No. 616 of 2014 was filed challenging the process of selection only in respect of the Manipur Education Service Grade-III i.e., Assistant Inspector of Schools in the Department of Education (S), Government of Manipur. On 22-8-2014, this court was pleased to pass an interim order directing that the recruitment process if undertaken by the MPSC, it may continue but no order for appointment shall be passed without the leave of the court followed by another order dated 23-9-2014 modifying the earlier order dated 22-8-2014 with the direction that the recruitment process undertaken by the MPSC be continued and concluded but the final selection list be not published without the leave of the court. On further perusal the petitioners came to know that a writ petition being W.P. (C) No. 599 of 2014 was filed challenging the process of selection in respect of Assistant Inspector of Schools i.e., Manipur Education Service Grade-III and the said two writ petitions filed by the petitioners therein challenged only the process of selection in respect of Manipur Education Service Grade-III. But to the utter surprise of the petitioners, the Secretary, MPSC issued a notification dated 23-1-2015 by wrongly interpreting the said order dated 23-9-2014 passed by this court in W.P. (C) No. 616 of 2014 as if the said order had covered the selection process in respect of Manipur Education Service Grade-II also. Accordingly, the present writ petition has been filed by the petitioners praying that the notification dated 23-1-2015 issued by the Secretary, MPSC be quashed and set aside to the extent indicated above and the MPSC be directed that there is no bar by the order dated 23-9-2014 from declaring the result of the selection process in respect of Manipur Education Service Grade-II.

8. The instant writ petition is contested by the respondent No. 1 by filing an affidavit-in-opposition wherein it is stated that in compliance of the order dated 23-9-2014, the said Notification dated 23-1-2015 was issued and moreover, since the category of posts was not mentioned in the said order dated 23-9-2014, it was not possible on the part of the respondent No. 1 to declare the

result of the selection of a particular category.

W.P. (C) No. 723 of 2014:

9.1. The instant writ petition has been filed by the petitioners praying for quashing the Press Note dated 23-7-2014 in so far as it relates to filling up of 41 posts of Assistant Inspector of schools by holding Limited Competitive Examination and for reconsidering the case of the petitioners for regularisation to the post of the Assistant Inspector of Schools in compliance of the order dated 31-3-2013 passed in W.P. (C) No. 454 of 2010 or reviewing the order dated 4-3-2005 having regard to the irregularity committed by the respondents.

9.2. According to the petitioners, they were initially appointed as Assistant Science Graduate Teachers/Graduate Teachers/Assistant Graduate Teachers in the years between 1982 -1987 vide various orders issued by the Department of Education (S), Government of Manipur. They were allowed to function as Assistant Inspector of Schools and allowed to enjoy the pay and allowances attached to the post of Assistant Inspector of Schools. In compliance with the orders passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 954 of 2001, W.P. (C) No. 1044 of 2001, W.P. (C) No. 1045 of 2001 and W.P. (C) No. 371 of 2003, the regularisation orders of the petitioners and other similarly situated were issued by the State Government. Although a writ appeal was preferred against the said judgment and order passed in W.P. (C) No. 1045 of 2001, the same was disposed of by the Hon''ble Gauhati High Court when it was appraised of the fact that the regularisation order dated 26-2-2003 had been issued by the State Government.

9.3. In an attempt to cancel the regularisation of 27 (twenty seven) Assistant Inspector of Schools, show cause notices vide Memorandum dated 28-6-2003 were issued to the petitioners and in response thereto, the petitioners had explained the circumstances leading to the regularisation after due consultation with the DP in view of the posts being Class-III posts as per the Recruitment Rules, 1976. Some of the petitioners have been allowed to hold the post of Deputy Inspector of Schools by issuing different orders even before the issuance of the regularisation orders in 2003.

9.4. While working as Assistant Inspector of Schools, the petitioners came to know that the State Government vide order dated 4-3-2005 had cancelled the regularisation of 24 (twenty four) Assistant Inspector of Schools including the present petitioners on the ground that the regularisations were effected without holding a DPC and in violation of the rules relating to promotion.

9.5. Being aggrieved by actions of the State Government, the petitioners approached the Hon''ble High Court questioning the said Government order dated 4-3-2005 by way of various writ petitions which were disposed of by a common judgment and order dated 19-6-2009 whereby the Hon''ble Gauhati High Court, Imphal Bench while declining to interfere with the impugned order dated 4-3-2005 was pleased to grant liberty to the State respondents to consider

the case of the petitioners. While hearing the W.P. (C) No. 406 of 2005 and the connected matters, the Hon''ble High Court found that the relaxation or exempting from holding DPC as claimed in the regularisation order dated 26-2-2003 was not there in the relevant records/files produced by the State Government. However, the State respondents issued an order dated 4-1-2010 deeming the petitioners as eligible persons for promotion subject to their coming within the zone of consideration and being aggrieved by it, the petitioners submitted representation dated 18-1-2010 to the Hon''ble Minister (Education), Manipur to examine and consider the cases of the petitioners but no positive response has been received by the petitioners till date. Being aggrieved, the petitioners approached the Hon''ble High Court by way of a writ petition being W.P. (C) No. 454 of 2010 praying for a direction to the respondents therein to reconsider the cases of the petitioners for regularisation in terms of the order dated 19-6-2009 which was disposed of with the direction to the respondents to reconsider the case of the petitioners along with other similarly situated case expeditiously as per the recruitment rules as applicable. The Hon''ble Gauhati High Court, Imphal Bench vide its order dated 31-1-2013 directed the respondents to complete the whole process within a period of 3 (three) months.

9.6. During the intervening period, the Manipur Education Service Rules, 2012 came into being and under the said rules, 50% of the vacancies for the post of Assistant Inspector of Schools shall be filled up by direct recruitment through Limited Competitive Examination from amongst the candidates possessing Master''s Degree and Degree of Bachelor of Education and who had completed 10 (ten) years of regular services; the remaining 50% shall be filled up by direct recruitment through open competition. It has come to the knowledge of the petitioners that the State respondents have already taken process of consideration of the case of the petitioners and similarly situated persons and the matter was pending for consideration by the Cabinet. While awaiting with positive hope that the respondents would consider the cases of the petitioners, they came to know that an advertisement had been issued by the MPSC on 23-7-2014 inviting applications for appointment to various posts under the Government of Manipur including 27 (twenty seven) posts of Deputy Inspector of Schools and 41 (forty one) posts of Assistant Inspector of Schools. The present writ petition has been filed by the petitioners praying for quashing the Press Note dated 23-7-2014 and directing the respondents to consider the cases of the petitioners for regularisation to the post of Assistant Inspector of Schools.

10. The instant writ petition is contested by the respondent No. 1 by filing an affidavit-in-opposition wherein it is stated that the Manipur Education Service Rules, 2012 was framed with a view to streamline the administration towards fulfilling the centrally sponsored schemes; that with the enforcement of the said Rules, 2012, the erstwhile posts of Assistant Inspector of Schools ceased to exist and different eligibility conditions have been prescribed; that the petitioners are allowed to function as in-charge/look after the works of the Assistant Inspector of Schools as stop gap arrangement without considering the inter-se seniority;

that the petitioners are not entitled to be regularised; that the earlier/former recruitment rules for the post of Assistant Inspector of Schools was repealed by the 1st amendment of Manipur Education Service Rules, 2014 and that the petitioners have no accrued or vested right for promotion which was taken away by the enforcement of the Manipur Education Service Rules, 2012.

W.P. (C) No. 599 of 2014:

11.1. The instant writ petition has been filed by the petitioners praying for quashing the Government letter dated 30-5-2014 as well as the advertisements dated 17-7-2014 and 23-7-2014 issued by the Manipur Public Service Commission inviting applications from amongst the eligible persons for appointment to the posts of Assistant Inspector of Schools and also for filling up 82 vacant posts of Assistant Inspector of Schools, in accordance with the Recruitment Rules, 2001, on regular basis by providing an opportunity to the petitioners for being considered for regular appointment.

11.2. According to the petitioners, they are all at present working as Assistant Inspector of Schools at different places of posting on in-charge basis. The Department of Personnel and Administrative Reforms (Personnel Division), Government of Manipur issued a notification dated 27-12-2001 publishing the rules called the Education (S) Department, Manipur (Assistant Inspector of Schools) Recruitment Rules, 2001 and as per the said rules, the method of recruitment was exclusively by promotion from the Graduate Teachers/Head Masters of Primary Schools having at least 5 years in the grade and the sanctioned posts were 82 (eighty two) in number. Some of the petitioners and other similarly situated persons approached the Hon'ble High Court by way of a writ petition being W.P. (C) No. 128 of 2007 which was disposed of by the Hon'ble High Court vide order dated 7-9-2009 directing the respondents therein to consider the cases of the petitioners as and when the posts of the Assistant Inspector of Schools or equivalent were filled up, if they were found eligible as per the Recruitment Rules and in terms of the said court's order, the Department of Education, Government of Manipur issued a specific order dated 4-1-2010 thereby ordering that the request/prayer of the petitioners would be considered along with other eligible persons within the zone of consideration for promotion as per the Recruitment Rules. Thereafter, the State Government published the final seniority list of all the Graduate Teachers on 15-6-2012. Although the petitioners have been rendering their respective services with devotion and dedication, some of them are being paid for the post of Assistant Inspector of Schools vide Government's letter dated 28-8-2002 and the remaining are being paid for the substantive post of Graduate Teachers.

11.3. The rules called the "Manipur Education Service Rules, 2012" came to be made whereunder out of those 82 sanctioned posts, 50% are to be filled up by Direct Recruitment (Open Competition) and the remaining 50% by Direct Recruitment (Limited Competition). The minimum qualifications prescribed for direct recruitment are as under-

"i) Primary teachers with Post-Graduate Degree in any Discipline and B.Ed. with 10 years of regular service.

ii) Graduate Teachers with Post-Graduate Degree in any Discipline and B.Ed. with 10 years of regular service.

iii) Assistant Head Master of High Schools with Post-Graduate Degree in any discipline and B.Ed. with 10 years of regular service."

11.4. To the great shock and surprise of the petitioners, the Government of Manipur addressed to the Secretary, Manipur Public Service Commission a letter dated 30-5-2014 with the requisition for filling up the vacant posts of Assistant Inspector of Schools and pursuant thereto, the MPSC issued an advertisements dated 17-7-2014 and 23-7-2014 inviting applications from amongst the eligible candidates for appointment to the posts of 82 Assistant Inspector of Schools. After utilizing the services of the petitioners for so long, the action of the respondents for throwing them out of the service without considering their cases is arbitrary and illegal. The petitioners are entitled to be considered for regular appointment to the posts of Assistant Inspector of Schools in accordance with the Rules, 2001. The 82 vacant posts of the Assistant Inspector of Schools are not newly created under the Rules, 2012 but are the existing vacancies remained unfilled since the operation of the Rules, 2001. Under the Rules, 2012, all the posts have been shown to be filled up by direct recruitment and with the change being made in respect of the qualification, the petitioner's right to be considered for appointment on promotion has been taken away. In spite of the orders being passed by the Hon'ble Gauhati High Court, the State respondents have failed to initiate steps to consider the cases of the petitioners as per Rules, 2001. Although the Finance Department (PIC) issued the order dated 11-7-2001, the same was not implemented, as a result when the Rules, 2001 came to be framed and notified, 82 sanctioned posts were shown therein which are being held by the petitioners on in-charge basis. Being aggrieved by the said letter dated 30-5-2014 and advertisements dated 17-7-2014 and 23-7-2014, the present writ petition has been filed by the petitioners.

11.5. The instant writ petition is contested by the respondent No. 1 by filing an affidavit-in-opposition wherein it is stated that the substantive posts of the petitioners are Graduate Teachers/Headmasters of Primary Schools and they have been allowed to function as Assistant Inspector of Schools on in-charge/look after basis without considering the inter-se seniority; that the said Manipur Education Service Rules, 2012 was framed with a view to streamline the administration towards fulfilling the centrally sponsored schemes; that an amendment was made to the effect that the earlier rules in respect of the posts specified in the Scheduled-I was repealed from the date of coming into force of the Rules, 2012; that with the enforcement of the said Rules, 2012, appointments are to be made to the posts of Assistant Inspector of Schools through Open Competition as well as the Limited Department Examination; that 82 posts Assistant Inspector of Schools specified in Schedule-I shall be deemed

to have been newly created and that the petitioner's substantive posts being the Graduate Teachers/Headmasters of the Primary School, they are not entitled to be promoted merely because they have been allowed to work as in-charge or look after the post of Assistant Inspector of Schools. By way of supplement thereto, the respondent No. 6 has filed an affidavit-in-opposition contending inter-alia that after the abolition of 28 posts, the State Government decided not to fill up the remaining posts and instead, decided to constitute an organised service for which the Manipur Education Service Rules, 2012 came to be made/framed prescribing a detailed procedure therein; that by the 1st amendment, the earlier recruitment rules in respect of the posts specified in the schedule-I was repealed; that assuming for the sake of argument that Recruitment Rules, 2001 would apply to the cases of the petitioners, they have no vested or fundamental rights to be considered for promotion to the posts of Assistant Inspector of Schools, since they are not within the zone of consideration; that it is settled law that mere chances of promotion are not conditions of service and that a right to be considered for promotion is a fundamental right provided the candidate is eligible/qualified and is within the zone of consideration.

W.P. (C) No. 422 of 2014:

12.1. The instant writ petition has been filed by the petitioners praying that 82 (eighty two) vacant posts of Assistant Inspector of Schools, against which the petitioners are working as Assistant Inspector of Schools on in-charge basis, be filled up by the respondents in accordance with the Recruitment Rules, 2001.

12.2. According to the petitioners, who are all together 17 (seventeen) in number, were initially appointed to the posts of Graduate Teacher/Arts Graduate Teacher/Science Graduate Teacher/Assistant Graduate Teacher/Assistant Science Graduate Teacher vide various orders issued by the Director of Education (S), Government of Manipur. While the petitioners were serving in the aforesaid capacity, they were allowed to work and function as in-charge Assistant Inspector of Schools in public interest in different places of posting for which the competent authorities issued various orders. While the petitioners except Nos. 3, 7, 12 and 16 were serving in the aforesaid capacity, they were further allowed to function as in-charge Deputy Inspector of Schools in various offices mentioned in the orders issued by the competent authorities.

12.3. On 14-8-2014, when the matter was listed, this court was pleased to pass an order directing that the names of the petitioner Nos. 3, 5, 6, 8, 9 and 17 be deleted from the array of parties and accordingly, their names have been deleted, although an amended cause title has not been filed in respect thereof.

12.4. According to the petitioners, the Recruitment Rules known as "The Education (S) Department, Manipur (Assistant Inspector of Schools) Recruitment Rules, 2001 came to be notified on 4-1-2002 and as per the said Recruitment Rules, there were 82 posts of Assistant Inspector of Schools to be filled up by promotion in the ratio of 5:1 from the Graduate Teachers and Head Masters of

Primary Schools. Since the petitioners being eligible for appointment as Assistant Inspector of Schools, some of the petitioners filed a joint petition being W.P. (C) No. 128 of 2007 praying for filling up the said posts of Assistant Inspector of Schools which was disposed of vide Court's order dated 7-9-2009 with the direction to the respondents to consider the case of the petitioners as and when the said posts were filled up as per the Recruitment Rules along with the similarly situated persons. Pursuant to the said order dated 7-9-2009, the Government of Manipur issued an order dated 4-1-2010 by which the Government was pleased to order that the request/prayer of the petitioners for promotion to the post of Assistant Inspector of Schools be considered along with other eligible persons within the zone of consideration as per the Recruitment Rules and on the recommendation of a duly constituted DPC. In spite of the said order being passed by the Hon'ble Gauhati High Court, Imphal Bench, the respondents have failed to consider the case of the petitioners. While the petitioners were discharging their duties as Assistant Inspector of Schools/Deputy Inspector of Schools, the Government of Manipur made/framed the rules called the Manipur Education Services Rules, 2012 which was notified on 10-12-2012. As per the Rule 2(g) of the said Rules, the post of Joint Director, Zonal Education Officer, Deputy Inspector, Assistant Director including the post of Assistant Inspector of Schools have been shown as MES Grade-III. Rule 27(1) of the said Manipur Education Services Rules, 2012 provides the procedure for filling up vacant posts in Grade-III only by direct recruitment - 50% through limited competitive examination who have passed Master Degree/Degree of Bachelor of Education and the remaining 50% by direct recruitment through open competition from amongst the candidates possessing PG Degree in any discipline and Degree of Bachelor of Education. Being aggrieved, the petitioners have filed the present writ petition.

13. The instant writ petition is contested by the respondent No. 3 by filing an affidavit-in-opposition contending inter-alia that as per Recruitment Rules, 2001, the total number of posts in the cadre of Assistant Inspector of Schools was 82 which was reduced to 54 on downsizing of the Departments and the method of recruitment was by promotion; that the State Government took a policy decision not to fill up the said vacancy and instead of doing that, the State Government decided to constitute an organised service known as the Manipur Education Service for which the Manipur Education Service Rules, 2012 was framed providing a different method of recruitment - 50% by direct recruitment through limited competitive examination and the remaining 50% by direct recruitment through open competition; that after having abolished the old posts, new 82 posts of Assistant Inspector of Schools were created under the organised service; that the petitioners have no vested or fundamental rights to be considered for appointment to the posts of Assistant Inspector of Schools in terms of the provisions of Recruitment Rules, 2001 and that a right to be considered for promotion is a fundamental right provided the candidate is eligible/qualified and is within the zone of consideration.

W.P. (C) No. 616 of 2014:

14.1. The present writ petition has been filed by the petitioners praying for quashing the entire process of selection to the posts of Assistant Inspector of Schools pursuant to the requisition letter dated 30-5-2014 and the advertisements dated 17-7-2014 & 23-7-2014 in respect of the office of ZEO, Churachandpur and for direction to the respondents to initiate the process for filling up the existing vacancies for the posts of Assistant Inspector of Schools as per the Recruitment Rules, 2001.

14.2. According to the petitioners, on the recommendation of the DPC they were initially appointed to the post of Under Graduate Teachers/Matriculate Teachers and Graduate Teachers vide various orders issued by the Director of Education (S), Govt. of Manipur. Thereafter, the petitioners were allowed to discharge their duties as Assistant Inspector of Schools for various offices of the Zonal Education Officers on in-charge basis. While they were discharging their duties as the Assistant Inspector of Schools, the Commissioner, Education (S), Govt. of Manipur allowed the petitioners to work as in-charge Deputy Inspector of Schools and in the meantime, the State Government issued a notification dated 4-1-2002 publishing the Recruitment Rules, 2001 and as per the said Recruitment Rules, there were 82 (eighty two) sanctioned posts of Assistant Inspector of Schools which were to be filled up 100% by promotion. Thereafter, the Government of Manipur issued another notification dated 4-12-2012 publishing the Manipur Education Service Rules, 2012 by which the posts of Assistant Inspector of Schools are to be filled up from two sources- one, by direct recruitment and another, by promotion under limited departmental examination. The qualification of M.A/M.Sc/M.Com with B.Ed are the essential qualifications for both the direct recruitment and promotion.

14.3. On 30-5-2014, the Joint Secretary (Education/S), Govt. of Manipur sent a letter to the Secretary, MPSC requesting it to take appropriate and necessary action for recruitment of Assistant Inspector of Schools through open competition. Pursuant to the said letter, the Secretary, MPSC issued an advertisement dated 17-7-2014 inviting applications from amongst the eligible candidates in the form prescribed for it. Being aggrieved, the present writ petition has been filed by the petitioners.

15. The instant writ petition is contested by the respondent No. 2 by filing an affidavit-in-opposition wherein it is stated that the Manipur Education Service Rules, 2012 was framed with a view to streamline the administration towards fulfilling centrally sponsored schemes; that the said rule was amended by the Manipur Education Service (Amendment) Rules, 2014 repealing the earlier/former Recruitment Rules and the erstwhile posts ceased to exist; that the petitioners whose substantive posts were Graduate Teachers, are allowed to function on in-charge/look after basis as a stop gap arrangement without considering the inter-se seniority amongst the Graduate Teachers; that they cannot claim absorption/regularisation/promotion in violation of the provisions of

the Manipur Education Service Rules, 2012 and that the petitioners have no accrued or vested right for promotion which was taken away by the enforcement of the said rules.

W.P. (C) No. 927 of 2014:

16.1. The instant writ petition has been filed by the petitioner praying for a direction to the respondents to consider the case of the petitioner for regularisation as Assistant Inspector of Schools in terms of his long 24 years service as Assistant Inspector of Schools with pay and allowance attached to it and also for issuing a writ of mandamus or any other appropriate writ not to make the advertisement dated 23-7-2014 effective in respect of the promotion quota.

16.2. According to the petitioner, he being a graduate, was appointed as Assistant Science Graduate Teacher vide order dated 11-5-1987 issued by the Director of Education (S), Government of Manipur on regular basis on the recommendation of a DPC. After the petitioner having passed B.T. Examination in the year, 1990, his service was utilised as Assistant Inspector of Schools vide order dated 6-7-1990. While the petitioner was serving as Assistant Inspector of Schools, the Department of Education (S), Government of Manipur issued an order dated 6-12-1991 allowing the petitioner to enjoy the scale of pay of Assistant Inspector of Schools till the post is filled up on regular basis.

16.3. While the petitioner was serving as Assistant Inspector of Schools w.e.f. 6-7-1990, the Government of Manipur took a policy decision for regularisation of ad-hoc employees and accordingly, issued an OM dated 22-8-1994. The petitioner along with two others approached the concerned authorities to consider their case for regularisation in terms of the said OM dated 22-8-1994 and moreover, the petitioner and the said two others approached the Hon'ble Gauhati High Court, Imphal Bench by way of writ petition being C.R. No. 949 of 1994 praying for regularisation of their services in terms of the said OM. The said writ petition was disposed of vide Court's order dated 29-1-2001 with the direction that the case of the petitioners be considered in terms of the promotional rules within a period of four months there from. In compliance of the said court's order dated 29-1-2001, the Government of Manipur issued an order dated 23-5-2001 regularising the services of the petitioner and two others as Assistant Inspector of Schools.

16.4. To their shock and surprise, the Government order dated 23-5-2001 by which the services of the petitioner and two others were regularised as Assistant Inspector of Schools, was cancelled on the ground that the said OM dated 22-8-1994 was not applicable to the case of the petitioner and the two others. The petitioner and the two others challenged the said cancellation order dated 13-7-2001 by filing a writ petition being W.P. (C) No. 371 of 2002 in which the Hon'ble Gauhati High Court, Imphal Bench was pleased to pass an interim order dated 23-3-2002 to the effect that the Government order dated 13-7-2001

should not be applicable in respect of the petitioners therein. On 18-5-2009, the said writ petition along with other identical cases were dismissed by the Hon''ble Gauhati High Court, Imphal vide its order dated 19-6-2009 and inspite of the cancellation of his regularisation, the petitioner was allowed to continue to function as Assistant Inspector of Schools with all amenities attached to the said post and even in the MGEL issued by the Government of Manipur, the petitioner''s designation is shown as Assistant Inspector of Schools.

16.5. By the time when the petitioner was transferred and posted as Assistant Inspector of Schools vide order dated 6-7-1990, the Recruitment Rules notified vide order dated 4-11-1976 was in force which came to be amended in January, 2002 and under the said Recruitment Rules, the petitioner was qualified and eligible for appointment on promotion to the post of Assistant Inspector of Schools. Because of his long standing and experiences as Assistant Inspector of Schools, the petitioner was allowed to work as Deputy Inspector of Schools w.e.f. 22-3-2003 and the petitioner has, by now, served more than 24 (twenty four) years as Assistant Inspector of Schools enjoying the pay and allowances of Assistant Inspector of Schools but the service of the petitioner is not yet regularized till date. The Government of Manipur issued a notification publishing the Manipur Education Service Rules, 2012 - one, by direct recruitment through open competition and another, by promotion under limited departmental examination.

17. The writ petition is contested by the respondent Nos. 1 and 2 by filing a affidavit-in-opposition wherein it is stated that the petitioner''s substantive post being the Science Graduate Teacher, has no vested/accrued right to claim regularisation to the post of the Assistant Inspector of Schools on the basis of in-charge engagement; that the utilisation of his service as Assistant Inspector of Schools was not made in consideration of seniority and eligibility of the petitioner; the case of the petitioner was not covered by the said OM dated 22-8-1994 as he was not appointed on ad-hoc basis; that the writ petition being W.P. (C) No. 371 of 2002 filed by the petitioner was dismissed vide a common judgment and order dated 19-6-2009 and that the recruitment process under the Manipur Education Service Rules, 2012 was almost completed and result thereof could not be declared because of the interim order passed by this court. In addition to the above, the respondent No. 2 has filed a separate affidavit-in-opposition wherein it is stated that as per Recruitment Rules, 2001, the total number of posts in the cadre of Assistant Inspector of Schools was 82 which was reduced to 54 on downsizing of the Departments and the method of recruitment was by promotion; that the State Government took a policy decision not to fill up the said vacancy and instead of doing that, the State Government decided to constitute an organised service known as the Manipur Education Service for which the Manipur Education Service Rules, 2012 was made/framed providing a different method of recruitment-50% by direct recruitment through limited competitive examination and the remaining 50% by direct recruitment through open competition; that after having abolished the old posts, new 82 posts of

Assistant Inspector of Schools were created under the organised service; that the petitioners have no vested or fundamental rights to be considered for appointment to the posts of Assistant Inspector of Schools in terms of the provisions of Recruitment Rules, 2001 and that a right to be considered for promotion is a fundamental right provided the candidate is eligible/qualified and is within the zone of consideration.

18. All these writ petitions can be categorised into three groups - one, consisting of writ petitions being W.P. (C) No. 707, 612 & 109 of 2015 wherein their common and main prayer is that the result of the recruitment process/examination conducted by the Manipur Public Service Commission pursuant to its advertisement dated 17-7-2014 and Press Note dated 23-7-2014 for appointment to the post of Assistant Inspector of Schools be declared; two, consisting of W.P. (C) No. 723, 599, 422 & 927 of 2014 in which their main grievance is as regards the Manipur Education Service Examination, 2014 being conducted by the Manipur Public Service Commission under the provisions of the Manipur Education Service Rules, 2012 on the ground that they have vested right to be considered for promotion pursuant to the court's orders and this group can further be sub-divided into two sub-groups based on their facts - (a) W.P. (C) No. 599 of 2014 on the one hand and (b) W.P. (C) No. 723, 422 & 927 of 2014 on the other hand and three, consisting of W.P. (C) No. 616 of 2014 wherein the petitioners have prayed for issuing appropriate directions to the respondents therein to initiate process for filling up the vacancies for the post of Assistant Inspector of Schools as per the Recruitment Rules, 2001, although there is no court order in their favour for being considered for promotion to the post of Assistant Inspector of School.

19. From the pleadings of all the parties as stated above, the following issues have arisen for consideration by this court:

"a) Whether the petitioners in W.P. (C) No. 723 of 2014, W.P. (C) No. 599 of 2014 & W.P. (C) No. 422 of 2014, by virtue of the court's order and in particular, orders dated 7-9-2009 and 31-1-2013 being passed in their favour that they be considered for promotion which had attained finality, have accrued or vested rights to be considered for appointment to the post of Assistant Inspector of Schools on promotion in terms of the Recruitment Rules, 2001?

b) Whether, having regard to the fact that the vacancies having arisen before the commencement of Manipur Education Service Rules, 2012, the petitioners in W.P. (C) No. 616 of 2014 are entitled to be considered for promotion by initiating process for filling up the existing vacancies as per the Recruitment Rules, 2001?

c) Whether the petitioners in W.P. (C) No. 707 of 2015, W.P. (C) No. 612 of 2015 and W.P. (C) No. 109 of 2015 have accrued or vested right to be considered for selection in terms of the Manipur Education Service Rules, 2012 that existed at the time of advertisement?

d) If the above issues (a), (b) & (c) are decided in the affirmative, what is the

relief that can be granted by this court?"

In Re: Issue (a):

20.1. It is well settled that that no employee has any right to promotion but has right to be considered for promotion which is considered to be a fundamental right. Even in *Ajit Singh & ors. (II) v. State of Punjab & ors.* reported in , (1999) 7 SCC 209, relied upon by Shri A. Bimol, learned counsel appearing for the Director (Education/S), it has been held by the Hon"ble Supreme Court that Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be considered for promotion. But this consideration has to be done in accordance with the relevant Acts or Rules framed under the provisions of Article 309 of the Constitution of India. Article 309 confers power either on the Union or any State to enact laws regulating the recruitment and conditions of service of persons appointed to public service in connection with its affairs. As is provided in the proviso, until any such Act being enacted either by the Union or any State, the President or the Governor, as the case may be, is competent to make rules regulating the recruitment and conditions of service of persons appointed to public service in connection with its affairs. This power of the State Government includes the power to pass a new Act superseding the earlier Act or to amend the existing rules on the basis of the policy decision taken by the Union or the State and such exercise of power by the State Government cannot be challenged by any one. In other words, an employee has the right to be considered in the light of the existing rules and in this regard, the Hon"ble Supreme Court in the case of *Deepak Agarwal & anr. v. State of UP & ors.*, , (2011) 6 SCC 725 held:

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah* case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

The Hon"ble Supreme Court has further observed in para 32 as under:

"32. Similarly, this view has been reiterated by this Court in *State of M.P. v. Raghuveer Singh Yadav*, *H.S. Grewal v. Union of India* and *Rajasthan Public Service Commission v. Chanan Ram*. This Court in *Rajasthan Public Service Commission* case has held that it is the rules which are prevalent at the time

when the consideration took place for promotion, which would be applicable. In SCC para 17, it has been held as follows: (SCC pp. 218-19)

17. In *State of M.P. v. Raghuveer Singh Yadav* a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In para 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In *J & K Public Service Commission v. Dr. Narinder Mohan* another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for the respondent-writ petitioner, stated that it is not his case that the writ petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5-11-1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the appellants and against the respondent-writ petitioner."

20.2. The only exception that can be curbed out, as regards the power of the Union of India or the State Government to enact laws or frame rules under Article 309 of the Constitution changing service conditions of its employees is that it cannot enact laws or frame rules affecting or taking away any right accrued to or vested right of the employee. In *R.S Ajara & ors. v. State of Gujarat & ors.* reported in , (1997) 3 SCC 641, the Hon''ble Supreme Court, after examining its earlier decisions, held:

"16. The resolution dated 31-1-1992 has been assailed by the promotee officers on the ground that it is retrospective in operation and affects their rights. The law in this field is well settled by the decisions of this Court. A benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights. (See: *State of Gujarat v. Raman Lal Keshav Lal Soni*; *K.C. Arora (Ex-Capt.) v. State of Haryana*; *T.R. Kapur v. State of Haryana*; *Uday Pratap Singh v. State of Bihar*.) Can it be said that the resolution dated 31-1-1992 makes any change in the existing provision governing the seniority so as to take away or deprive the respondents of a right which has accrued to them or which has crystallized? As noticed earlier, the 1981 Rules do not contain any principle governing the seniority of Assistant Conservators of Forests appointed under the said Rules. Shri P.P. Rao has invited our attention to the Handbook for Personnel Officers issued by the General Administration Department of the Government of Gujarat. In para 1 of Chapter V, dealing with Seniority, it is stated:

"In the case of direct recruits appointed on probation, the seniority would be determined ordinarily with reference to the date of their appointment on probation while in the case of the promotees, seniority would be determined with reference to the date of their promotion to long-term vacancies."

The words "vested right" have been explained by the Hon'ble Supreme Court in *J.S. Yadav v. State of Uttar Pradesh & anr.*, (2011) 6 SCC 570 by holding as under:

"22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course.

23. The appellant had been appointed under the provisions of the 1993 Act which did not require seven years' experience as a District Judge. In the instant case, the 2006 Amendment Act came into force on 23-11-2006. The State of U.P. did not take any step for discontinuation of the appellant up to May 2008 on the ground that he did not possess the eligibility as per the 2006 Amendment Act.

24. The legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. (Vide *Roshan Lal Tandon v. Union of India*, *State of Mysore v. M.H. Krishna Murthy*, *Raj Kumar v. Union of India*, *K.C. Arora v. State of Haryana* and *State of Gujarat v. Raman Lal Keshav Lal Soni*.)"

20.3. It has been contended by Shri I. Lalitkumar, Shri H.S. Paonam, senior advocates and Ms. Th. Babita, advocate, learned counsels appearing for the petitioners herein that the petitioners have vested right to be considered for promotion or in other words, rights to be considered for promotion have accrued in favour of the petitioners by virtue of the court's orders and in particular, orders dated 7-9-2009 and 31-1-2013 passed by the Hon''ble Gauhati High Court, Imphal Bench by which the State respondents therein have been directed to consider the cases of the petitioners. On the contrary, the learned Advocate General and Shri A. Bimol, learned counsel appearing for the Director (Education/S), Govt. of Manipur have submitted that the petitioners have no vested right to be considered for promotion and pursuant to a conscious decision of the State Government, the Manipur Education Service Rules, 2012 was made/framed on the basis of which the process of selection had already been initiated by the Manipur Public Service Commission and in support of their contentions, reliance has been placed in Dr. K. Ramulu & anr. v. Dr. S. Surya Prakash Rao & ors. , (1997) 3 SCC 59 and State of Punjab & ors. v. Arun Kumar Aggarwal & ors. , (2007) 10 SCC 402. On perusal of the said decisions, this court is of the view that their contentions have no force and the facts of the said two cases are not similar to that of the present ones and the said decisions being distinguishable, are not relevant in so far as the issue involved herein is concerned. As has been stated in the preceding paras, the Hon''ble Supreme Court in J.S Yadav (supra) has held that "vested right" is a right independent of any contingency and it can arise from a contract, statute or by operation of law. It is not specifically held that "vested right" can arise from an order or judgment of the High Court or the Hon''ble Supreme Court but it can be easily inferred that it will include the law laid down by the Hon''ble Supreme Court or the High Courts for the reason that the word "law" has wide connotation and moreover, an order passed by the Hon''ble Supreme Court or the High Court is to be obeyed and implemented by all concerned. In this regard, what has been held by the Hon''ble Supreme Court in Commissioner, Karnataka Housing Board v. C. Muddaih , (2007) 7 SCC 689 is relevant, para 32 of which is as under:

"32. We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

Similarly, the Hon''ble Supreme Court in Prestige Lights Ltd. v. State Bank of India , (2007) 8 SCC 449 held:

"24. An order passed by a competent court-interim or final-has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a "drastic step" and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour."

20.4. From the above decisions rendered by the Hon"ble Supreme Court as regards the mandatory requirement of the court's order to be implemented by all concerned, it is indubitably clear that the petitioners have vested right to be considered for promotion. It is not in dispute that the petitioners have initially joined the service as Assistant Science Graduate Teacher/Graduate Teachers/ Assistant Graduate Teachers etc. but subsequently, they have been and are being allowed to work as Assistant Inspector of Schools/Deputy Inspector of Schools on in-charge basis for a number of years and according to them, at the time when the orders dated 7-9-2009 and 31-1-2013 were passed by the Hon"ble Gauhati High Court, Imphal Bench, they were eligible for being considered for promotion in accordance with the existing rules namely the Recruitment Rules, 2001. The contention of the learned senior advocates/advocates appearing for the petitioners is that despite the said orders being passed by the Hon"ble Gauhati High Court, Imphal Bench, the petitioners have not been considered at all in compliance thereof and in the meantime, as per rules called the Manipur Education Service Rules, 2012 made by the State Government, they became ineligible for appointment as Assistant Inspector of Schools and lost their promotional avenue. Their contention has some force and is sustainable in law and their vested right to be considered cannot be taken away by the State Government.

In so far as the petitioners in W.P. (C) No. 723 & 927 of 2014 are concerned, Shri A. Bimol, learned counsel appearing for the Director (Education/S), Government of Manipur has made alternate submission that they had already been considered by the State Government but were found not qualified for being appointed on promotion as Assistant Inspector of Schools for the reason that a proper DPC was not held in accordance with law and persons senior to them had not been considered at all. It is no doubt true that initially the case of the petitioners is that since they have served as Assistant Inspector of Schools on ad-hoc/in-charge basis for a number of years, they are entitled to regularisation of their services. There was a specific prayer of the petitioners in W.P. (C) No. 927 of 2014 that they be directed to be regularised, probably, in terms of the OM dated 22-8-1994 issued by the State Government. Pursuant to the orders passed by the Hon"ble Gauhati High Court, Imphal Bench, the State Government issued Government orders regularising their services which was later cancelled as stated above. Regularisation is not one of the methods of recruitment recognised in the

service jurisprudence and is nothing but only a regularisation of irregular actions of the State Government in matters of appointment either by way of direct recruitment or by promotion. It may be noted that such regularisation of ad-hoc/in-charge services is now impermissible in view of the law laid down by the Constitution Bench of the Hon''ble Supreme Court in the case of *The Secretary, State of Karnataka v. Uma Devi* , (2006) 4 SCC 1.

While disposing of the writ petitions, the Hon''ble Gauhati High Court, Imphal Bench was pleased to direct that the petitioners therein be considered for regularisation in terms of the related promotion rules/service rules. It may further be noted that there is no provision at all in the relevant recruitment rules for appointment by way of regularisation and regularisation is normally done by the State Government by way of a policy decision only. In the case of the petitioners in W.P. (C) No. 927 of 2014, the State Government has taken a stand that the regularisation order was cancelled because the petitioners were not eligible under the said OM dated 22-8-1994 and were not within the zone of consideration. Thus, it is seen that while passing the said orders, the intention of the Hon''ble Gauhati High Court, Imphal Bench appears to be that the petitioners be considered for appointment on promotion as per the recruitment rules, which is also fortified or substantiated by the Government order dated 4-1-2010 whereby the State Government has ordered that the petitioners, along with other eligible persons within the zone of consideration, be considered for promotion as per RR and also on the recommendation of a duly constituted DPC. Court''s direction was only for consideration and not for appointment. The State Government being an institution, it will make no difference whether the employees are appointed on promotion either in terms of the Recruitment Rules, 2001 or appointment in terms of the Manipur Education Service Rules, 2012. The only requirement is that the appointment shall be made in accordance with law. Therefore, there is no harm in directing that the petitioners shall be considered, along with the similarly situated, for promotion in terms of the Recruitment Rules, 2001.

In Re: Issue (b):

21.1. This issue has arisen in W.P. (C) No. 616 of 2014 wherein it has been contended by Shri B.P. Sahu, senior advocate appearing for the petitioners that the petitioners were/are eligible for appointment on promotion to the post of Assistant Inspector of Schools as they possess and fulfil the requisite qualification/criteria prescribed in the Recruitment Rules, 2001; that the vacancies which were stipulated in the Recruitment Rules, 2001 and that too, well before the commencement of the Manipur Education Service Rules, 2012, have to be filled up under the said Recruitment Rules, 2001; that the issuance of the advertisement dated 17-7-2014 and the Press Note dated 23-7-2014 inviting applications for direct recruitment through the Manipur Public Service Commission is in violation of the Recruitment Rules, 2001 and that the acts of the State respondents and the Manipur Public Service Commission initiating

process for appointment to the posts of Assistant Inspector of Schools under the provisions of Manipur Education Service Rules, 2012, instead of initiating such a process under the Recruitment Rules, 2001, are arbitrary, malafide and illegal. On the strength of these contentions, the petitioners have prayed for appropriate directions from this court to direct the State respondents including the Manipur Public Service Commission to initiate process for appointment on promotion to the posts of Assistant Inspector of Schools in terms of the Recruitment Rules, 2001. In support of his contention, Shri B.P. Sahu, learned senior counsel for the petitioners has relied upon the decision rendered by the Hon''ble Supreme Court in *State of Rajasthan v. R. Dayal & ors.* , (1997) 10 SCC 419 wherein the Hon''ble Supreme Court has held that the posts which fell vacant prior to the amendment of the rules would be governed by the original rules and not by the amended rules. On the other hand, the learned Advocate General and Shri A. Bimol, advocate has relied upon the decision in *Deepak Agarwal case* (supra) wherein the Hon''ble Supreme Court has held that there is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. These two decisions appear to be slightly contradictory to each other but the decision rendered in *Deepak Agarwal case* is a recent one and moreover, it has been rendered by the Hon''ble Supreme Court after referring to its earlier decisions including that of *R. Dayal case* (supra) and on perusal of the said decisions, the one in *Deepak Agarwal case* appears to be quite relevant and applicable so far as the issue involved herein is concerned.

21.2. It has also been contended by Shri B.P Sahu, learned senior counsel appearing for the petitioners herein that a false additional affidavit has been filed on behalf of the State respondent deliberately with the ulterior motive and malafide intention to misguide this court and in terms of the law laid down by the Hon''ble Supreme Court in *Dhananjay Sharma v. State of Haryana & ors.* , (1995) 3 SCC 757, filing of false affidavit in judicial proceedings in any court of law amounts to criminal contempt and any person doing so is liable to be severely dealt with. Therefore, he has prayed that appropriate proceedings for contempt be initiated against the erring official. To counter it, the learned Advocate General has submitted that there is no question of filing a false affidavit and that under the Recruitment Rules, 1976, the post of Assistant Inspector of Schools was classified as Class-III post and the averments made in the additional affidavit are to mean that only and it was never the intention of the State Government to mislead the court by making the averment that the post of Assistant Inspector of Schools was classified as Grade-III post under the Recruitment Rules, 2001. On perusal of the said additional affidavit, it is seen that the averment made in the said affidavit was that under the erstwhile rules, the posts of AI were Class-III posts but it did not specifically mention that the post of Assistant Inspector of Schools was classified as Class-III post under the Recruitment Rules, 2001. There can be no dispute about the law being laid down by the Hon''ble Supreme Court in the said *Dhananjay Sharma case* (supra) but only on the basis of the said averments made in the additional affidavit, it cannot

be said that the State Government has filed a false affidavit warranting penal action. The case would have been different, had the said averment mentioned specifically that the post of Assistant Inspector of Schools was classified as Grade-III post under the Recruitment Rules, 2001. In any case, the question whether the post of Assistant Inspector of Schools is classified as Grade-III post or not, will have no much relevance while deciding the issue involved herein.

21.3. It is true to the extent that the petitioners were eligible for appointment on promotion to the posts of Assistant Inspector of Schools against the posts created and stipulated in the Recruitment Rules, 2001 but that does not mean that the petitioners ought to be considered under Recruitment Rules, 2001 even after the Manipur Education Service Rules, 2012 came to be made in view of the law laid down by the Hon'ble Supreme Court in Deepak Agarwal Case. The petitioners herein do not have vested right to be considered for promotion under the Recruitment Rules, 2001 although they may have rights to be considered in terms of the rules in force at the time of their consideration. But the fact remains that the petitioners herein are similarly situated with that of the petitioners in other identical cases namely W.P. (C) No. 599, 422 and 723 of 2014 except for the fact that the petitioners herein have not approached the Hon'ble High Court earlier to redress their grievances. But since this court has arrived at a finding herein above that the petitioners in W.P. (C) No. 599 of 2014 have vested right to be considered for promotion to the post of Assistant Inspector of Schools in terms of the Recruitment Rules, 2001, the petitioners herein can also be directed to be considered, along with other similarly situated namely the petitioners in W.P. (C) No. 599 of 2014, under Recruitment Rules, 2001 in view of the Government order dated 04-1-2010 issued by the State Government.

In Re: Issue (c):

22.1. It has been submitted by Shri M. Hemchandra, learned counsel appearing for the petitioners in W.P. (C) No. 612 of 2015 that the petitioners being eligible for appointment as Assistant Inspector of Schools in terms of the Rules, 2012, applied for selection pursuant to the advertisement dated 23-7-2014 issued by the Manipur Public Service Commission and that the selection process is already completed but because of the interim orders dated 22-8-2014 and 23-9-2014 passed by this court in W.P. (C) No. 616 of 2014, the Manipur Public Service Commission has withheld the declaration of result thereof. It has further been submitted by him that in view of the aforesaid facts, the petitioners have acquired vested right for being considered for selection in accordance with the rules as they existed at the time of advertisement namely, the Rules, 2012. To substantiate his contentions, he has heavily relied upon the decisions rendered by the Hon'ble Supreme Court in the case of Dr. P.K Jaiswal v. Ms. Debi Mukherjee & ors. , (1992) 2 SCC 148; State of Punjab & ors. v. Arun Kumar Aggarwal & ors. , (2007) 10 SCC 402. The submissions made by Shri N. Ibotombi, learned senior advocate and Shri Y. Ronelchandra, advocate, learned counsels appearing for the petitioners in W.P. (C) No. 707 of 2015 and W.P. (C)

No. 109 of 2015 respectively, are similar to that of Shri M. Hemchandra, learned counsel appearing for the petitioners in the instant writ petition with the only difference that they have not cited any decision in support of their contentions. On the other hand, relying upon the decision in *Jai Singh Dalal & ors v. State of Haryana & anr.* 1993 Supl. (2) SCC 600, Shri I. Lalitkumar, senior advocate appearing for the petitioners in W.P. (C) No. 599 & 422 of 2014 has submitted that the petitioners in W.P. (C) No. 612, 707 and 109 of 2015 have no right to claim that the selection process already started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the Manipur Public Service Commission. In the said *Jai Singh Dalal Case*, it has also been held that the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or resort to fresh selection and appointment on revised criteria.

22.2. There can be no dispute about the law being laid down by the Hon"ble Supreme Court in the above cases and in fact, the said decisions, on which reliance has been made by Shri M. Hemchandra, have been rendered by relying upon the law laid down in *N.T Devin Katti & ors. v. Karnataka Public Service Commission & ors.* , (1990) 3 SCC 157 wherein the Hon"ble Supreme Court has held:

"11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an

advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

On the other hand, it may be noted that the decision in *Jai Singh Dalal* case, relied upon by Shri I. Lalitkumar, learned senior advocate, has been rendered by the Hon"ble Supreme Court relying upon its earlier decisions including a Constitution Bench judgment in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47 wherein the Hon"ble Supreme Court held:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha*, *Neelima Shangla v. State of Haryana*, or *Jatinder Kumar v. State of Punjab*."

22.3. From the above decisions relied upon by the learned counsels appearing for the parties, it is seen that once an advertisement has been issued by a State Public Service Commission or any competent authority inviting applications, for appointment to certain posts of the State Government, from amongst the eligible candidates who have duly applied for it and the selection process has commenced, such a candidate has a right to be considered for selection and not for appointment. Such a right of a candidate is always subject to the power of the State Government either to allow the completion of the process of selection or to cancel it and to resort to a fresh selection. In case the State Government cancels the process of selection, the right of the candidate to be considered for selection shall stand extinguished and the only safeguard is that the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. In the instant cases, the selection process is, admittedly, almost complete but for the interim orders passed by this court as aforesaid, the result thereof could not be declared by the Manipur Public Service Commission and since the State Government has not cancelled it, the petitioners can be said to be

continuing to have their right to be considered for selection.

In Re: Issue No. (d):

23.1. Since the Issue Nos. (a), (b) and (c), referred to above, are considered and decided in the affirmative, this court proposes to consider as to what relief can be granted in the facts and circumstances of these cases. It may be noted that in case each of the writ petitions is considered separately and independent of others, the outcome would have been different in the sense that the writ petitions being W.P. (C) No. 707 & 612 of 2015 could have been allowed, since no counter was filed by the respondents therein controverting the averments made in the said petitions, in terms of the law laid down by the Hon'ble Supreme Court in the cases of *Naseem Bano (smt) v. State of UP & ors.*, 1993 Suppl (4) SCC 46; *State of Assam v. Union of India* (2010) 10 SCC 403; *Asha v. PT. B.D. Sharama University of Health Sciences & ors.*, (2012) 7 SCC 389 wherein the Hon'ble Supreme Court has held that an averment made in the petition is expected to be specifically denied by the replying party and if there is no specific denial, such averment is deemed to have been admitted by the respondent and similarly, the other remaining writ petitions ought to have been allowed because of the reasons mentioned hereinabove. But it can't be done so in the facts and circumstances of the present cases for the reason that the prayers made in the said writ petitions of the two warring groups are contradictory and are opposed to each other and allowing the prayers in respect of one group would result in denying the prayers in respect of the other group. In other words, all the writ petitions cannot be allowed, even though all the issues have been decided in the affirmative. Therefore, although all writ petitions are being disposed of by this common judgment and order, the appropriate relief is to be moulded, keeping in mind the peculiar facts and circumstances of these cases, in such a way so as to meet all the issues commensurate with the findings arrived at by this court. Since this court having held that the petitioners in W.P. (C) No. 599, 723 & 422 of 2014 have vested right to be considered for promotion by virtue of the court's orders and that other petitioners in WP (C) No. 616 & 927 of 2014 can also be considered for promotion in terms of the Government order dated 4-1-2010 and moreover, the right to be considered having accrued in their favour in earlier point of time while the Recruitment Rules, 2012 was in operation, the petitioners are to be considered by the State respondents without any loss of time and the State respondents being duty bound, shall comply with the said court's orders.

23.2. In fact, the whole controversy has arisen out of the Manipur Education Service Rules, 2012 being made by the State Government, the validity of which has been questioned, it is stated at the bar, by some of the petitioners herein by way of a writ petition and the same is pending for consideration by the Division Bench of this Court. Since the validity and correctness of the said Manipur Education Service Rules, 2012 is not the subject matter in issue before this court in these writ petitions, this court does not propose to and will not make any observation in respect thereof.

23.3. For the reasons stated herein above and in view of the peculiar facts and circumstances of these cases, all the writ petitions being W.P. (C) No. 707 of 2015; W.P. (C) No. 612 of 2015; W.P. (C) No. 109 of 2015; W.P. (C) No. 599 of 2014; W.P. (C) No. 616 of 2014; W.P. (C) No. 422 of 2014; W.P. (C) No. 723 of 2014 and W.P. (C) No. 927 of 2014 are disposed of with the following directions:

"(a) The State Government and in particular, the Department of Education (S) shall constitute a DPC and thereafter, consider the cases of all eligible employees/teachers including all the petitioners herein as on 04-01-2010, in terms of the provisions of the Education (S) Department, Manipur (Assistant Inspector of Schools) Recruitment Rules, 2001 and other relevant Rules relating to the seniority, zone of consideration etc., within a period of two months from the date of receipt of a copy of this judgment and order;

(b) After the DPC being constituted and held as aforesaid, all the employees/teachers including the petitioners who are found qualified in terms of the provisions of the Education (S) Department, Manipur (Assistant Inspector of Schools) Recruitment Rules, 2001 and other relevant Rules relating to the seniority, zone of consideration etc., shall be appointed as Assistant Inspector of Schools against the vacancies of posts created and stipulated in the Education (S) Department, Manipur (Assistant Inspector of Schools) Recruitment Rules, 2001 within a month thereafter;

(c) After the directions (a) & (b) above having been complied with, if there are vacancies available, the Manipur Public Service Commission shall declare the result of the said Manipur Education Service Examination, 2014 conducted pursuant to its advertisement dated 17-7-2014 and Press Note dated 23-7-2014 and submit a select list, to the State Government, consisting of the number of candidates equal to that of the remaining vacancies only. It is made clear that in the event of none of the employees/teachers including the petitioners being found to be qualified for appointment on promotion to the post of Assistant Inspector of Schools by the said DPC, the result of the said Manipur Education Service Examination, 2014 be declared as per the said advertisement dated 17-7-2014 and Press Note dated 23-7-2014 issued by the Manipur Public Service Commission and select list be prepared accordingly."