

(2019) 08 MAN CK 0012

In the Manipur High Court

Case No : Writ Appeal No. 9 Of 2017, Write Petition (C) No. 1018 Of 2015

Dhruba Oinam

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 21, 162, 226, 309

Citation : (2019) 08 MAN CK 0012

Hon'ble Judges : Lanusungkum Jamir, J;Khwaitrakpam Nobin Singh, J

Bench : Division Bench

Advocate : Kh. Tarunkumar, Sukumar

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri Kh. Tarunkumar, learned Advocate appearing for the appellant; Shri Sukumar, learned Government Advocate appearing on behalf of respondent No.1 and Shri L. Raju, learned Advocate appearing on behalf of respondent No. 2. None appears for the remaining respondents.

[2] The instant writ appeal is directed against the common judgment and order dated 10/02/2017 passed by the learned Single Judge of this Court in writ petition being WP(C) No.681 of 2013 and writ petition being WP(C) No.1018 of 2015 by which the writ petition being WP(C) No.1018 of 2015 was dismissed while the writ petition being WP(C) No.681 of 2013 was allowed with the direction to the respondents therein to consider the case of the petitioner and other eligible candidates for promotion to the post of Assistant Engineer. In other words, this writ appeal is directed against the judgment and order dated 10-02-2017 dismissing the WP(C) No.1018 of 2015 only.

[3.1] Facts and circumstances which have led to the filing of the instant writ appeal, in short, are that the appellant was appointed as Section Officer Grade-I in the Irrigation and Flood Control Department, Government of Manipur

(hereinafter referred to as "the IFCD") vide order dated 06-09-1999 issued by the Chief Engineer, IFCD on regular basis on the recommendation of a Selection Committee in its meeting held on 06/09/1999.

[3.2] Pursuant to a Cabinet decision taken on 07/03/2001, the Principal Secretary (Finance), Government of Manipur issued an order dated 19/03/2001, the para 9 thereof provides that the conversion of casual staff to work-charged staff and work-charged staff to regular establishment notified by the State Government was a one-time measure and no promotion/ appointment/ benefits under the said scheme should be extended with immediate effect.

[3.3] On 20/7/2010, the Additional Secretary (Finance), Government of Manipur wrote a letter to the Chief Engineer, IFCD, Manipur regarding the updation of Manipur Government Employees List (MGEL) wherein it is stated that the work-charged employees converted to regular establishment were not included in the sanctioned strength as these posts were not regular posts and would stand abolished when the incumbents would retire or expire. In order to avoid any confusion in the matter, the sanctioned strength of these posts as entered in the MGEL was deleted and entered as 0(zero) as was followed in the MGEL lists of PWD and PHED. On 26/09/2011, the Chief Engineer (IFCD), Manipur issued an order whereby the final seniority list of Section Officer Grade-I, separately for Degree/AMIE and non-degree and a combined seniority list of Degree/AMIE and non-degree, was published. Thereafter, the Chief Engineer (IFCD) wrote a letter to the Commissioner (IFC), Government of Manipur seeking a clarification as to whether the work-charged staffs who have been converted into work-charged establishment, could be considered for inclusion in the common seniority list for purpose of promotion to higher posts. On 15/01/2014, a final seniority list of Section Officer Grade-I, IFCD, Government of Manipur was published and hardly a year later, on 04/05/2015 the Deputy Secretary (IFC), Government of Manipur issued an order whereby the sanction of the Governor of Manipur was accorded to the extension/ continuation of various temporary Class-III and Class-IV posts of IFCD, Manipur including that of 149 posts of Section Officer Grade-I. But the posts held by the private respondents were not included therein as they were not holding regular posts at all.

[3.4] On 03/11/2015, the Chief Engineer (IFCD), Manipur published a tentative seniority list of Section Officer Grade-I (Civil, Mechanical & Electrical) inviting objections wherein the names of the private respondents were shown for the first time. Being aggrieved by the said tentative seniority list, the appellant submitted his objection on 12/11/2015 to the Chief Engineer, IFCD and without taking into account the grounds raised by the appellant in his written objection, the Chief Engineer, IFCD, Manipur published a final seniority list of Section Officer Grade-I (Civil, Mechanical & Electrical) showing the private respondents as senior to the appellant. Being aggrieved by the said final seniority list dated 25/11/2015, the appellant filed a writ petition being WP(C) No.1018 of 2015 followed by an application being MC[WP(C)] No.1 of 2016 praying for retraining the official

respondents from holding a DPC for promotion to the posts of Assistant Engineer (Mechanical) in the IFCD Manipur. On 04/01/2016, this Court passed an order whereby the official respondents were restrained from holding a DPC for promotion to the post of Assistant Engineer (Mechanical) in the IFCD, Manipur.

[3.5] On 13/01/2016, the private respondent No.3 therein filed an application being MC[WP(C)] No.8 of 2016 praying for vacation of the interim orders dated 04/01/2016 and 11/01/2016 to which an affidavit-in-opposition was filed by the appellant. On 18/01/2016, the said application being MC[WP(C)] No. 8 of 2016 was dismissed by this Court.

[3.6] On 04/08/2016, an affidavit-in-opposition on behalf of the State of Manipur, respondent No.1 was filed in the said writ petition being WP(C) No. 1018 of 2015 to which a reply affidavit was filed by the appellant. On 18/10/2016, the appellant filed an application praying for taking necessary action against the officer who had sworn the affidavit-in-opposition on behalf of the respondent No.1. In addition to that, with the leave of the Court, the appellant filed an additional affidavit on 19/10/2016 but the writ petition filed by the appellant came to be dismissed vide judgment and order dated 10/02/2017 passed by this Court.

[3.7] The learned Single Judge, while dismissing the said writ petition, held that the bar contained in para 9 of the order dated 19-03-2001 did not mean that those who had already been granted the benefits of regularisation under the scheme, should not be given further benefits, even if these benefits would accrue on their own rights independent of the scheme. The restriction imposed by para 9 of the order dated 19-03-2001 was on further conversion of casual staff to work-charged and work-charged staff to regular establishment in terms of the earlier decision taken by the State Cabinet in 1997. The learned Single Judge further held that the stand taken by the State respondents and the private respondents in the final seniority list of Section Officer Grade-I was unexceptionable and that was the correct approach adopted by the State respondents.

[3.8] Being aggrieved by the judgment and order dated 10-02-2017 by the learned Single Judge, the instant writ appeal has been preferred by the appellant under the following amongst other grounds:

(a) The learned Single Judge failed to appreciate the fact that the affidavit-in-opposition filed on behalf of the State of Manipur, respondent No.1 was a false affidavit for the reason that in para 5 thereof, it has been clearly stated that the existence of the Court's order dated 02-06-2010 passed in WP(C) No. 545 of 2009 was not discussed or appreciated as the same was not reflected in the affidavit-in-opposition filed in WP(C) No.1 of 2012. In fact, the existence of the court's order dated 02-06-2010 was clearly stated therein even by quoting the operative portion thereof. The learned Single Judge ought to have rejected the said affidavit-in-opposition filed on behalf of the State Government;

(b) The learned Single Judge failed to appreciate that the submission of the respondent No.2, the Chief Engineer that the averment made by the State Government in its affidavit that those work-charged employees who were converted to regular establishment, could not be included in the seniority list, was done in ignorance of the order passed in WP(C) No.545 of 2009. This statement was false because in para 10 of the affidavit-in-opposition which was jointly filed by the Administrative Department and the Chief Engineer in WP(C) No.1 of 2012, the existence of the order of this Court dated 02-06-2010 passed in WP(C) No.545 of 2009 was clearly mentioned.

(c) The learned Single Judge erred in not seeing that the private respondent No. 3 did not approach this Court with clean hands and therefore, he was not entitled to any of the reliefs claimed by him;

(d) The learned Single Judge failed to appreciate that the decision of the Cabinet regarding the regularisation of the work-charged employees, which was conveyed to all the Engineering Departments, was that the posts being created for regularisation of the work-charged employees, should stand abolished automatically on the retirement or termination of the services of the incumbents;

(e) The learned Single Judge erred in not appreciating that the Finance Department, Government of Manipur had clearly conveyed its decision in its letter dated 20-07-2010 that the posts which were being held by the work-charged employees converted to regular establishment, were not regular posts as these posts would stand abolished when the incumbents would retire or expire.

(f) The learned Single failed to appreciate that the State respondents could not be permitted to take a stand which was contradictory to their earlier stand without any reason thereof. The earlier stand as reflected in the affidavit filed in WP(C) No.1 of 2012 was that the work-charged staff converted into regular establishment could not be included in the seniority list of Section Officer Grade-I as the benefit of further promotion was not allowed. In the affidavit filed in WP(C) No.1018 of 2015, it was stated that it had been decided that the converted work-charged staff/ S.O. Grade-I who were on the verge of retirement, were also to be placed in the seniority list dated 25-11-2015 and that they were to be considered for promotion if found eligible as per the relevant Recruitment Rules for the post of Assistant Engineer. The State Government did not assign any justifiable reason supported by relevant record/ document for the change of its stand;

(g) The learned Single Judge has erroneously interpreted para 9 of the order dated 19-03-2001 as it is nowhere stated therein that the conversion of casual staff to work-charged and work-charged to regular establishment in terms of the earlier decision taken by the State Cabinet in 1997 would be restricted and therefore, the private respondents could not claim themselves to be included in the seniority list and to be considered for promotion to the higher post.

[4] During the course of hearing, the grounds as mentioned hereinabove have

been reiterated and emphasized by Shri Kh. Tarunkumar Singh, the learned Advocate appearing for the appellant. On the other hand, it has been submitted by Shri Shri Sukumar, the learned Advocate appearing for the respondent No.1 that although there was a stand taken by the State Government not to include the work-charged employees who had been converted into regular establishment in the seniority list and also not to give promotional facilities, the State Government decided to include them in the seniority list of the Section Officer Grade-I in view of the order dated 02-06-2010 passed by the Hon'ble Gauhati High Court, Imphal Bench in WP(C) No.545 of 2009 which had attained finality and to consider their cases for promotion to the higher post. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in Col. A.S. Iyer & ors. Vs. V. Balasubramanyam & ors., (1980) 1 SCC 634; Amarjeet Singh & ors. Vs. Devi Ratan Singh & ors., (2010) 1 SCC 417 and Union of India & ors. Vs. Atul Shukla & ors., (2014) 10 SCC 432. Shri L. Raju, the learned Advocate appearing for the respondent No.2 adopted the argument of the counsel appearing for the State Government and in addition thereto, it has been submitted by him that the State Government took the decision for inclusion of the private respondents in the seniority list after the order dated 02-06-2010 being placed before it.

[5] Article 16 of the Constitution of India provides for equal opportunity in matters relating to public employment and it being a fundamental right, any action taken by the Government or its instrumentalists in violation thereof will be rendered illegal. In Union Public Service Commission Vs. Girish Jayantilal Vaghela & ors., (2006) 2 SCC 482, the Hon'ble Supreme Court held:

"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment or appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article

16 of the Constitution."

What is a constitutional mandate as enshrined in Article 16 of the Constitution has been vividly and candidly explained by a Constitution Bench of the Hon^{ble} Supreme Court in *Secretary, State of Karnataka & ors. Vs. Uma Devi & ors.*, (2006) 4 SCC 1 wherein the Hon^{ble} Supreme Court held:

"34. In *A. Umarani vs. Registrar, Coop. Societies* a three-Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments. This Court also held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or anybody or authority governed by a statutory Act or the rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

From the above decisions, it is absolutely clear that the law relating to public employment as mandated in Article 16 of the Constitution of India has been settled by the Hon^{ble} Supreme Court.

What the constitutional scheme envisages, in short, is that while making public employment, the procedure established by law in that behalf ought to be followed and in other words, the procedure ought to include many things and in particular, the framing of recruitment rules under the provisions of Article 309 of the Constitution of India, the creation of post, the issuance of advertisement inviting applications from amongst the eligible candidates, the selection to be made by a Selection Board etc. The parties involved herein can have no and will

have no any dispute in this regard. But an exception has been carved out in the decision rendered in Uma Devi's case itself and in particular, para 53 thereof by which irregular appointment can be regularized in the manner stated therein. The para 53 of the decision rendered in Uma Dev case wherein an exception has been made, reads as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

In State of Karnataka & ors Vs. M.L.Kesari & ors, AIR 2010 SC 2587, the decision rendered in Uma Devi case has been summarized as under:

"4. In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court, however, made one exception to the above position and the same is extracted below:

The Hon^{ble} Supreme Court has observed that the exception to the general principles against "regularization" enunciated in Uma Devi case, will apply, if the following conditions are fulfilled:

"(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

[6] What does the expression "work-charged establishment" mean? Any Act passed by the State Legislature and the rules made thereunder in which the said expression has been defined, is not brought to the notice of this Court by any of the counsel appearing for the parties including the State Government. It demonstrates that the State Government has not yet framed any rule as contemplated under the provisions of Article 309 of the Constitution of India in this regard. The said expression "work-charged establishment" appears to have derived from the CPWD Manual wherein it has been stated to mean the establishment whose pay and allowances etc. are directly chargeable to "works" being undertaken by it. It further appears that there are about 38 categories of posts in the work-charged establishment of CPWD, as enumerated in Annexure-I. No posts can be created by the DG, CPWD and for creation of additional posts, the approval of the cabinet is required. All posts in the work-charged establishment are to be filled up in accordance with the provisions of the recruitment rules for the respective categories. As per 6th Pay Commission, Group "D" employees have been placed in Group "C" on the basis of fulfillment of minimum education or the necessary training and a list showing the classification of the posts in the work-charged establishment of CPWD has been annexed as Annexure-II. For the purpose of grant of leave, membership of Trade Union etc., the employees in the work-charged establishment are regarded as ? industrial? staff and are governed by the Labour laws as applicable to them. Similar is the case with the expression "regular establishment" which appears to have not been defined in any of the Acts or rules framed by the State Government. There appears to be no rule at all to deal with the conversion of work-charged employees to regular establishment except the scheme wherein it is nowhere mentioned that the work-charged employees can be regularized against the sanctioned posts which shall have to be filled up through the methods of appointment as prescribed in the recruitment rules only. That is the

reason why certain posts had to be created separately, in addition to the sanctioned posts, to accommodate the work-charged employees who had worked for many years, with limited benefits. But their rights cannot go beyond what is contemplated in the policy decision and they must get themselves satisfied with it. They formed a different class by themselves and cannot be equated with the Section Officer Grade-I appointed in accordance with the recruitment rules. In other words, they can be said to have entered into the service from the back door which they are aware of from the time of their initial engagement. If they wish to get their rights extended to that of the persons appointed on regular basis, they must get themselves appointed in terms of the recruitment rules. The conversion of work-charged employees to regular establishment is quite different from the appointment on regular basis in accordance with the recruitment rules. In its true sense, the expression "regular establishment" is not the CPWD itself or for that matter, IFCD in the present case but is an establishment maintained by the CPWD/ IFCD in a regular manner to execute their certain works, for which there is no any rule framed by the State Government under the provisions of Article 309 of the Constitution of India. For appointment of a person as Section Officer Grade-I in the IFCD, a specific recruitment rules has been framed and such appointment is to be made strictly on the basis of the methods-by direct recruitment and by promotion, as prescribed therein and not by absorption or by conversion. Any appointment made contrary to the recruitment rules is illegal and will be rendered as being violative of the constitutional scheme as mandated in Article 16 of the Constitution of India. This is what has actually happened in the present case.

[7] Admittedly, the private respondents were initially appointed as work-charged employees and in particular, Shri H. Rajen Singh, as a Technical Assistant in the year, 1983. It is not in dispute that the private respondents were similarly situated and they were converted to regular establishment as Section Officers under the policy decision taken by the State respondents which was notified on 16-04-1997. On the basis of the policy decision notified on 16-04-1997, the State Government issued an order dated 20-11-1998 creating posts for conversion of 1002 work-charged employees to regular establishment in the IFCD, Manipur and consequently, the private respondents were appointed as Section Officers in the regular establishment by way of conversion vide order dated 05-12-1998. The stand taken by Shri H. Rajen Singh, one of the private respondents, who filed a writ petition being WP(C) No.681 of 2013, was that since the private respondents including himself, had been converted to regular establishment, they were entitled to be treated as regular Section Officers. Moreover, as they had been included in the seniority list, they were entitled to be considered for promotion to the higher post of Assistant Engineer.

In the year, 1997 the State Government examined the issue relating to regularization of the work-charged/ Master roll employees and on the basis of the report of a Cabinet Sub-Committee, the State Government took a policy decision vide its letter dated 16-04-1997 agreeing to the said report subject to three

conditions, of which the relevant one was that the posts being created for regularization of the eligible work-charged employees, shall stand abolished automatically on the retirement on superannuation or on termination of the service of the incumbents. The State Government issued an order dated 20-11-1998 by which 1002 work-charged posts were converted to regular posts and pursuant thereto, an office order dated 05-12-1998 was issued converting the work-charged employees including the private respondents who had completed 10 years, to regular establishment with the rider that the conversion was strictly against the posts created vide order dated 20-11-1998 which would stand abolished as and when the incumbents would retire on superannuation or on termination of their services.

Pursuant to a cabinet decision taken on 07-03-2001, the State Government issued another order dated 19-03-2001 which specifically provides that the conversion of casual staff and work-charged staff to regular establishment notified by the State Government was a onetime measure and further promotion / appointment / benefits under the scheme shall not be extended with immediate effect. It was followed by an order dated 07-06-2003 which stated that the State Government was pleased to abolish the converted work-charged posts as and when the incumbents would cease to hold the posts. In its letter dated 25-07-2010 addressed to the Chief Engineer, IFCD relating to updation of Manipur Government Employees List, the Finance Department informed it that the posts against which the work-charged employees were converted to regular establishment, were not the regular posts and that they be deleted from the sanctioned strength/ posts. A clarification was sought for by the Department of IFC as to whether the work-charged employees converted to regular establishment, could be included in the seniority list of Section Officer Grade-I and considered for appointment on promotion to the higher posts. The Finance Department (PIC) clarified at Note 74 in the file of the IFCD that since the conversion was a onetime measure and no further promotion could be extended, it would not be appropriate to include them in the seniority list. On the strength of this clarification, the State Government in its affidavit filed in WP(C) No.1 of 2012 filed by Shri H. Rajen Singh questioning his transfer and posting order dated 06-12-2011, had stated that there was no provision for inclusion of work-charged employees converted to regular establishment in the seniority list. However, contrary to its earlier stand, in the affidavit filed by the State Government in WP(C) No.1018 of 2015, a U turn was taken by it stating that in its judgment and order dated 02-06-2010, the Hon'ble Gauhati High Court had settled the issue relating to seniority and promotion of the Section Officer Grade-I who were recruited from other sources. The existence of this order dated 02-06-2010 passed in WP(C) No.545 of 2009 was not discussed and appreciated, as the same could not be reflected due to oversight and lack of knowledge and accordingly, it was decided that the work-charged employees converted to regular establishment, were to be placed in the seniority list dated 25-11-2015 and were to be considered for promotion as per the recruitment of rules for the

post of the Assistant Engineer. Instead of questioning the order dated 02-06-2010 passed by the Hon'ble Gauhati High Court, Imphal Bench which was passed contrary to its own stand, the State Government took advantage of it to help some persons which is unfortunate. It had shown non-application of mind by the State Government as regards its own policy decision and the constitutional scheme.

[8] It is thus clear that the work-charged employees are altogether different from the regular Government servants for the reason that while the work-charged employees are appointed as provided under the CPWD Manual, the regular Government servants are appointed in accordance with the rules framed by the State Government under the provisions of Article 309 of the Constitution of India. In service jurisprudence, there are mainly two methods of appointment—one, by direct recruitment and two, by appointment on promotion which are commonly prescribed in many of the recruitment rules framed by the different State Governments. There are other methods like appointment by transfer or by deputation or by absorption which are too prescribed in some of the recruitment rules. A copy of the recruitment rules for appointment to the post of Section Officer Grade-I is not placed on record. But from the writ petition being WP(C) No.1 of 2012 filed by Shri H. Rajen Singh, along with certain documents, who is one of the private respondents herein, it is seen that as per the recruitment rules, the essential qualification for appointment to the posts of Section Officer Grade-I is the degree/ diploma in Civil/ Mechanical/ Electrical Engineering from a recognized Institute and the method of appointment is 70% by direct recruitment and 30% by promotion failing which by direct recruitment. The appointment by regularization or by absorption is not one of the methods as prescribed in the recruitment rules. It is not in dispute that the private respondents were absorbed by way of conversion from the work-charged establishment to regular establishment pursuant to a policy decision which is said to have been withdrawn, probably, sometime in the year, 2002. In other words, the private respondents had not been absorbed as per the recruitment rules as mandated in Article 16 of the Constitution because there is no any provision for it therein and in fact, had they been absorbed as per recruitment rules, the present controversy would not have arisen at all. In the office order dated 05-12-1998 itself, it is specifically stated that the inter-se seniority would be decided in due course which was followed by the Government order dated 19-03-2001 which provided that the conversion was a onetime measure and the further promotion/ appointment/ benefits should not be extended with immediate effect. The posts against which the private respondents were absorbed, were not the regular posts as is evident from the letter dated 20-07-2010 mentioned above and accordingly, these posts were later enlisted as zero in the MGEL, as had been done by the State Government in respect of the PWD and PHED.

[9] The order dated 02-06-2010 passed by the Hon'ble Gauhati High Court in the writ petition being WP(C) No.545 of 2009, has been relied upon by the counsel appearing for the respondents and therefore, it is appropriate for this

Court to examine and consider it. In WP(C) No.545 of 2009, the main prayer was probably for a simple direction for finalization of seniority list of Section Officer Grade-I in the IFC Department, Government of Manipur. The Hon'ble Gauhati High Court, Imphal Bench held:

"By now it is well settled position of law that fixation of seniority among the direct recruits shall be on the basis of the merit position contained in the recommendation of Selection Committee/ DPC and the date of appointment / absorption / regularization to the post shall be the date on which an incumbent shall be deemed to have been born to the cadre of the post. It is not in dispute that the rule regulating the service conditions of Section Officer Grade-I and administrative instructions issued by the Government in this regard, do not recognize bifurcation or trifurcation of the cadre of the S.O. Grade-I as-(i) appointees by a direct recruitment on the recommendation of a Selection Committee/ DPC; (ii) appointees by regularization to post of S.O Grade-I on the basis of Selection Committee/ DPC and (iii) appointees by absorption to the post as direct recruits. Once a person has been appointed under any of the methodologies mentioned above, he is to be treated as an officer born in the cadre of Section Officer Grade-I from the date on which he is appointed / absorbed/ regularized."

Accordingly, while disposing of the said writ petition, the Hon'ble Gauhati High Court, Imphal Bench directed the respondents therein to finalise the tentative seniority list dated 31-08-2009 after considering the objections filed by the incumbents. On perusal of the order dated 02-06-2010, it is seen that the policy decision of the State Government and the manner in which the private respondents were brought to the regular establishment, were not brought to the notice of the Hon'ble Gauhati High Court which had proceeded on the assumption that the appointment by absorption would be treated at par with the appointment on regular basis either by direct recruitment or by promotion in terms of the recruitment rules. In view of the above, the said order dated 02-06-2010 cannot be said to be a good law applicable to all cases, as the same had not been passed by the Hon'ble Gauhati High Court, Imphal Bench after discussing the effect or the impact of the State Government's policy decision in relation to the recruitment rules nor was it passed after having considered the constitutional scheme as explained in Uma Devi case and mandated in Article 16 of the Constitution of India.

[10] While dismissing the writ petition being WP(C) No.1018 of 2015, the policy decision of the State Government and the constitutional scheme as explained in Uma Devi case were not discussed and considered by the learned Single Judge and the contention of the counsel appearing for the petitioner therein was rejected mainly on the ground that para 9 of the order dated 19-03-2001 was misconstrued by him. The learned Single Judge held that the said para 9 of the order dated 19-03-2001 was issued after the conversion of the private respondents to regular establishment in the year, 1997 and that it could not

adversely affect any vested rights created in the year, 1998. The order dated 19-03-2001 was issued in terms of the decision taken by the cabinet on 07-03-2001, and not on the basis of the cabinet decision taken in the year, 1997, for downsizing of the Government which provided for termination of all appointments on direct recruitment on part time/ contract/ ad-hoc/ substitute/ casual basis etc. It provided for cancellation of the results of the DPCs which had not yet been announced and ban was imposed on filling up of promotion vacancies on regular basis for a period of three years. It also provided for abolition of all direct recruitment posts lying vacant as on 19-04-1999 excluding the posts to be filled up in respect of police and jail departments. It was in that context that the Government decided as contained in the order dated 19-03-2001 that the conversion of casual staff to work-charged and work-charged to regular establishment which was based on the earlier cabinet decision taken in the year, 1997, would be a onetime measure and no further promotion / appointment / benefits under the scheme should be extended. The said restriction was on further conversion of casual staff to work-charged and work-charged to regular establishment and it was meant to put an embargo on further benefits which could be given to those casual/ muster roll or work-charged employees who had completed requisite years of service. In other words, it has been mentioned in para 9 that the further promotion/ appointment/ benefits under the scheme shall not be extended and it does not mean that those who had already been granted benefits under the scheme shall not be given further benefits, even if these benefits would accrue on their own rights independent of the scheme. The benefits claimed by the private respondents are the rights to be included in the seniority list and rights to be considered for promotion to the higher post by virtue of being regular Section Officer and not on the basis of the scheme. Therefore, the bar placed on further promotion/ appointments/ benefits as contemplated under para 9 of the order dated 19-03-2001 was to be confined to such benefits contemplated under the same scheme framed by the Government in terms of the earlier policy decision taken in the year, 1997 and not to any other benefits outside the scheme. The learned Single Judge further held that the claims of the private respondents to be included in the seniority list as well as for consideration for promotion to the post of the Assistant Engineer were not under the scheme but were natural consequences of being in the regular establishment as Section Officer.

[11] From the perusal of the judgment and order of the learned Single Judge, it is seen that the learned Single has failed to discuss and consider as to how the private respondents were initially appointed and whether the conversion was in accordance with the constitutional scheme. The learned Single Judge has examined only the applicability of the order dated 19-03-2001 to the facts of the present case and after having held that it would not apply to the private respondents, the contention of the counsel appearing for the appellant was rejected. It may be noted that the appointment by absorption or by conversion is not one of the methods of recruitment as prescribed in the recruitment rules for

appointment to the post of Section Officer Grade-I. The method of appointment as prescribed in the Recruitment Rules, is 70% by direct recruitment and 30% by promotion. The sanctioned strength/ posts had been determined or fixed by the State Government from time to time in respect of the Section Officer Grade-I. As seen from the above, only the persons who are appointed either by direct recruitment as against 70% or by promotion as against 30%, would constitute the service/ cadre of Section Officer Grade-I. No other person could claim to have become a member of the service/ cadre. The posts created by the State Government for conversion of work-charged employees into regular establishment, did not form part of the sanctioned strength/ posts and accordingly, they were shown to be zero in the MGEL, as they would stand abolished as and when the incumbents including the private respondents would retire on superannuation or on termination of their services. The private respondents were not initially appointed against the regular posts nor were they appointed by following the procedure prescribed in law and in particular, the recruitment rules. No posts were created at the time of their initial appointment. No advertisement was made for their appointment and on top of that, no DPC was held by the State Government. Since their conversion was totally against the constitutional scheme as explained in the Uma Devi case and mandated in Article 16 of the Constitution, they could not have been treated at par with the Section Officer Grade-I who were appointed on regular basis strictly in accordance with the recruitment rules. The conversion was only for a limited purpose, in the sense that it was intended to provide some kind of help to those, including the private respondents, who had worked many years continuously. The posts against which they were converted to regular establishment, were for a limited purpose and they could not have been brought into the service/ cadre of Section Officer Grade-I and if they were not brought to the service/ cadre, the question of their being included in the seniority list did not arise at all. Since their initial appointment was not as per the recruitment rules for the post of Section Officer Grade-I and that too, not against regular posts, it was illegal and not even irregular which could have been regularized under the exception carved out in the Uma Devi case and M.L. Kesari case. It would be absolutely unreasonable and illegal, if they were to be treated at par with those who were appointed on regular basis and that too, in accordance with the recruitment rules. The learned Single Judge has also proceeded erroneously on the assumption that since the private respondents had been converted to regular establishment, they ought to be automatically treated at par with the Section Officers Grade-I officers who were appointed on regular basis and that they ought to be included in the seniority list. In our view, the conclusion of the learned Single Judge is absolutely incorrect because there is no any rule for doing that except the scheme which provides nothing about seniority and in the office order dated 05-12-1998 itself, it is specifically stated that the inter-se seniority would be decided in due course. No rule on the basis of which the seniority of the private respondents could be determined, was brought to the notice of this Court except the order dated 02-06-2010 passed by the Hon'ble Gauhati High Court, Imphal Bench which

would have no application to the case of the appellant as has been explained hereinabove.

[12] There is no and can be no dispute as regards the law laid down by the Hon^{ble} Supreme Court in the decisions relied upon by the counsel appearing for the State Government. But since the facts of those cases are not similar to that of the present case, the law laid down therein will have no application at all. The first is the one rendered in Col. A.S. Iyer case wherein rule 11 provide for recruitment to the Survey of India Class I cadre from three sources-(1) from Corps of Engineer Officer; (2) from promoted Class-II civilian officers and (3) from direct recruits by competitive examination through the UPSC. The military engineers were in more preferential position than the civilian engineers in the matters of initial recruitment as well as seniority and promotions. The Hon^{ble} Supreme Court held:

"45. Let us eye the issue from the egalitarian angle of Articles 14 and 16. It is trite law that equals shall be treated as equals and, in its application to public services, this simply means that once several persons have become members of one service they stand as equals and cannot, thereafter, be invidiously differentiated for purposes of salary, seniority, promotion or otherwise, based on the source of recruitment or other adventitious factor. Birthmarks of public servants are obliterated on entry into a common pool and our country does not believe in official casteism or blue blood as assuring preferential treatment in the future career. The basic assumption for the application of this principle is that the various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service.

The above decision has been referred to in Union of India Vs. Atul Shukla case.

In Amarjeet Singh case, the Hon^{ble} Supreme Court held:

"28. In the instant case, promotions had been made by two different DPCs held on 19-12-1998 and 22-1-1999. Both DPCs had made promotions under different Rules on different criterion and their promotions had been made with retrospective effect with different dates notionally. In the writ petition before the High Court, the promotion of the appellants had not been under challenge. The seniority which is consequential to the promotions could not be challenged without challenging the promotions. Challenging the consequential order without challenging the basic order is not permissible. (Vide P. Chitharanja Menon v. A. Balakrishnan)."

Since the private respondents were converted from work-charged establishment to regular establishment which was contrary to the constitutional scheme, they could not be treated at par with the appellant. It may be noted that the posts were created vide order dated 20-11-1998 which provides that the posts so converted as regular ones from work-charged establishment shall stand abolished automatically on the retirement on superannuation or termination of

the services of the incumbents concerned. Similar is the case with the order dated 05-12-1998 by which the private respondents were converted to regular establishment. A conjoint reading of these two orders dated 20-11-1998 and 05-12-1998 makes it clear that they were not appointed on regular basis or for that matter they were not converted to regular establishment against the sanctioned posts. In other words, as has been stated hereinabove, they were converted to regular establishment without following the rules as mandated in Article 16 of the Constitution. For the purpose of their conversion, certain posts were created for a limited purpose which should stand abolished on their retirement or termination. It means that they could hold the posts so created as long as they did not retire or they were not terminated from their services and not beyond that. Therefore, the appellant cannot be faulted for not questioning their conversion and in other words, he was not aggrieved by the said conversion. Moreover, by the time when they were converted to regular establishment in the year, 1998, he was not yet appointed on regular basis and since he was appointed in the year, 1999, there was no occasion for him to question it because at that time he was not aware that the private respondents would be placed above him in the seniority list. The appellant became aggrieved, only when they were shown above him in the seniority list which compelled him to file the writ petition.

[13] In the normal course, since the learned Single Judge had failed to consider certain legal issues of the case as discussed hereinabove, the instant writ petition could have been remitted to the learned Single Judge for re-consideration. But keeping in mind the fact that the issue relating to finalization of seniority list in respect of the Section Officer Grade-I in the IFCD has been pending for so long, this Court is of the view that instead of remitting the matter to the learned Single Judge for re-consideration, the same could be considered by this Court which this Court did it accordingly in the preceding paragraphs. According to this court, the points which the learned Single Judge failed to consider, pertain to the questions of law and have nothing to do with the facts of the case which remain undisputed amongst the parties. The question was as to whether the initial appointment of the private respondents and their conversion to regular establishment was in tune with the constitutional scheme as mandated in Article 226 of the Constitution of India. The other question was as to whether there was any statutory rule, other the recruitment rules, by which they could claim to have become a member of the cadre/ service of the Section Officer Grade-I in the IFCD. Moreover, one of the private respondents, Shri H. Rajen Singh is said to have retired from service during the pendency of this appeal.

[14] In view of the above and for the reasons stated hereinabove, this Court is of the view that the instant writ appeal has substance and merit and is accordingly allowed with the result that the writ petition being WP(C) No.1018 of 2015 stands allowed and the seniority list dated 25-11-2015 of Section Officer Grade-I issued by the Chief Engineer, IFCD in respect of the Mechanical Degree Holder stands quashed and set aside. The State respondents and in particular, the Chief

Engineer, are directed to prepare a final seniority list of the Section Officer Grade-I in respect of the Mechanical Degree Holder within a reasonable time, preferably by 30th November, 2019 in terms of this judgment and order. There shall be no order as to costs.