

(2021) 02 MAN CK 0003

In the Manipur High Court

Case No : Writ Petition (c) No. 31, 606, 607, 630, 685 Of 2020

Dr. Rebika Soibam Chanu

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 19-02-2021

Acts Referred:

Manipur Forest Service Rules, 1986 — Rule 3, 5, 6, 7(1)
Manipur Forest services (Amendment) Rules, 2010 — Rule 5(i)(C)
Constitution Of India, 1950 — Article 14

Citation : (2021) 02 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : H. Tarunkumar, G. Pushpa, E. Premjit, M. Hemchandra, N. Ibotombi, Kh. Samarjit, Lenin Hijam

Final Decision : Allowed

Judgement

[1] Heard Shri H. Tarunkumar, learned Advocate; Smt. G. Pushpa, learned Advocate and Shri E. Premjit, learned Advocate appearing for the

petitioners while Shri M. Hemchandra, learned Sr. Advocate; Shri N. Ibotombi, learned Sr. Advocate; Shri Kh. Samarjit, learned Advocate appearing

for the private respondents and Shri Lenin Hijam, learned Addl. AG appearing for the State respondents.

[2] Since the above writ petitions have arisen out of a common set of facts, the same are being disposed of by this common judgment and order.

WP(C) No. 606 of 2020

[3.1] The validity and correctness of the final seniority list for the post of MFS Grade-II is under challenge in this writ petition and in addition thereto,

the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to issue a fresh final seniority list

and to convene a Class-I DPC for the post of MFS Grade-I.

[3.2] According to the petitioners, they were appointed as the Assistant Conservator of Forest, MFS Grade-II on regular basis in the year, 2014 on the recommendation of the Manipur Public Service Commission (hereinafter referred to as "the MPSC") and they have been serving in that capacity

till date. On 06-10-2020, the State Government issued a tentative seniority list for the post of the Assistant Conservator of Forest, MFS Grade-II

inviting claims and objections to be submitted on or before 26-10-2020 and pursuant thereto, the petitioners submitted their written objections to the

respondent No.1 on 24-10-2020. It may be noted that on 04-05-2018, a tentative seniority list was published by the Under Secretary (DP),

Government of Manipur to which also the petitioners had submitted their written objection for the modification/ rectification of the tentative seniority

list.

[3.3] As per Rule 7(1) PART-IV of the Manipur Forest Service Rules, 1986 (hereinafter referred to as "the Rules, 1986") as amended from time

to time, the post of MFS Grade-I is to be filled up by appointment on promotion from amongst the officers who had put in five years of service in the

MFS Grade-II. However, in the tentative seniority list, the respondent No. 4 & 5 who were not eligible for consideration of promotion to the post of

the Assistant Conservator of Forest, MFS Grade-II, have been included therein at Serial No. 1 & 2 which is illegal and not in consonance with the

established rule. The respondent No.4 & 5 were not eligible for promotion even to the post of the MFS Grade-II in the vacancies for the year, 2013 as

per their positions in the seniority list of the post of the Range Forest Officers who had undergone certificate course in forestry. They were not

considered in the earlier DPC on the ground of non-fulfillment of the essential qualification of diploma certificate for the reason that the diploma

certificate obtained by them fraudulently were not considered by the DPC. Their cases were considered by the recent review DPC purported to have

been convened as per the direction of the Single Judge of this Court wherein the Single Judge had observed that in case they were selected and

recommended by the review DPC, the official respondents were directed to appoint them. In other words, the respondent No.4 & 5 were appointed

on promotion to the post of the MFS Grade-II vide order dated 31-08-2020 in a

purported compliance with the Single Judge's order dated 20-12-

2019 passed by him in WP(C) No.898 of 2018. The idea was that there should be a proper examination and consideration of the eligibility criteria

before making any selection and recommendation by the DPC for appointment to the post of MFS Grade-II.

[3.4] On 07-09-2020, the Principal Chief Conservator of Forest, Manipur wrote a letter to the Under Secretary (Forests & Env'n.), Government of

Manipur requesting him to expedite the notification of the inter-se seniority list of the MFS Grade-II at the earliest and to constitute a Screening

Committee for promotion from the post of the MFS Grade-II to the post of the MFS Grade-I. To the utter shock and dismay, a final seniority list was

published by the Joint Secretary to the Governor of Manipur vide his order dated 12-11-2020 which was issued without considering the objections filed

by the petitioners on 23-10-2020. The said order was issued by the State Government in violation of the principle of natural justice. On 19-11-2020, the

petitioners submitted a written objection to the Principal Secretary/ Commissioner (DP), Government of Manipur for modification/ rectification of the

said final seniority list and in spite of that, the official respondents took appropriate steps to hold the proposed Class-I DPC for promotion to the post of

the MFS Grade-I on the basis of final seniority list.

[3.5] Being aggrieved by the said final seniority list, the instant writ petition has been filed by the petitioners on the inter-alia grounds that the diploma

certificates on the basis of which the respondent No.4 & 5 had been considered, were obtained by them fraudulently for the reason that they were not

eligible to undergo the said diploma course, as is evident from the letter dated 02-11-2006 issued by the Academic Officer that the Range Forest

Officers are not eligible for undergoing the post-graduate diploma course. At the time of joining the course, the respondent No.4 & 5 were holding the

post of the Range Forest Officer as reflected in the final seniority list published for the post of the Range Forest Officer on 18- 12-2008. It is further

evident from the letter dated 07-08-2010 issued by the Deputy Secretary (Forest & Environment), Government of Manipur that the Range Forest

Officers are not eligible for 10 months advanced P.G. diploma programme/ Course and in addition thereto, the Director, Wildlife Institute of India vide

its letter dated 21-07-2010 has clarified that the Range Forest Officers are not

eligible for 10 months advanced diploma course. Since the respondent No.4 & 5 had undergone the said post-graduate diploma course in Wildlife Management in a fraudulent manner, any consequential order/ letter issued pursuant thereto is illegal, non-est and void ab initio. The respondent No.4 & 5 have been considered by the review DPC mechanically without proper application of mind and were given promotion to the post of the Assistant Conservator of Forest, MFS Grade-II without any reason. The final seniority list will have a great impact and consequences upon the petitioners while considering them for promotion to the post of the MFS Grade-I. The validity and correctness of the diploma certificate obtained by the respondent No. 5 has been challenged by some of the Range Forest Officers by way of WP(C) No.116 of 2020 wherein this Court had passed an interim order to the effect that the validity of the said certificate should be subject to the outcome of the writ petition. It is well settled law that if the initial action is not taken in consonance with law, all consequential proceedings would fall for the reason that the illegality strikes at the root of the order.

[4.1] The stand of the State Government as indicated in its affidavit, is that the objections of the petitioners in respect of the tentative seniority list were considered and disposed of on the ground that respondent No.4 & 5 were promoted to the post of MFS Grade-II with effect from 02-12-2013 vide order dated 31-08-2020 on the recommendation of the DPC held on 03-08-2020 which has not been challenged nor has any order been passed by any Court against it and that their names have been included in the final seniority list as per the provisions of the Rules, 1986. The stand of the respondent Nos.2 & 3 is similar to that of the respondent No.1 and therefore, the same is not repeated here for the sake of brevity. However, it has been stated in their affidavit that the respondent No.4 & 5 had undergone the diploma course in wildlife as per the order dated 14-07-2017 issued by the Secretariat: Forest and Environment, Government of Manipur, although only the officers at the rank of the Assistant Conservator of Forest and above, are eligible. The validity and correctness of the diploma certificates held by them is being challenged in WP(C) No. 116 of 2020 which is still pending before this Court.

[4.2] An affidavit on behalf of the respondent No.4 & 5 was filed stating that they were appointed as the Range Forest Officers sometime in between

the years, 1986 and 1989. As per the Rules, 1986, the posts of MFS Grade-II are to be filled up by promotion and direct recruits in the ratio of 50:50

and therefore, the petitioners who are direct recruits, have no right to interfere with the promotion of the promotes to the post of the MFS Grade-II.

The names of the respondent No.4 & 5 were included in the final seniority list as per the order dated 31-08-2020 issued by the DP, granting

retrospective promotion with effect from 02-12-2013, on the basis of the recommendation of the review DPC held on 03-08-2020 in compliance with

the order dated 20-12-2019 passed by this Court. The respondent No.4 & 5 are the Range Forest Officers possessing diploma in Wildlife

Management from the Wildlife Institute of India, as they underwent diploma course in the years, 2005-06 through proper official procedure. The MFS

Grade-II officers who have put in more than six years, are not willing to undergo the diploma course thereby losing the State quota of seats. A DPC

was held in the year, 2013 whereby the respondent No.4 & 5 were not recommended on the ground that there was no Range Forest Officers

possessing certificate / diploma in forestry/ wildlife. This proceeding of the DPC dated 02-12-2013 came to be challenged in WP(C) No.83 of 2015

wherein this Court quashed and set aside it. A review DPC was held but the respondent No.5 was not recommended on the ground that he was not

within the zone of consideration. He challenged it by way of WP(C) No.898 of 2018 which was allowed vide order dated 20-12-2019 passed by the

Single Judge with the direction to hold a review DPC. The order dated 31-08-2020 had not been challenged by anyone nor had anybody questioned the

validity and genuineness of the diploma certificates by the respondents in WP(C) No.898 of 2018. The respondent No.6 & 7 in their affidavit have

stated that after they being promoted in the year, 2013 to the post of the MFS Grade-II, they became eligible for the post of the MFS Grade-I. The

final seniority list was published on 12-11-2020 after considering the objections submitted by all concerned. Due to the issues arising in respect of the

respondent No.4 & 5, their right to be considered for promotion was curtailed and they would retire on attaining the age of superannuation. There is no

dispute at all so far as their seniority positions are concerned. The order dated 31-08-2020 has not been challenged by anyone. An affidavit has been

filed by the respondent No.8 stating that he was directly appointed as the MFS Grade-II on 14-10-2014. The final seniority list was published by

setting right the minor aberrations crept therein by doing justice to him. The grievances raised in the writ petition qua the respondent No.4 & 5 would

have no relevance as the same are not directed against him. Similar is the case with the affidavit filed by the respondent No.11 and therefore, the

same are not repeated here for the sake of gravity.

WP(C) No. 607 of 2020

[5.1] The validity and correctness of the final seniority list published vide order dated 12-10-2020 issued by the Joint Secretary (DP), Government of

Manipur and the order dated 12-06-2020 issued by the Under Secretary, Government of Manipur by which the private respondents were appointed by

way of promotion to the post of the MFS Grade II are under challenge in this writ petition.

[5.2] According to the petitioners, they were appointed as the Assistant Conservator of Forest, MFS Grade-II vide order dated 14-10- 2014 issued by

the State Government on the recommendation of the MP SC. As per the Rules, 1986, the method of recruitment for the post of the MFS Grade-II, in

short, is that 40% of the substantive vacancies which occur from time to time shall be filled up by promotion while the remaining shall be filled up by

the direct recruitment.

[5.3] The Government of Manipur issued a notification dated 15-03- 1992 whereby Rule 3 was amended stating that the service shall have 3 grades,

namely (a) the MFS Selection Grade; (b) the MFS Grade-I and

(c) the MFS Grade-II. Rule 6 of the said Rules provides that the member of the service with a minimum of 6 years regular shall be eligible for being

considered for promotion to the MFS Grade-I and since the petitioners being put in 6 years on regular service in the MFS Grade-II, they were eligible

for promotion to the post of the MFS Grade-I.

[5.4] The private respondents entered into their services as the Range Forest Officers being appointed on 03-05-1988 and 03-05-1989 as seen from

the seniority list of the Range Forest Officers issued by the Forest & Environmental Department, Government of Manipur vide Notification dated 18-

12-2008. The Government of Manipur issued an order dated 14-07-2005 according sanction to the deputation of the private respondents for

undergoing post graduate diploma course in Wildlife Management at Wildlife Institute of India, Dehradun. Since the private respondents were in the

rank of the Range Forest Officers, they were not eligible for undergoing the said diploma course as per the recruitment rules of the Range Forest

Officers. It is a CGS Class-II to be filled up by way of Class-II DPC. The essential qualification for the post of the Range Forest Officer is Graduate

in Science or its equivalent. The private respondents who were not eligible, were wrongly nominated for undergoing the post graduate diploma course

in Wildlife Management vide Government letter dated 21-07-2005 addressed to the Director, Wildlife Institute of India. As the Forest Range Officers

are not eligible for such undergoing the diploma course, the Wildlife Institute of India vide its letter dated 21-07-2010 clarified that the Range Forest

Officers are not eligible for such course.

[5.5] The private respondents submitted their joining reports by way of impersonation of their respective posts which is evident from the joining reports

dated 02-09-2005 submitted to the Wildlife Institute of India, Dehradun by filling up the admission form, although they were not holding the posts of the

Assistant Conservator of Forest which is equivalent to the MFS Grade-II. They fraudulently mentioned themselves in their forms as the Assistant

Conservator of Forest and in the final seniority list dated 12-11-2020 their names were shown. The final seniority list was published without

considering the objection raised by the petitioners. Being aggrieved by the said final seniority list, the instant writ petition has been filed by the

petitioners on the inter-alia grounds that the tentative seniority list dated 06-10-2020 was finalized without assigning any reason in order to favour the

private respondents who are not eligible to be considered for promotion to the post of the MFS Grade-I. The private respondents were appointed by

way of promotion to the post of the MFS Grade-II vide order dated 12-06-2020 purportedly in compliance with the order dated 20-12-2019 passed by

the Single Judge but the private respondents have been given promotions retrospectively w.e.f. 02-12-2013. While disposing of the WP(C) No.898 of

2018, the Single Judge never directed the petitioners therein to be appointed to the post of the MFS Grade-II but it was left to the Government to hold

a fresh DPC for consideration as per the rules. The Government of Manipur was going ahead with the process of holding a DPC on 24-11-2020 as is

evident from the notice dated 18-11-2020 to consider eligible MFS officers Grade-II to the post of MFS Grade I.

[6] The stand of the respondent No.1 is similar to that of its stand indicated in the affidavit filed in WP(C) No.606 of 2020 and therefore, the same is

not repeated here for the sake of brevity and in addition thereto, it has been stated that the meeting of the Screening Committee was held on 24-12-

2020 as per the interim order dated 23-11-2020 passed by this Court. The private respondents have filed an affidavit and the averments made therein

are almost the same as that of their affidavit filed in WP(C) No.606 of 2020 and therefore, the same are not repeated here for the sake of brevity.

WP(C) No. 630 of 2020

[7.1] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to

cancel the post graduate diploma certificate in Wildlife Management obtained by the private respondents and also for issuing a writ of certiorari or any

other appropriate writ to quash and set aside any subsequent proceeding/ order/ notification issued pursuant to the said impugned diploma certificate

for the end of justice.

[7.2} The petitioners are the Assistant Conservator of Forest, MFS Grade-II appointed in the year, 2014 on the recommendation of the MPSC. As per

the Rule 5 of the Rules, 1986 as amended from time to time, the Range Forest Officer having diploma certificate in Forestry and Wildlife with four

years regular service; the Range Forest Officer with Certificate in Forestry/ Wildlife having five years on regular service and the Range Forest

Officer without diploma/ certificate having seven years of regular service are eligible for promotion to the post of the MFS Grade-II, the Assistant

Conservator of Forest. The petitioners came to know from the reliable sources that some Range Forest Officers who are not eligible, had been

promoted to the post of the MFS Grade-II. These officers who are not eligible, had undergone the post graduate diploma in Forestry and Wildlife

obtaining the certificate thereof in a fraudulent manner in collusion with the officials of the Forest Department.

[7.3] The State Government issued an order granting promotions to ten Forest Range Officers including the private respondents for the post of the

MFS Grade-II vide order dated 31-08-2020 in a purported compliance with the order dated 20-12-2019 passed by the Single Judge in WP(C) No.898

of 2018 directing the respondents to hold a review DPC for the post of the MFS

Grade-II of all the eligible persons including the petitioners therein and that in case the petitioners therein were selected and recommended by the review DPC, they would be appointed to the post of the MFS Grade-II but the review DPC failed to consider the true spirit of the direction given by this Court. The requisite qualification as required in the Rules, 1986, was not considered and examined by the DPC while making their recommendation.

[7.4] The said diploma certificate course is meant for the in-services Indian Forest Service and State Forest Officers of the rank of the Deputy

Conservator of Forests/ Assistant Conservator of Forest with possession of forestry training and a minimum of Bachelor's Degree in any of the natural sciences. The private respondents were ineligible to undergo the said post graduate diploma course in Wildlife for the reason that they were

neither the Assistant Conservator of Forest nor the equivalent and above rank officers and that the private respondent No.4 was an Arts Graduate. In

other words, the officers who are in the rank of the Range Forest Officer, cannot be admitted to undergo the PG diploma course in the Wildlife

Management Institute as is evident from the letter dated 02-11-2006 issued by the Academic Officer. At the time of joining the said training, the

private respondents were holding the post of the Range Forest Officer as is evident from the seniority list for the post of the Range Forest Officer

published on 18-12-2010. The Government of Manipur vide its letter dated 07-08-2010 informed that the Range Forest Officers were not eligible for

the post graduate diploma programme course.

[7.5] The private respondents who knew fully well that they were not eligible to undergo the said diploma course, requested the authority for deputing

them to undergo the said course. The private respondents went for the training course by concealing their real positions in collusion with the then

officers and therefore, the diploma certificates obtained by the respondent No.4 & 5 are non est and are not sustainable in law. The letter dated 21-

07-2010 issued by the Director, Wildlife Institute of India clarified that the Range Forest Officers are not eligible for such training.

[7.6] Such illegal administrative action of the State Government granting permission to the private respondents for promotion to the post of the MFS

Grade-II, shall have a great impact and consequence upon the petitioners while considering their cases for promotion to the post of the MFS Grade-I.

As per Rule 7(1) PART-IV of the Rules, 1986, the post of MFS Grade-I is to be filled up from amongst the officers who had put in five years of service in the grade of the MFS Grade-II.

[7.7] Being aggrieved by the action of the State Government, All Manipur Forest Rangers's Association submitted an application dated 28- 04-2010

for cancellation of the diploma certificates obtained by the respondent No.4 & 5 but no action was taken by it. The existence of the certificates came

to be known to the petitioners only after the issuance of the order dated 31-08-2020 because of which the petitioners could not challenge it in time. It

is well settled law that if the initial action is not taken in consonance with law, all subsequent and consequential action would fail for the reason that the

illegality strikes at the root of the order. Therefore, the diploma certificates which have been obtained by the private respondents, are not sustainable in

law and deserve to be set aside. It may be noted that the private respondents who knew fully well that they are not eligible to undergo the diploma

course, submitted their applications to the Wildlife Institute of India by stating in column 7 therein as the Assistant Conservator of Forest which is

clearly an impersonation as they were holding the post of the Range Forest Officer at the relevant point of time and therefore, it is a fit case where

this Court may restrain the officers from taking up any subsequent action on the said certificates.

WP(C) No. 685 of 2020

[8.1] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus to direct the respondents to cancel the impugned order of

promotion dated 31-08-2020 and to issue a writ of certiorari or any other appropriate writ to quash and set aside the proceedings of the review DPC

dated 28-04-2020.

[8.2] According to the petitioners, they were appointed as the Assistant Conservator of Forest on regular basis in the year, 2014 and are still working

as such.

[8.3] The petitioners came to know that a review DPC was held by the MPSC on 28-04-2020 to review the proceedings of the DPC held on 31-10-

2013 and the said DPC had recommended 10 Range Forest Officers for promotion to the post of MFS Grade-II including two Range Forest Officers

who are not within the zone of consideration and without fulfilling the eligibility

criteria. The said DPC was held purportedly in compliance with this Court's order dated 20-12-2019. It may be mentioned that the private respondents were considered by the earlier DPCs held on 19-09-2013 and 07-07-2018 but were not recommended by the DPCs. Ten Range Forest Officers including the private respondents were recommended for promotion, for which an order dated 31-08-2020 was issued. This Court's order dated 20-12-2020 was challenged by some Range Forest Officers by way of a writ appeal being WA No.11 of 2020 which is now pending before this Court.

[8.4] While passing the judgment and order dated 20-12-2020, the Single Judge directed that a review DPC be held and all eligible officers including the petitioners be considered and if the private respondents were recommended, they should be appointed as the MFS Grade-II. The review DPC failed to examine the eligibility and fulfillment of essential qualifications as per the Rules, 1986 as amended from time to time, but recommended ten Range Forest Officers who were appointed vide order dated 31-08-2020 issued by the State Government. On the basis of this order, the final seniority list was published, showing the private respondents at serial No.1 and 2 therein, which came to be challenged in WP(C) No.606 of 2020.

[8.5] In the DPC held on 28-04-2020, the private respondents could not have been considered as they were not within the zone of consideration. But taking undue advantage of the diploma certificates obtained by them fraudulently, they were considered by the DPC recommending their names for promotion to the post of the MFS Grade-II. The legality and validity of the said diploma certificates came to be challenged in WP(C) No.630 of 2020 wherein notice had been issued to the respondents.

[8.6] Being aggrieved by the DPC proceedings dated 28-04-2020 and the Government order dated 31-08-2020, the instant writ petition has been filed on the inter-alia grounds that the promotions granted to the private respondents will have a great impact and consequence while considering them for getting promotion to the post of the MFS Grade-I. The failure on the part of the DPC to consider and apply the provisions of the Rules, 1986 including the law of zone of consideration as mentioned in MFS (Amendment) Rules, 2010, is illegal and unsustainable in law. The All Manipur Forest Ranger's association had submitted an application on 20-04-2010 for cancelation of the diploma certificates obtained by the private respondents

fraudulently which is still pending for consideration by the State Government. It is a well settled law that if a particular act is fraudulent, any

consequential order issued pursuant to the such act is non-est and void ab initio and no person shall be allowed to take advantage of it.

WP(C) No. 31 of 2021

[9.1] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the

proceedings of the review DPC held on 03-08-2020 reviewing the earlier proceedings of the fresh review DPC held on 28-04-2020 which had

reviewed the earlier DPC held on 31-10-2013 and the consequent order dated 31-08-2020 issued by the Department of Personnel and Administrative

Reforms, Government of Manipur and also for issuing a writ of mandamus or any other appropriate writ to direct the respondents to hold a review

DPC reviewing the proceedings of the DPC held on 03-08-2020 considering the case of the petitioners being the senior most in the cadre of the MFS

Grade-II.

[9.2] The petitioners No. 1, 2 & 3 joined their services as the Range Forest Officers on regular basis in the Forest & Environment Department on 02-

05-1987, 03-05-1988 and 03-05-1989 respectively. On 10-02-2009, the Forest & Environment Department, Government of Manipur issued a

notification notifying the final seniority list of the Range Forest Officers in the Department. As is evident from the letters dated 02-11-2006 and 21-07-

2010, the Forest Range Officers are eligible to pursue only the course of certificate in Wildlife from the Wildlife Institute of India and not the post

graduate diploma in Wildlife Management which can only be pursued by the officers at the level of the Assistant Conservator of Forest and above.

[9.3] The petitioners pursued the course of certificates in Wildlife during the years 2006 to 2010 and were awarded certificates on 31-01-2006, 01-11-

2011 and 31-01-2008 respectively. Apart from the petitioners, the respondent Nos.5 & 6 also pursued the said certificate course and thus, except the

above petitioners and the respondent Nos. 5 & 6, other officers do not possess the certificate in Wildlife from the Wildlife Institute of India.

[9.4] The Government of Manipur issued a notification dated 01-04-2010 amending the Rules, 1986 by which 50% of the authorized permanent

strength of the service shall be filled up by promotion as under:-

Range Forest Officers with diploma in Forestry/Wild Life from any State Forest Service College/Wild Life Institute of India recognized

by the Govt. of India, Ministry of Environment & Forests who have put in 4 (four) years regular service in the grade of Range Forest

Officer including those periods spent on training on the Diploma course.

Failing which

Range Forest Officers with Certificate in Forestry/Wild Life from any State Forest Service College/Wild Life Institute of India recognized by

the Govt. of India, Ministry of Environment & Forests who have put in 5 (five) years regular service in the grade of Range Forest Officer

including those periods spent on training on the Certificate course.

Failing which

Range Forest Officers without Diploma/ Certificate in Forestry/ Wild Life who have put in 7 (seven) years regular service in the grade of

Range Forest Officer.

[9.5] In view of Rule 5(i)(C) of the Rules, 2010 read with the final seniority list, the petitioners being the holders of certificates in Wildlife from the

Wildlife Institute of India, are to be considered as the senior most Range Forest Officers for promotion to the MFS Grade-II against the ten vacancies

arose during the year 2010-2013, although the said ten vacancies of the MFS Grade-II were to be filled up in accordance with the provisions contained

in Rule 5(i)(C) of 2010 but the same were filled up without considering the petitioners which is in violation of the rules and consequently, the

appointment letter dated 02-12-2013 was issued.

[9.6] On 13-07-2017, the Registrar, MPSC wrote a letter to the Commissioner (DP), Government of Manipur seeking ACRs of all the eligible officers

within the zone of consideration but in reply thereto, the Principal Chief Conservator of Forest, Manipur wrote a letter dated 25-07-2017 furnishing

information with regard to the ACRs and diploma certificates of the respondent Nos.5 & 6. Being aggrieved by it, the petitioners filed a writ petition

being WP(C) No.596 of 2017 which was disposed of on granting a liberty to the petitioners to submit a detailed representation which the petitioners

did. Without considering the representation, a DPC was held on 03-01-2018 for promotion to the post of the MFS Grade-II against the said ten

vacancies. Being aggrieved by it, the petitioners filed a writ petition being WP(C) No.581 of 2018 and a review DPC was held on 07-07-2018 but the proceedings thereof were challenged by one of the Range Forest Officers by way of WP(C) No.898 of 2018 which was disposed of vide judgment and order dated 20-12-2019 setting aside the review DPC held on 07-07-2018 with the direction that a fresh review DPC be held considering all the eligible persons including the petitioners therein. In the meanwhile, the Government of Manipur issued orders dated 01-02-2019, 21-12-2019 and 06-02-2020 appointing the petitioners to the post of the MFS Grade-II against the later vacancies of the MFS Grade-II. In respect of the review DPC to be held pursuant to the judgment and order dated 20-12-2019, the names of the petitioners were not reflected for consideration by the review DPC which denied the petitioners their rights to be considered because of which the representation dated 05-05-2020 was submitted by them. Being aggrieved by the inaction on the part of the State respondents, WP(C) No.273 of 2020 was filed by the petitioners and during the course of hearing, the counsel appearing for the respondents mentioned about the existence of the order dated 12-06-2020 because of which the writ petition was withdrawn with a liberty to file a fresh writ petition. On 22-06-2020, an application under RTI was submitted to the MPSC seeking information as regards the review DPC held on 28-04-2020 and in reply thereto, the MPSC wrote a letter dated 04-07-2020 furnishing the proceedings of the DPC on the basis of which the petitioners filed a writ petition being WP(C) No.466 of 2020 challenging the review DPC held on 28-04-2020 and the appointment order dated 12-06-2020. To their utter shock and surprise, the Principal Chief Conservator of Forest issued a show cause notice dated 04-07-2020 as to why the disciplinary action could not be initiated against them. The petitioners submitted their replies on 10-07-2020. Later on, the said show cause notice was challenged in WP(C) No.509 of 2020 and in the meantime, the petitioners came to know that the order dated 31-08-2020 had been issued appointing ten persons to the post of the MFS Grade-II. The petitioners immediately moved an application seeking information pertaining to the review DPC held on 03-08-2020 to review the proceedings of the fresh review DPC held on 28-04-2020 in connection with the filling up of ten vacancies of the MFS Grade-II by promotion. Being aggrieved by the proceedings dated 03-08-2020, the instant writ petition has been filed by the petitioners contending that

the DPC held on 03-08-2020 had failed to consider the case of the petitioners, even though they were the senior most persons within the zone of consideration. Had the consideration of this Court contained in the judgment and order dated 20-12-2019 been applied with letter and spirit, the cases of the petitioners would have been considered in a review DPC for promotion to the post of the MFS Grade-II against the ten vacancies of the MFS Grade-II occurred during the year between the years, 2010 and 2013. In order to support their contentions, various decisions rendered by the Honâ??ble Supreme Court have been relied upon. The denial for consideration of the petitioners for promotion to the post of the MFS Grade-II is arbitrary being violative of Article 14 of the Constitution. The petitioners have been promoted to the post of the MFS Grade-II against the later vacancies, cannot be denied their rights to be considered against the earlier vacancies occurred during the financial years between the year, 2010 and 2013. Respondent Nos. 7 to 14 do not possess certificates in Forestry/ Wildlife and therefore, they are not eligible for consideration under the rules.

[10] From the aforesaid pleadings three issues have arisen for consideration by this Court-one, relating to the validity and correctness of the final seniority list published vide order dated 12-11-2020 issued by the Joint Secretary (DP), Government of Manipur; two, relating to the validity and correctness of the diploma certificates obtained by Shri L. Biramangol Singh and Shri Kh. Hitler Singh (hereinafter referred to as â??the contesting private respondentsâ?) fraudulently as alleged by the petitioners and three, relating to the validity and correctness of the proceedings of the review DPC held on 03-08-2020 and the consequent order dated 31-08-2020 issued by the DP, Government of Manipur.

[11.1] As regards the first issue, it has been submitted by the counsels appearing for the petitioners, Shri H. Tarunkumar, learned Advocate and Smt. G. Pushpa, learned Advocate that the contesting respondents were appointed as the Range Forest Officers sometime in the years between 1986 and 1989, while the petitioners in WP(C) No.606 of 2020 and WP(C) No.607 of 2020 were appointed directly as the Assistant Conservator of Forest, MFS Grade-II in the year, 2014 on the recommendation of the MPSC. As per the Rules, 1986, as amended from time to time, a Range Forest Officer with certificate in Forestry/ Wild Life who have put in 5 (five) years regular service in the grade including those periods spent on training on the

certificate course, is eligible for consideration for promotion to the post of MFS Grade-II. A Range Forest Officer is not eligible to undergo a diploma

course in wildlife. But the contesting private respondents had obtained diploma certificate fraudulently as alleged by the petitioners, on the strength of

which the review DPC in its meeting held on 03-08-2020 considered their cases and recommended their names for promotion to the post of the MFS

Grade-II. The State Government, based on the said recommendation of the review DPC, issued an order dated 31-08-2020 promoting ten Range

Forest Officers including the contesting private respondents to the post of the MFS Grade-II. Since the contesting private respondents having been

promoted to the post of MFS Grade-II with effect from 02-12-2013, their names have been shown in the final seniority list of the MFS Grade-II at

serial No.1 & 2. The objection raised by the petitioners before the finalization of the seniority list, was not considered by the State Government nor

was any reason given thereof, if considered and disposed. Relying upon the decision rendered by the Honâ??ble Supreme Court in the Siemens

Engineering & Manufacturing Co. of India Ltd. Vs. Union of India & anr., (1976) 2 SCC 981, it has been contended by them that where an authority

makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes and every quasi- judicial order must

be supported by reasons. It has further been submitted by them that the review DPC had failed to consider the fact that the diploma certificates were

obtained fraudulently by the contesting private respondents with the result that they had become senior to the petitioners and as and when a DPC is

held for promotion to the post of the MFS Grade-I, an injustice would be done to them. The stand of the State Government is that since the contesting

private respondents have been recommended on 03-08-2020 by the review DPC, they have been appointed vide Government order dated 31-08-2020

which remains unchallenged by anyone and therefore, they have been shown above the petitioners in the final seniority list. In addition to the stand of

the State Government, it has been stated by the office of the Principal Chief Conservator of Forest that the contesting private respondents had

undergone the diploma course vide Government order dated 14-07-2005 issued by the Secretariat: the Department of Forest & Environment,

Government of Manipur. Shri N. Ibotombi, Senior Advocate appearing for the contesting private respondents submitted that the review DPC was held

in compliance with this Court's order dated 20-12-2019 and on the recommendation of the review DPC, the contesting private respondents were appointed to the post of the MFS Grade-II with retrospective effect from 02-12-2013 and that they were entitled to be shown in the final seniority list

keeping in mind the services rendered by them. There is nothing wrong in showing the names of the contesting private respondents above the

petitioners in the final seniority list. The petitioners have no case at all and accordingly, their writ petitions are liable to be dismissed by this Court.

[11.2] It is not in dispute that the contesting private respondents were appointed as the Range Forest Officers in the years between 1986 and 1989,

while the petitioners were appointed directly as the Assistant Conservator of Forest, MFS Grade-II in the year, 2014 on the recommendation of the

MPSC. The post of the MFS Grade-II is a promotional post from the post of the Range Forest Officer and the promotion to the post of MFS Grade-II

is to be made in terms of the Rules, 1986 as amended from time to time. A meeting of a DPC was held on 31-10-2013 for promotion to the post of the

MFS Grade-II, before the petitioners were appointed as the MFS Grade-II but the contesting private respondents were not recommended for

appointment on promotion on the ground that there was no Range Forest Officer with diploma/ certificate in forestry/ wildlife. The matter was carried

to this Court by way of WP(C) No.83 of 2015 and with the interference by this Court, a review DPC was held on 07-07-2018 and this time too, the

contesting private respondents were not recommended on the ground that they were not within the zone of consideration. One of the contesting

private respondents approached this Court again by way of WP(C) No.898 of 2018 which was allowed on 20-12-2019 with the direction that a review

DPC be held and if the contesting private respondents were recommended by the review DPC, they should be appointed on promotion to the post of

the MFS Grade-II. On the basis of the recommendation of the review DPC, they were appointed on promotion to the post of the MFS Grade-II with

retrospective effect from 02-12-2013 vide Government order dated 31-08-2020, because of which they were shown in the final seniority list above the

petitioners. This final seniority list is being challenged by the petitioners mainly on the ground that the review DPC failed to consider the fact that the

contesting private respondents had obtained the diploma certificates fraudulently and they could not be permitted to take advantage of the same. In

view of the contentions made by the petitioners, the answer to this issue will depend upon and will lie in the validity and correctness of the diploma

certificates obtained by the contesting private respondents. It is not disputed by the parties that the validity and correctness of the diploma certificates

obtained by the contesting private respondents is a subject matter in issue in WP(C) No.116 of 2020 which is not listed before this bench. On top of

that, the validity and correctness of the diploma certificates obtained by the contesting private respondents is being questioned in WP(C) No.630 of

2020 which is listed before this bench. At this juncture, one aspect which needs to be considered by this Court is the submissions made by Shri Lenin

Hijam, the learned Addl. Advocate General and Shri N. Ibotombi, learned Senior Advocate that the issue relating to the validity and correctness of the

diploma certificates obtained by the contesting private respondents, had been looked into and considered by the Single Judge of this Court vide his

judgment and order dated 20-12-2019 passed in WP(C) No.898 of 2018, the relevant paragraph 16 reads as under:

“16. At this juncture, it is pertinent to note that the Diploma Course in Wildlife management is meant for the Forest Officers of the rank

of ACF/DCF and equivalent officers. The petitioner and another person, who are Ranger Forest Officers were recommended to undergo the

Diploma Course in Wild Life Management even though they are Range Forest Officers, as they had secured Honours in certificate Course.

The concerned officer had recommended them to equip with latest development in Wildlife Management in the country for managing many

National Park and Wildlife Sanctuary in the State. The Dean of Wildlife Institute of India also communicated the eligibility of the two

officers to undergo the Diploma Course and the State Government also agreed to the deputation of the petitioner and another officer and

they had also duly passed the said Course. In view of the above, the respondent cannot contend that the petitioner has obtained the

certificate by playing fraud at the distant point of time. In fact, the petitioner has undergone the said Diploma Course as per the directions

of his higher officials.”

It is correct that the above observations have been made by the Single Judge of this Court but the same appear to have been made on the basis of the

fact that the concerned officer of the Forest Department had recommended the contesting private respondents to equip with the latest development in Wildlife Management; that the Dean, Wildlife Institute of India communicated their eligibility; that the State Government agreed to their deputation and that they had completed the course and obtained the diploma certificates. Although the State Government contended that the diploma course is to be undergone by the Assistant Conservator of Forest and above that rank and the Range Forest Officers are not eligible to undergo it, it appears to have failed to produce all the relevant materials before the Single Judge for consideration while considering the WP(C) No.898 of 2018. The Single Judge appears to have made the above observations based on the materials placed before it. In the present writ petitions, the petitioners have produced copies of the applications submitted by the contesting private respondents for undergoing the diploma course wherein they are alleged to have given false information and to have impersonated themselves to be the Assistant Conservator of Forest, when they were in fact at the rank of the Range Forest Officer. Despite the false information being furnished by them, the State Government vide its letter dated 14-07-2005 permitted them to undergo the diploma course deliberately, even though it was well aware of the fact that they were at the rank of the Range Forest Officers which had prima facie shown that the contesting private respondents were in collusion with the officials of the Forest Department. Therefore, the contention of the petitioners that the contesting private respondents had obtained the diploma certificates fraudulently, appears to be prima facie correct. While making the above observations, the Single Judge appears to have no idea about the alleged false information furnished in their applications.

[11.3] While passing the said judgment and order dated 20-12-2019, the Single Judge simply directed that a fresh review DPC be held in terms of the Rule 5(i)(C) of the Manipur Forest services (Amendment) Rules, 2010 to consider all eligible persons including the contesting private respondents and if they were selected and recommended by the review DPC, they should be appointed on promotion to the post of MFS Grade-II. There is no specific direction in the said judgment and order dated 20-12-2019 that the contesting private respondents should automatically be appointed on promotion to

the post of the MFS Grade-II. All that has been directed by him, is that they should be considered in accordance with law for grant of promotion. The grievance of the petitioners is that the review DPC failed to consider the cases of all the eligible officers in accordance with the provisions of the Manipur Forest services (Amendment) Rules, 2010 and in other words, the review DPC had not taken into account the allegation based on the documents that the contesting private respondents had obtained the diploma certificates fraudulently and on the contrary, the review DPC had proceeded on the assumption that they were in possession of the diploma certificates in forestry with the result that they had been promoted to the post of the MFS Grade-II and had, thereafter, been shown in the final seniority list above the petitioners. Their grievance is genuine for the reason that the contesting private respondents were considered for promotion to the post of the MFS Grade-II on the basis of their having undergone the diploma course and not on the basis of their having undergone certificate course. Therefore, the final seniority list for the post of the MFS Grade-II cannot be said to be a legally valid final seniority list and hence, is unsustainable in law.

[12] The second issue relates to the validity and correctness of the diploma certificates which is alleged to have been obtained by the contesting private respondents fraudulently. The allegation is based on the false information furnished by them in their applications which are placed on record and their impersonation of being the Assistant Conservator of Forest. Since the contesting private respondents were in the rank of the Range Forest officers at that point of time, they could not have been allowed to undergo the diploma course but for their false information furnished in their applications, they had been allowed to undergo the diploma course. As has been observed in the preceding paragraphs, the officials of the Forest Department appear to have been involved in furnishing the said false information and in other words, the officials of the Forest Department appear to be in collusion with them, otherwise it would not have been possible for the Forest Department to grant permission to the contesting private respondents for undergoing the diploma course. There is no specific averment made in the affidavit of the contesting private respondents denying categorically the allegations made by the petitioners that the diploma certificates were obtained by them fraudulently except stating that they were

deputed for undergoing the diploma course in Wildlife Management by the State Government considering the urgency and the need of wildlife trained manpower in the Forest Department and that at that time, as there was no Assistant Conservator of Forest to undergo the diploma course, the Central Government insisted to provide wildlife trained officers in Zoo, national park, Wildlife Sanctuary etc., otherwise its funding would be withdrawn. It has further been stated in their affidavit admitting that the Range Forest Officers cannot be directly considered for undergoing the diploma course but in exceptional cases, the Range Forest officers with honors certificate in Wildlife Management are also considered for deputation. In the past also, the Range Forest Officers had been deputed to undergo the diploma course as a policy decision of the State Government adopted from time to time to encourage the meritorious Range Forest Officers to be equipped and to promote their professional skill for the benefit of the Forest Department.

There can be no issue on their averments mentioned above that in exceptional cases, the Range Forest Officers can be allowed by the Wildlife Institute of India to undergo the diploma course for the reason that there is always an exception in the rules. Their averments made in the affidavit appear to be correct to that extent. But it may be noted that the ground on which the validity and correctness of their diploma certificates is being questioned by the petitioners, is that the diploma certificates had been obtained by fraudulent means. In other words, to undergo the diploma course, they had claimed themselves to be the Assistant Conservator of Forests which appears to be absolutely incorrect. What was the need of claiming themselves to be the Assistant Conservation of Forest for deputation, when they could undergo the diploma course as the Range Forest Officers in exceptional circumstances as contended by them. The Forest Department, Manipur, knowing well that the contesting private respondents were only in the rank of the Range Forest Officers, endorsed their claim and allowed them to undergo the diploma course on deputation. This conduct of the Forest Department had shown that their officials were hand in glove with them to ensure that they could somehow undergo the diploma course so that they could take advantage of it, while they were being considered for promotion to the next higher post. This is what appears to have exactly happened in the present cases. Thus, it is seen that the allegation of the petitioners has a prima facie case which needs to be gone into and considered by this

Court. Once the fraud committed by the contesting private respondents in obtaining the diploma certificate is proved, they cannot be permitted to enjoy

the fruits of the diploma certificates in view of the decisions rendered by the Honâ??ble Supreme Court in a catena of decisions. In S.P.

Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by Lts, (1994) 1 SCC 1 relied upon by the counsels appearing for the petitioners, the

Honâ??ble Supreme Court held that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Facts of

the said case are slightly different from that of the present case for the reason that in the said case, the order was obtained by playing fraud on the

Court. It is not so in the present cases. However, in Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & ors., (2003) 8

SCC 311, the Honâ??ble Supreme Court passed a general order holding that fraud is a conduct either by letter or words, which induces the other

person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. This has been referred

to in District Primary School Council, West Bengal Vs. Mritunjoy Das & ors., (2011) 15 SCC 111 wherein it has been observed by the Honâ??ble

Supreme Court that no person should be allowed to keep an advantage which he has obtained by fraud. Similar is the case with Devendra Kumar Vs.

State of Uttaranchal & ors., (2013) SCC 363 wherein it has been held that it is settled position of law that where an applicant gets an office by

misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. Therefore, the law is

very clear on the issue relating to any advantage being obtained by playing fraud but in the peculiar facts and circumstances of the present cases, this

Court is of the opinion that it may not be appropriate for this Bench to decide the second issue. As has been observed hereinabove, since the validity

and correctness of the diploma certificates obtained by the contesting private respondents is under challenge in WP(C) No.116 of 2020 and moreover,

WA No.11 of 2020 arising out of the judgment and order dated 20-12-2019 passed by the Single Judge in WP(C) No.898 of 2018 is already pending

for consideration by the Division Bench of this Court, it may not be appropriate for this Bench to decide the same issue involved in WP(C) No.630 of

2020 at this stage because any observation made by this Bench in this regard may have a bearing on the said writ appeal.

[13] As regards the third issue, Rule 5(i)(C) of the Rules, 1986 as amended vide Notification dated 01-04-2010, lays down the eligibility criteria for

promotion to the post of the MFS Grade-II from amongst the Range Forest Officers in order of priority-one, a Range Forest Officer with diploma in

Forestry/ Wildlife who has put in four years regular service in the grade including those periods spent on training on the diploma course; two, a Range

Forest Officer with certificate in Forestry/ Wildlife who has put in five years regular service in the grade including those periods spent on training on

the diploma course and three, a Range Forest Officer without diploma/ certificate in Forestry/ Wildlife who has put in seven years regular service in

the grade. In other words, there are three categories of the Range Forest Officers who are eligible for consideration of promotion to the post of the

MFS Grade-II on priority basis. This rule will have to be followed by the DPC while considering the cases of the Range Forest Officers for promotion

to the post of the MFS Grade-II. The grievance of the petitioners in WP(C) No.685 of 2020 and WP(C) No.31 of 2021 and in particular, the

petitioners in WP(C) No.31 of 2021 who were in the rank of the Range Forest Officers and had undergone certificate course in Forestry/ Wildlife like

the contesting private respondents, is that the review DPC in its meeting held on 03-08- 2020, had failed to consider the above rule in its true spirit and

perspective. The review DPC has proceeded on the assumption that since the contesting private respondents had obtained diploma certificates, they

had to be considered under the first category. In fact, they had been considered under the first category. According to the petitioners, the contesting

private respondents ought to have been considered under the second category for the reason that they had obtained the certificates of the certificate

course and that they could not have been considered, as if they were in possession of the certificates of diploma course because the manner in which

the diploma certificates were obtained by them was fraudulent and illegal. The consideration of the contesting private respondent by the review DPC

under the first category is illegal and without taking into account the illegality committed by the review DPC, the State Government had issued the

order dated 31-08-2020 promoting them to the post of the MFS Grade-II with effect from 02-12-2013, as a result of which they had been placed

above the petitioners in the final seniority list. The specific case of the petitioners in WP(C) No.31 of 2021 is that they were similarly situated with the

contesting private respondents, in the sense that they were also in the rank of the Range Forest Officers along with the contesting private respondents having undergone the certificate course but they were senior to the contesting private respondents. Although the said petitioners have been promoted to the post of the MFS Grade-II in the year, 2019 against the subsequent vacancies, they ought to have been considered for the vacancies which arose in the year, 2010-2013, when the contesting private respondents were considered by the review DPC. The failure on the part of the review DPC as well as the State Government to do that, the petitioners in WP(C) No.31 of 2021 who were senior to the contesting private respondents, have become junior to them in the final seniority list with the result that as and when the MFS Grade-II officers are considered for promotion to the post of the MFS Grade-I, the contesting private respondents would get the advantage over them. Seniority is one of the conditions of service and therefore, when the eligible officers are considered for promotion to the next higher post, the seniority list will have to be considered by the DPC.

[14] In view of the above and for the reasons stated hereinabove, the following orders are passed by this Court:

(a) WP(C) No.606 of 2020 and WP(C) No.607 of 2020 are allowed and consequently, the final seniority list for the post of the MFS Grade-II

published vide order dated 12-11-2020 issued by the Joint Secretary (DP), Government of Manipur is quashed and set aside;

(b) List WP(C) No.630 of 2020 along with WA No.11 of 2020 and it is open to the parties herein to approach the Division Bench of this Court praying

for taking up the writ appeal, at an early date, along with WP(C) No.116 of 2020 and praying for passing appropriate orders, thereafter, keeping in

mind the fact that some of the private respondents had retired on attaining the age of superannuation during the pendency of these cases;

(c) WP(C) No.685 of 2020 is allowed and consequently, the proceedings of the review DPC adopted in its meeting held on 03-08-2020 and the

consequent order dated 31-08-2020 issued by the Under Secretary (DP), Government of Manipur are quashed and set aside;

(d) In view of the order (c) above, passed by this Court, WP(C) No.31 of 2021 stands disposed of;

(e) The official respondents shall prepare a fresh final seniority list for the post of the MFS Grade-II and publish the same only after WA No.11 of

2020 along with WP(C) No.630 of 2020 being disposed of by this Court;

(f) After a fresh final seniority list for the post of the MFS Grade-II being published as per order (e) above, the official respondents shall constitute a

review DPC which shall consider all eligible officers and recommend the names for appointment on promotion to the post of the MFS Grade-I;

(g) In view of the orders passed by this Court hereinabove, the proceedings of the DPC probably held on 24-12-2020 as stated in the counter affidavit

filed on behalf of the State Government in WP(C) No.607 of 2020 in terms of the interim order dated 23-11-2020 passed by this Court, stand quashed

and set aside with the direction that no further action pursuant thereto shall be taken by the official respondents for the purpose of promotion from the

post of the MFS Grade-II to the post of MFS Grade-I.

There shall be no order as to costs.