
(2016) 02 MAN CK 0001
In the Manipur High Court
Case No : W.P.(C) Nos. 86 and 138 of 2013

L. Mohen Singh and Others	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 162, Article 309

Citation : (2016) 2 GauLT 203

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : N. Umakanta, Advocate, for the Appellant; Th. Ibohal, A.G., H. Debendra, G.A., S. Rupachandra, A.S.G. and K.R. Panmei, Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—1. Heard Mr. N. Umakanta, learned counsel for the petitioners in both the writ petitions. Heard also Mr. Th. Ibohal, learned A.G., Manipur and Mr. L. Devendra, learned GA for the State respondents and Mr. S. Rupachandra, learned ASG, for the respondent No. 6.

2. These two writ petitions have been taken up together considering the fact that these two petitions arise from the same cause of action and similar reliefs have been sought for, seeking quashing of the impugned order dated 09.08.2012 passed by the Principal Secretary, Commerce & Industries Department denying the inclusion/appointment of the petitioners in the Manipur Finance Service (MFS) cadre posts of Account Officers and seeking a direction for inclusion of the petitioners in the cadre of Manipur Finance Service Grade-III from the date of appointment as Account Officers on 4.12.1999.

3. The facts which are in common and relevant may be briefly stated.

4. According to the petitioners, the petitioner No. 1 joined service as Lower Division Clerk in the Department of Commerce & Industries on 26.04.1974 and

the petitioner No. 2 in the same post w.e.f. 07.04.1979 in same department. Thereafter, they were duly promoted to the posts of Upper Division Clerks. Subsequently, the petitioner No. 1 was appointed as Head Clerk w.e.f. 18.12.1990 and the petitioner No. 2 as Senior Accountant w.e.f. 18.12.1990 in the same department. According to the petitioners, the petitioners as Head Clerk and Senior Accountant were eligible for promotion to the higher post of Account Officer as per the recruitment rules known as "Industries Department, Manipur (Accounts Officer) Recruitment Rules, 1977" hereinafter referred to as the old Recruitment Rules of 1977. As per the aforesaid Recruitment Rules of 1977, the post of Accounts Officer is to be filled up by way of promotion, failing which by deputation. As regards promotion:-

1) Head Clerk in the common cadre of (i) Industries Deptt. (ii) Industrial Training Institute and (iii) Weights and Measures Deptt. with 6 years service in the grade is eligible.

2) Similarly, Senior Accountant with 4 years service in the grade or total of 6 years service as Head Clerk is also eligible.

5. According to the petitioners, the respondent authorities initiated the process for filling up of two vacant posts of Accounts Officers in the Commerce & Industries Department which had been lying vacant since 01.04.1997 and 23.08.1997 as is evident from the letter dated 06.07.1998 from the office of the respondent No. 1 to the Director, Commerce and Industries, Govt. of Manipur (respondent No. 5) requisitioning the ACRs for 9 (nine) eligible officers including the present petitioners. Thereafter, the office of the respondent No. 1 furnished the necessary documents to the Manipur Public Service Commission (MPSC) for filling up the vacant posts of Accounts Officers by promotion in the Commerce and Industries Department, Govt. of Manipur vide letter dated 30.03.1999 (Annexure-A/6). Thereupon, Departmental Promotion Committee was convened by the MPSC on 18.10.1999 for making necessary recommendation. After the DPC, the Manipur Public Service Commission furnished the proceedings of the DPC held on 23.10.1999 containing the recommendation by way of promotion to two posts of Accounts Officers in the Commerce and Industries Department vide letter dated 23.10.1999 (Annexure A/8 to the writ petition). On the basis of the aforesaid recommendation of the MPSC, the petitioners were promoted to the posts of Accounts Officers in the Commerce and Industries Department vide order dated 4.12.1999 issued by the office of the respondent No. 1 (Annexure A/9 to the writ petition). In the meantime, the Manipur Finance Service was constituted by the Government and the Manipur Finance Service Rules, 1998 were notified vide notification dated 13.04.1998 which were enforced w.e.f. 24.04.1998. The petitioners contend that after they came to know that the Manipur Finance Service had been constituted w.e.f. 24.04.1998 in which the posts of Accounts Officers were encadred in the Manipur Finance Service as MFS Grade-III posts, the petitioners made the request for treating them as members of the Manipur Finance Service Grade-III and submitted their representations to

the competent authority on 3.12.2007 and 29.10.2007 respectively. The said representations were forwarded by the Director of Commerce and Industries, Govt. of Manipur to the respondent No. 1 for inducting them into the Manipur Finance Service vide letter dated 21st May, 2008 (Annexure A/12). The matter was considered at various levels including the Committee of Officers headed by the Chief Secretary, Govt. of Manipur on 28.07.2008. In their meeting, they discussed the issue of the petitioners claiming their induction in the Manipur Finance Service and after due deliberation, the Committee of Officers recommended that two additional posts be created as ex-cadre posts for accommodation of the petitioners and these two posts would stand abolished once they vacate these posts. The relevant portions of the deliberations of the aforesaid meeting of the Committee of Officers held on 28.07.2008 are reproduced herein below:

"i)

ii) The second issue is that the Commerce & Industries Department had promoted Shri L. Mohen Singh, Head Clerk and Smt. R. Ningtamla, Senior Accountant of the Department to the posts of Accounts Officer on 04/12/1999 long after the MFS Rules came into force. This promotion is irregular as any appointment either by way of direct recruitment or promotion to the cadre post of Account Officer is to be done by DP and not by the Department concerned. This issue is directly linked to the problem posts of Accounts Officer in Commerce & Industries Department rendering the two newly posted MFS officers postless.

3. After a detailed discussion on the above two issues the following decisions were arrived at:

i)

ii) Similarly, Principal Secretary, Commerce & Industries Department will, by 02/08/2008, move a note to Finance Department seeking review of right sizing order issued by FD(PIC) to restore the number of posts of Accounts Officer to six out of which four posts will be cadre posts of MFS as specified in the schedule to the MFS Rules, 1998. The two additional posts will be ex-cadre posts to accommodate Shri L. Mohen Singh, Head Clerk and Smt. R. Nongtamla, Senior Accountant. The two posts will stand abolished once they vacate the post on retirement/promotion expiry etc. The entire process should be completed within one month.

iii)

iv)"

6. Even though the Committee of Officers made the recommendation for accommodating the petitioners by creating two ex-cadre posts as mentioned above, no further action was taken in favour of the petitioners compelling the petitioners to approach the Hon"ble High Court by filing a writ petition, being W.P. (C) No. 365 of 2011 which was disposed of on 15.09.2011 directing the

respondents to consider implementation of the decision of the Committee of Officers in their meeting held on 28.07.2008, relevant portions of which are quoted above, as expeditiously as possible and to grant the consequential benefits. The aforesaid order dated 15.09.2011 of the Hon"ble High Court being relevant is reproduced hereinbelow:

"15.09.2011

ORDER

Heard Mr. N. Umakanta, learned counsel for the petitioners as well as Mr. Nepoleon, learned State counsel.

By means of this writ petition, the two petitioners have prayed for a direction to the respondents to implement the decisions contained in the minutes of the meeting held on 28.07.2008 (Annexure-A/8). By the said decision adopted by the Govt. of Manipur in the Department of Personnel, it was inter alia decided as follows:-

"ii) Similarly, Principal Secretary, Commerce & Industries Department will, by 02.08.2008, move a note to Finance Department seeking review of right sizing order issued by FD(PIC) to restore the number of posts of Accounts Officer to six out of which four posts will be cadre posts of MFS as specific in the schedule to the MFS Rules, 1998. The two additional posts will be ex-cadre posts to accommodate Shri L. Mohen Singh, Head Clerk and Smt. R. Nongtamla, Senior Accountant. The two posts will stand abolished once they vacate the post on retirement/promotion expiry etc. The entire process should be completed within one month."

Learned counsel for the petitioners submits that because of non-implementation of the said recommendation, the petitioners have suffered immensely in their service career and in the process one of them is going to retire on February, 2012. Thus, he submits that if the said decision is not implemented during life span of their service career, same will have telling effect.

In the counter affidavit, filed by the State respondents the aforesaid fact has not been denied, but it has been contended on behalf of the respondent No. 4 that it is beyond his purview to implement the order and that the matter will have to be looked into by the Personnel Department, Govt. of Manipur. It has also been stated that necessary proposal will have to be made by the Principal Secretary in the Department of Commerce and Industries, Govt. of Manipur.

Wherever action is required to be taken for implementation of the decision contained in the minutes of the meeting, the respondents will have to initiate and finalise the same and cannot sit over the matter indefinitely. In fact, as per the said minutes of the meeting, the entire process was to be completed within one month. By now more than three years have elapsed.

In view of the above, the writ petition is disposed of directing the respondents to

consider implementation of the decision as contained in Annexure-A/8 minutes of the meeting dated 28.07.2008 as expeditiously as possible, but at any rate, not later than 30.11.2011. Consequent upon implementation of the said decision, if the petitioners are entitled any consequential benefits, same may also be provided to them. The respondents shall bear in mind that the petitioner No. 1 is going to retire from service on attaining the age of superannuation on February, 2012.

Sd/- Judge"

7. Undisputedly, no appeal was preferred against the said order dated 15.09.2011 passed by the Hon"ble High Court in W.P.(C) No. 365 of 2011. Thereafter, in course of the implementation of the aforesaid order passed by the Hon"ble High Court, as a contempt proceeding was also initiated against some of the official respondents under Contempt Case (C) No. 164 of 2011, the matter of the petitioners was again taken up and considered by the authorities. The Committee of Officers constituted again considered the matter on 31.12.2011 and after observing that the promotion of the two petitioners was in contravention of the Manipur Finance Service Rules, 1998 advised the Administrative Department to move a proposal to the Department of Personnel for appointment on promotion of the petitioners to Grade-III posts of the Manipur Finance Service. The relevant portions of the aforesaid proceeding of the Committee of Officers and their recommendation may be reproduced hereinbelow:

"5. The Committee of Officers, in compliance of Hon"ble High Court's directions, dated 15/09/2011, considered decision of the meeting held on 28/07/2008 and observed that the promotion of the above two Officials by the Administrative Department of Commerce & Industries is in contravention of the MFS Rules, 1998 and is therefore, irregular. It further noted that no action has been taken by the Administrative Department against the Officials who are responsible for irregular promotion of the two officials. The Committee felt any post-facto endorsement of an irregular decision by the Commerce & Industries Department, the Committee observed, had clearly over-stepped its jurisdiction and violated the MFS Rules, 1998. Considering all pros and cons, the Committee of Officers noted that the decision taken in the meeting on 28/07/2008 with regard to the above two promotion cases cannot be implemented as it is violated of the MFS Rules, 1998. The Administrative Department of Commerce & Industries is, therefore, advised to-

- a) Move a proposal to the Department of Personnel for appointment on promotion of Shri L. Mohen Singh, Head Clerk and Smt. R. Ningtamla, Sr. Accountant to Grade-III of MFS;
- b) Furnish details of the Officers/Officials responsible for irregular promotion of the two Officials to the Department of Personnel so as to initiate appropriate disciplinary against them; and

c) File an appropriate Affidavit, in consultation with the DP, FD and Law Departments to apprise Hon"ble High Court that their direction dated 15/09/2011 has been duly considered."

On the basis of the aforesaid recommendation, the Administrative Department proposed to the MPSC for appointment by promotion of the two petitioners to the posts of Manipur Finance Service Grade-III. However, when the matter was referred to the MPSC for promotion of the petitioners, the MPSC in their meeting held on 10.04.2012 observed that the direction of the Hon"ble High Court to the Commerce & Industries Department was for creation of 2 (two) posts of Accounts Officers for accommodation of 2 (two) officers but there was no direction to consider for promotion of them to Manipur Finance Service Grade-III and accordingly advised the Department of Personnel to take up the matter with concerned Administrative Department for creation of 2 (two) posts of Accounts Officers as decided by the Committee of Officers in the meeting held on 28.07.2008 and as directed by the Hon"ble High Court in W.P.(C) No. 365 of 2011. It seems, thereafter, the Administrative Department initiated the process for consideration by the Cabinet for creation of 2 (two) ex-cadre posts of Account Officers in the Commerce and Industries Department to accommodate the petitioners to these posts. When the matter was taken up by the Cabinet in the meeting held on 11.5.2012, the Cabinet took the decision that the earlier decision of the Committee of Officers held on 28.07.2008 cannot be implemented as it is violative of the Manipur Finance Service Rules, as reproduced herein below:

"11. Now, the State Cabinet has decided that the decision as contained in Annexure A/8 of the writ petition in W.P.(C) No. 365 of 2011 (Shri L. Mohen Singh & Ors. Vs. State of Manipur & Others) cannot be implemented as it is violative of Manipur Finance Service Rules. The State Government has complied with the directions of Hon"ble Gauhati High Court in W.P.(C) No. 365 of 2011 to consider implementation of the decision as contained in Annexure A/8 of the W.P. (C) No. 365 of 2011 at the highest level i.e. State Cabinet."

On the basis of the aforesaid Cabinet decision, the authority issued the impugned order dated 9.8.2012. Based on the aforesaid impugned order the authorities initiated the process for cancellation of the earlier appointment order as Accounts Officers. Thus, being aggrieved, the petitioners having no other option, thereafter, have approached this Court again by filing these petitions for a direction to the respondent authorities for appointment of the petitioners as Accounts Officers and for inclusion as members of the Manipur Finance Service Grade-III.

8. Heard Ld. counsel for the petitioners and perused the materials on record.

9. According to Mr. Umakanta, learned counsel for the petitioners, the petitioners had been considered by a duly constituted Departmental Promotion Committee for promotion to the posts of Accounts Officers against regular vacancies in

terms of the Recruitment Rules of 1977 in association with the Manipur Public Service Commission after they were found to be eligible. The only formal defect according to the petitioners and which has also been highlighted by the respondent authorities, is that by the time they were recommended for promotion to the posts of Accounts Officers by the MPSC, the Manipur Finance Service had come into existence, in which the posts of Accounts Officers had been encadred as Grade-III posts of the Manipur Finance Service and hence recruitment to the posts of Accounts Officers is to be governed by the Manipur Finance Service Rules, 1998 which were enforced w.e.f. 24.4.1998. As per these MFS Rules, the Department of Personnel is the controlling authority and as such, all the matters relating to appointment to the posts of Manipur Finance Service ought to be at the instance of the Department of Personnel. However, in the present case, since the appointment was not done through the Department of Personnel, objection has been raised by the respondent authorities in inducting the petitioners to the Manipur Finance Service. According to the petitioners, they were not aware of the constitution of the new Manipur Finance Service, and since the Department of Commerce & Industries under which they were serving also was not aware of, the Department initiated the process for promotion to the two vacant posts of Accounts Officers in consultation with the MPSC. Accordingly, the MPSC in terms of the Recruitment Rules of 1977 made the recommendation of the petitioners for appointment as Accounts Officers after taking into consideration seven other eligible candidates and by applying the principle of "merit-cum-seniority". Accordingly, it is the case of the petitioners that they had been duly assessed by the MPSC on merit in terms of the Recruitment Rules of 1977 and could not now be deprived of the appointment made based on merit as Accounts Officers at this stage after a lapse of about 13 years. It is contended that if the decision of the State Government is to be implemented it would mean that the petitioners would have to be reverted to the posts of Head Clerk and Senior Accountant which would cause great injustice to the petitioners. Accordingly, the petitioners have sought for a direction to be issued to the respondents to treat them as members of the Manipur Finance Service Grade-III w.e.f. 4.12.1999. It has been submitted by Mr. Umakanta that the petitioner in W.P.(C) No. 86 of 2013, namely, L. Mohen Singh, has already retired from service on 28.02.2012 because of which the petitioner is unable to enjoy the retirement benefits. As far as the other petitioner is concerned it has been stated that she is also going to retire very soon within a few years. That apart, the petitioners had been deprived of all the benefits in terms of the revision of pay, etc.

10. Mr. Umakanta, learned counsel for the petitioners also submits that since the vacancies against which the petitioners were appointed, occurred prior to the enforcement of the Manipur Finance Service Rules, 1998, these vacancies had to be filled up in accordance with the earlier recruitment rules which were operating at the time of occurrence of the vacancies, viz., the Recruitment Rules of 1997. Mr. Umakanta further submits that the process for promotion of the petitioners to these 2 (two) vacancies was initiated prior to the coming into existence of the

Manipur Finance Service Rules, 1998 and as such, continuation of the process for promotion under the old recruitment rules even after coming into force of the new Rules cannot affect the process already initiated. In this regard, he has relied on the decisions of the Hon'ble Supreme Court in *Y.V. Rangaiah and Ors. Vs. J. Sreenivasa Rao and Ors.*, , (1983) 3 SCC 284; *P. Mahendran and Ors. Vs. State of Karnataka and Ors.*, , (1990) 1 SCC 411; *Kulwant Singh and Ors. Vs. Daya Ram and Ors.*, , (2015) 3 SCC 177.

Further, it has been stated that even if the promotion of the petitioners to the posts of Account Officers are held to be irregular, in view of the fact that the petitioners had been continuing in service as Account Officers for the last more than 13 (thirteen) years, this would be sufficient to invalidate the decision taken by the authorities in denying the induction of the petitioners to the Manipur Finance Service. Mr. Umakanta relying on the decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka and Ors. Vs. Umadevi(3) and Ors.*, , (2006) 4 SCC 1 contended that the irregular appointments which are not illegal, of duly qualified persons in duly sanctioned posts, can be regularised.

11. Mr. Umakanta has further submitted that in a similarly situated case, one K. Memthoibi Devi who was serving as a Head Clerk in the Directorate of Craftsman Training under the Labour Department was promoted to the post of Accounts Officer in the year 2006 not under the MFS Rules, 1998 without consulting the Department of Personnel which is the controlling authority. However, the State Government favoured the said Memthoibi Devi by deciding to absorb her service as Accounts Officer in the Manipur Finance Service Grade-III w.e.f. 3.08.2006 (i.e. from the date of her appointment as Accounts Officer), in compliance of the Hon'ble High Court's order dated 02.06.2010 passed in W.P.(C) No. 261/2010. It has thus been submitted that it will amount to gross discrimination if the cases of the petitioners are not considered similarly.

12. Contesting the contentions of the petitioners, Mr. L. Debendra, learned GA has submitted that the recommendation of the petitioners by the MPSC on 23.10.1999 and subsequent appointment as Accounts Officers on 4.12.1999 were contrary to the Manipur Finance Service Rules, 1998 which were enforced w.e.f. 24.07.1998, i.e., prior to the recommendation made by the MPSC and as such the MPSC could not have made any recommendation for promotion to the posts of Accounts Officers dehors the Manipur Finance Service Rules, 1998. It has been submitted that, with the constitution of the Manipur Finance Service Rules, 1998, the posts of Accounts Officers in the Commerce and Industries Department became cadre posts of Manipur Finance Service Grade-III and after being encadred to the Manipur Finance Service, the appointment to these posts can be made only in terms of the MFS Rules, 1998. Under the MFS Rules, 1998, the Department of Personnel & Administrative Reforms is the cadre controlling authority and all matters relating to appointment, promotion, transfer, etc. is to be done by the Department of Personnel and Administrative Reforms, which was not done in case of the petitioners. It has been contended that for the purpose of

appointment to the posts under the Manipur Finance Service, the Selection Committee to be constituted is provided under Rule 14 of the Manipur Finance Service Rules, 1998 which would consist of the Chairman MPSC/Members MPSC as the Chairman of the Committee, and other members being the Chief Secretary/Additional Chief Secretary, Commissioner/Secretary (DP) and Commissioner/Secretary (Finance).

Mr. Debendra, learned GA, further submits that at the time when the MPSC made the recommendation on 23.10.1999 for appointment of the petitioners to the posts of Accounts Officers, the DPC consisted of the Chairman of the MPSC as the Chairman of the DPC with only the Commissioner (Commerce & Industries) and Director (Commerce & Industries) as the members. It is, therefore, very clear that the composition of the DPC held on 23.10.1999 recommending the petitioners to the posts of Accounts Officers was different from the composition as contemplated under the Manipur Finance Service Rules, 1998 as mentioned above.

Mr. Debendra further submits that the contention of the petitioners that since the vacancies to which the petitioners were appointed as Accounts Officers arose before coming into force of the Manipur Finance Service Rules, 1998, these vacancies had to be filled up on the basis of the earlier recruitment rules existing prior to the Manipur Finance Service Rules, 1998, cannot be accepted as after coming into force of the Manipur Finance Rules, 1998, these posts which had remained vacant became encadred to Manipur Finance Service and would have to be filled up in terms of the Manipur Finance Service Rules, 1998. He further submits that there is no rule of universal or absolute application that vacancies are to be filled up invariably by the law existing on the date of when the vacancies arose and to buttress his submission, has heavily relied on the decision of the Hon'ble Supreme Court in Deepak Agarwal and Anr. Vs. State of Uttar Pradesh and Ors., , (2011) 6 SCC 725.

13. Further, as regards the contention of the petitioners that the State authorities had discriminated against the petitioners as in a similarly situated case, the State authorities had inducted to the Manipur Finance Service Grade-III another person, namely, Smt. K. Memthoibi Devi, who was promoted to the post of Accounts Officer not on the basis of the MFS Rules, 1998, it has been submitted by Mr. Debendra, Ld. G.A. that even assuming that similarly situated person was absorbed, if the same was done erroneously it cannot become the foundation for granting similar relief to the petitioners as it would amount to perpetuating an illegality. He submits that since the promotion of the said K. Memthoibi Devi as Accounts Officer was not in accordance with Manipur Finance Service Rules, 1998, such erroneous decision cannot be the basis for induction of the petitioners as members of the Manipur Finance Service as otherwise it would amount to perpetuating an illegality. In this regard, learned GA has relied on the decisions of the Hon'ble Supreme Court in Union of India and Anr. Vs. Kartick Chandra Mondal and Anr., , (2010) 2 SCC 422 and State of Orissa and Anr. Vs. Mamata

Mohanty, , (2011) 3 SCC 436.

14. It has been further submitted that the case of the petitioners was duly considered by the authorities in terms of the direction issued by the High Court in W.P.(C) No. 365 of 2011 to consider the implementation of the decision of the Committee of Officers taken on 28.07.2008 which was for creation of 2 (two) additional posts of Accounts Officers in the Commerce and Industries Department as Ex-cadre posts to accommodate the petitioners. However, the Cabinet ultimately took the decision on 11.5.2012 that since the appointment of the petitioners as Accounts Officers were in violation of the Manipur Finance Service Rules, 1998 and as such irregular, the decision of the Committee taken on 28.07.2008 could not be implemented. Hence, they could not be absorbed in the Manipur Finance Service. Accordingly, Mr. Debendra, learned G.A. submits that the impugned order dated 9.08.2012 does not suffer from illegality and as such, the present petitions are devoid of merit and liable to be dismissed.

15. Mr. S. Rupachandra, learned ASG appearing for the respondent No. 6 submits that the matter regarding appointment to the cadre of MFS Grade-III is purely within the domain of the State Government in which the respondent No. 6 has nothing to do, hence, as and when the appropriate order is passed, the authority will take appropriate steps for payment of pensionary benefits to the retired petitioner.

16. Having heard the learned counsel for the parties and considering the materials on records, this Court is inclined to grant the relief claimed by the petitioners for the reasons hereinafter discussed.

17. The Manipur Finance Rules, 1998 was notified on 13.04.1998 but it was enforced with effect from 24.07.1998 when it was published in the State Gazette in terms of Rule 1, which provides that these rules shall come into force from the date of publication in the official gazette. Though the recommendation and appointment of the petitioners were done in accordance with the old recruitment rules of 1977, it is the case of the respondents that these were not in accordance with the MFS Rules, 1998, hence illegal. Accordingly, the respondents contend that they cannot be inducted to the Manipur Finance Service cadre. This stand of the State respondents, though apparently seems incontrovertible, because of the actions of the respondent authorities themselves and in the peculiar facts and circumstances of this case, this Court finds it difficult to accept.

First of all, when the petitioners were recommended and appointed to the posts of Account Officers as mentioned above, nothing had been shown or brought on record to indicate that the petitioners themselves were also actively involved in the said process for recommendation and appointment. Since it was a promotional appointment, the participation of the candidates concerned in the recruitment process is not required. It was for the authorities to ascertain the vacancies, find out the eligibility of the candidates and on the basis of ACRs and other relevant materials, it was for the competent Departmental Promotion

Committee to make assessment of the suitability of the candidates for promotion to the higher posts. In other words, in case of appointment by promotion it is for the authorities to make necessary recommendation by taking such steps as required under the rules without involving the candidates. In the process of assessment by the authority, the participation of the eligible candidates is not required. There is no allegation on the part of the respondent authorities nor there is any material to show that the petitioners themselves were active participants in the aforesaid process for their recommendation and appointment as Accounts Officers under the old recruitment rules. Therefore, if the aforesaid process of recommendation and appointment of the petitioners were found to be wrong or irregular, the responsibility was that of the official respondents concerned and not the individual promotees. Even if the process is not strictly in accordance with the relevant rules but if it results in grant of certain benefits to the employees, the employees cannot be made to suffer unduly. The authority, either could review their wrong decision at the earliest or remove the defects in such defective order and regularise such irregularities. However, if the authorities sleep over the matter for a long period of time and do not take any action to review their apparently irregular action, the Court cannot countenance any belated action which would cause prejudice to the employee concerned. Such review ought to be taken at the earliest opportunity. In the present case, it is to be examined as to whether the authorities took necessary steps for reviewing or withdrawing their irregular or illegal order at the earliest in recommending and appointing the petitioners as Accounts Officers so that minimum prejudice could be caused to the petitioners. The facts disclosed in the pleadings, show that the authorities are seeking to review such irregular order after keeping the matter unattended for a long period of time or more than a decade. The fact that the petitioners were recommended and appointed as Accounts Officers under the old Recruitment Rules of 1997 in the year 1999 has not been disputed by the respondent authorities. The only plea of the respondent authorities is that the said recommendation and appointment was in violation of and not in accordance with the Manipur Finance Service Rules, 1998. Though the petitioners were promoted in 1999, the authorities did not disturb their appointment. It is also seen that after the petitioners approached the competent authorities for induction of their services by submitting necessary applications in the year 2007, the matter was taken up by the State authorities as evident from the proceedings of the Committee of Officers held on 28.7.2008. The Committee of Officers rather than reviewing the irregular appointment orders of the petitioners as Account Officers and recommending for recalling or cancelling the irregular order, instead recommended for creation of two ex-cadre posts to accommodate these petitioners. The State authorities, however, remained inactive after the said recommendation of the Committee of Officers was made on 28.07.2008. They neither took any action to accommodate the petitioners in the Manipur Finance Service nor sought to cancel the irregular appointment order. The petitioners thus continued to serve as Accounts Officers in the Industries Department. It was only after the petitioners moved the Hon''ble High Court by

filing W.P.(C) No. 365 of 2011 and Hon"ble Court vide order dated 15.09.2011 directed the State authorities to implement the decision of the Committee of Officers dated 28.07.2008 that the State Government woke up to the issue. Accordingly, the matter was again referred to another Committee of Officers. Though the subsequent Committee of Officers observed as evident from the proceeding dated 31.12.2011 that the earlier recommendation of the Committee of Officers made on 28.7.2008 with regard to the promotion to petitioners cannot be implemented as the appointment of the petitioners as Accounts Officers were violative of the Manipur Finance Service Rules 1998, and recommended that the Commerce and Industries Department should review and cancel the orders, no action seems to have been taken by the authorities to cancel the aforesaid irregular appointment of the petitioners. On the other hand, the respondent authorities proposed to the MPSC for their promotion/absorption to the MFS Grade-III posts in the month of March, 2012. The MPSC, however, without making any recommendation, advised the Department of Personnel to take up the matter with the concerned administrative department for creation of two posts of Accounts Officers. Later, the State Cabinet considered the case of the petitioners in their meeting held on 11.5.2012 observing that the appointment of the two petitioners is violative of Rule 6 of the MFS Rules 1998 and decided that the decision of the Committee of "Officers held on 29.7.2008 for creation of two ex-cadre posts cannot be implemented as it was violative of the MFS Rules. Significantly, no decision was taken by the State Cabinet for cancellation of the aforesaid order of appointment of the petitioners as Accounts Officers. It was only after the petitioner, L. Mohen Singh in WP(C) 86 of 2015 prayed for his retiral benefits that the State authorities proposed for cancellation of the earlier appointment of the petitioners as Accounts Officers vide letter dated 8.10.2012. From the above, it is clearly evident that no step was taken by the authorities to cancel the promotion order of the petitioners till 2012 after the petitioners were appointed as Accounts Officers in the year 1999. Even the Cabinet, though deciding that the appointments of the petitioners were not in accordance with the MFS Rules, 1998, did not take any categorical decision to cancel such wrong appointment order.

18. That apart, this Court is not convinced that the recommendation and appointment of the petitioners as Account Officers in the year 1999 after the enforcement of the MFS Rules, 1998, were illegal. It is not in dispute that the vacancies against which the petitioners were recommended and appointed arose on 01.04.1997 and 23.08.1997 which were prior to the enforcement of the MFS Rules, 1998. Now, it is a generally accepted principle that vacancies which are to be filled up by way of promotion are to be on the basis of the recruitment rules applicable when vacancies arose unless, contrary provisions are made in the new recruitment rules.

In *Kulwant Singh and Ors. Vs. Daya Ram and Ors.*, , (2015) 3 SCC 177 the Hon"ble Supreme Court reiterated the principle that the vacancies which had occurred prior to amendment of rules were governed by old rules and not by the

amended rules. The Hon"ble Supreme Court held in para Nos. 40 and 41 as follows:

"40. In *R. Dayal*¹ the Court was considering the effect of Rule 24-A of the Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954 (as amended). It pertained to the vacancies which were filled up prior to the amended Rule. Question arose whether the vacancies were prepared to be filled up under the amended Rule or unamended Rule. On behalf of the respondents therein reliance was placed on *Y.V. Rangaiah*². The Court, appreciating the factual scenario and the rule position, came to hold as follows: (*R. Dayal* case¹ SCC p. 422, para 8)

"8. ... But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose."

41. In *B.L. Gupta*³ the Court reiterated the principle stated in *Y.V. Rangaiah*², *P. Ganeshwar Rao*⁴ and *A.A. Calton v. Director of Education* , (1983) 3 SCC 33 : 1983 SCC (L & S) 356 wherein it had been held that the vacancies which had occurred prior to the amendment of rules were governed by the old rules and not by the amended rules. In *Arjun Singh Rathore*⁵ the views stated in *Y.V. Rangaiah*² and *R. Dayal*¹ were reiterated."

Further, it may be also noted that the right of the eligible candidates who come within the zone of consideration to be considered for promotion against regular vacancies which have arisen has been held to be a fundamental right of the employees concerned. In this regard, one may refer to *A. Satyanarayana and Ors. Vs. S. Purushotham and Ors.*, , (2008) 5 SCC 416; *Badrinath v. Government of Tamil Nadu and Ors.*, , (2000) 8 SCC 395; *Union of India and Ors. Vs. Sangram Keshari Nayak*, , (2007) 6 SCC 704.

In view of the above principles, when the vacancies arose to these two posts of Accounts Officers on 1.11.1997 and 23.8.1997 before the MFS Rules, 1998 came into force, the corresponding fundamental right of the petitioners to be considered for promotion to the higher posts of Accounts Officers had become accrued under the old Recruitment Rules of 1997. This Court finds it difficult to accept that such accrued fundamental right of the persons to be considered for promotion at the relevant time when the vacancies arise could be taken away by

way of implication.

Therefore, normally these two vacancies were to be filled up by promotion on the basis of the rules existing when these vacancies arose, in which event, it would be the old Recruitment Rules of 1997, under which the petitioners were, in fact, recommended and promoted by following procedures laid down under the said Recruitment Rules of 1997.

19. Mr. H. Debendra, learned G.A. however contended relying on the decision of the Hon''ble Supreme Court in Deepak Agarwal (supra) that though, vacancies arose prior to the enforcement of MFS Rules 1998, these vacancies were to be filled up under the new rules, viz., MFS Rules, 1998. He contends that these two posts of Accounts Officers in which the vacancies arose had remained unfilled and became encadred as Grade-III posts of Manipur Finance Service in terms of Rules 4, 5, & 6 and as such these posts are to be filled up under newly enforced MFS Rules, 1998. This contention of Mr. Debendra, deserves serious consideration. Rule 4 of the MFS Rules 1998 deals with the strength of service. Rule 4 (i) provides that the authorised permanent strength of the service and posts included therein are specified in Schedule I. Under Schedule I, a number of Account Officers in various Departments including Industry Department have been listed as MFS Grade-III posts. In the said list, Account Officers numbering 11 (eleven) of the Industries Department were initially included. Therefore, by implication, with the enforcement of the MFS Rules, 1998, with effect from 24.07.1998, these posts of Account Officers in Industry Department would become part of the MFS, Grade-III posts. And as such, appointment to the post of Accounts Officer MFS Grade III has to be done in the manner provided under the MFS Rules 1998, contends Mr. H. Debendra, Ld. G.A.

20. We will, therefore, examine the decision of the Hon''ble Supreme Court in Deepak Agarwal (supra) to see whether it supports the contention of the State respondents or not.

In the case of Deepak Agarwal (supra), the relevant service rules were amended after the vacancies arose. In the said case though under the earlier unamended rules the posts of Statistical Officer and Technical Officer were in the feeder grade and were eligible for promotion to the higher post of Deputy Excise Commissioner (DEC), the Government took a conscious decision to amend the rules by which these posts were excluded from the feeder cadre for promotion to the post of Deputy Excise Commissioner. The petitioners therein who were holding the posts of Technical Officers and Statistical Officers claimed that since some of the vacancies arose prior to the amendment of the rules they had an accrued right for consideration of promotion for the vacancies which arose before the amendment of the rules. The authorities proceeded to fill up the vacancies under the amended rules, thus denying promotion to the petitioners. The petitioners challenged this action of the authorities. The Hon''ble Supreme Court rejected the plea of the petitioners holding that no accrued or vested right had been taken away.

In para 25 of Deepak Agarwal (supra), the Hon''ble Supreme Court makes the observation of the fact that in that case of Deepak Agarwal (supra) there was no statutory duty cast upon the authorities to either prepare a year wise panel of the eligible candidates or of the selected candidates for promotion and the proviso to Rule 2 of the U.P. Excise Group "A" Service enabled the State to keep any posts unfilled and further observed that there was no statutory duty which the State could be mandated to perform under the applicable rules. The Hon''ble Supreme Court went to observe that there is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The Hon''ble Supreme Court observed that the right to be considered for promotion accrues on the date of consideration of the eligible candidates, unless, of course, the applicable rule, as in Y.V. Rangaiah (supra) lays down any particular time-frame, within which the selection process is to be completed. The Hon''ble Supreme Court rejected accordingly the contention raised in that case that the vacancy has to be filled up in accordance with the amended rules. Paras 25 and 26 as mentioned above are reproduced hereinbelow:

"25. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.

26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case² lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

The Hon''ble Supreme Court in Deepak Agarwal (supra) considered the judgment in Y.V. Rangaiah (supra) and distinguished it on facts. The Hon''ble Supreme Court noted that in Y.V. Rangaiah (supra) the rules provided for preparation of a panel for the eligible candidates every year in the month of September which was a statutory duty cast upon the State and exercise was required to be conducted every year. Thereafter, only promotion orders were to be issued. In Y.V. Rangaiah''s case it was found that no such panel was prepared for a particular year in 1976. Subsequently, the rule was amended which rendered the petitioners therein ineligible to be considered for promotion. In that context, it was held by the Hon''ble Supreme Court that such vacancies would be governed by the old rules and not the amended rules as held in para 24 of Deepak Agarwal (supra) case which is reproduced hereinbelow:

"24. We are of the considered opinion that the judgment in Y.V. Rangaiah case² would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules."

The Hon''ble Supreme Court in that case also noted the fact that under the recruitment rules, the Government was entitled to take a decision not to fill up vacancies as on the relevant date.

It was in those fact situations that the Hon''ble Supreme Court held that the rules as in existence at the time of consideration of promotion will be applicable.

21. Coming to the instant case, it may be noted that Rule 15 of the MFS Rules, 1998 lays down the conditions for eligibility and procedure for selection. Rule 15 reads as follows:-

"15. Conditions of eligibility and procedures for selection:-

(1) The Committee shall consider from time to time the cases of officers eligible under clause (b) of rule 5 and rule 30(ii) who have served in the respective grades or posts, as the case may be, for not less than specified years of service against each grade or post and prepare a list of officers recommended, taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on the merit with due regard to seniority.

(2) The names of persons included in the list shall be arranged in order of merit.

(3) The list so prepared shall be forwarded by the Committee to the Government."

Rule 15(1) therefore, provides that consideration of promotion would be done taking into account actual vacancies at the time of vacancy and those likely to occur during the year. It does not speak of consideration for promotion on the basis of yearwise vacancies. To that extent, the contention of Mr. Debendra, learned Govt. Advocate cannot be doubted. However, apart from the aforesaid provision there is nothing in the MFS Rules providing that these rules will have retrospective effect as regards vacancies which have occurred prior to the enforcement of these rules which was on 24.7.1998. We may also, however, examine what were the rules prevailing before the enforcement of these MFS Rules when the vacancies arose. If there was no corresponding statutory duty on the authorities to consider promotion on the basis of yearwise vacancies, as held in Deepak Agarwal (supra), the said decision would be applicable in the present case. It is not in dispute that before the enforcement of the MFS Rules, another set of Recruitment Rules i.e. Industries Department, Manipur (Accounts Officers) Recruitment Rules, 1977 was in operation which became superseded by the MFS Rules, 1998 with its enforcement on 24.7.1998. Of course, there is nothing in the aforesaid Recruitment Rules of 1977 about the manner in which the vacancies to the posts of Accounts Officers are to be filled up except for laying down the qualifications and eligibility criteria. However, the Department of Personnel and Administrative Reforms, Government of Manipur had been issuing Office Memoranda from time to time laying down the guidelines and instructions to be followed at the time of consideration for appointment to selection posts/services on promotion. Though these guidelines/instructions were not issued under the proviso to Article 309 of the Constitution of India, these guidelines and instructions to the extent are not inconsistent with the recruitment rules framed under proviso to Article 309, would have statutory force. These instructions and guidelines can be said to have been issued in exercise of the powers conferred under Article 162 of the Constitution of India. Such guidelines and instructions were issued by the Department of Personnel and Administrative Reforms on 27th November, 1982 and subsequently superseded by Office Memoranda dated 29th April, 1999 and 15th May, 2014. Since the latter two Office Memoranda were issue after the enforcement of the MFS Rules, 1998, we may not refer to the same. However, we may refer to the guidelines and instructions issued on 20.7.1982. For the purpose of this, the relevant portions of the aforesaid guidelines/instructions issued on 27.11.1982 may be reproduced herein below:

"No. 17/2/80-DP(I) GOVERNMENT OF MANIPUR DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS

Imphal, the 27th November, 1982.

To

- 1) All Commissioners/Secretaries, Government of Manipur.
- 2) All Secretariat Officers, Govt. of Manipur, Imphal
- 3) Secretary, Manipur Public Service Commission, Imphal.
- 4) All Heads of Departments/Officers, Manipur.
- 5) All Deputy Commissioners, Manipur.

Subject:-Principles for promotion to "Selection" posts.

Sir,

I as directed to say that the following Principles is substitution of the earlier Notification issued vide No. 17/2/80-DP dated 16-5-1981 are hereby prescribed as guidelines and instructions at the time of consideration for appointment to "Selection" posts/services on promotion.

Yours faithfully, Sd/- (A. Dwijamani Singh) Deputy Secretary (DP), Govt. of Manipur.

Copy of O.M. No. 220011/2/76-Estt(D) dated 24th December, 1980 from Ministry of Home Affairs, (Department of Personnel and Administrative Reforms)

Subject:-PRINCIPLES FOR PROMOTION TO "SELECTION" POSTS

Large number of clarifications are being sought by the various Ministries/ Departments on various aspects while preparing a penal for posts to be filled on the basis of selection. The various points raised are as follows:

- 1)
- 2)
- 3)
- 4)

2. All the above aspects have been carefully considered and the following instructions are issued for the guidance of all Ministries.

3. Zone of consideration for promotion to posts filled by selection.

Reference is invited to the Ministry of Home Affairs (now Department of Personnel & AR) OM No. 1/4-55-RPS dated 16-5-1957 laying down certain principles for promotion. In the operation of these principles it has been observed that the absence of clearly defined limits on the extent of the field of choice has led to lack of uniformity in the practices being followed by DPCs. Similarly it is felt that a large field of choice might result in excessive supersessions. Again, despite repeated instructions of the Government to hold DPCs annually there have been quite a few cases of delays resulting in vacancies being bunched. This would enlarge the field of choice and upset the relative seniority positions in the higher

post with reference to the positions which would not have resulted that DPCs met at the appropriate time. In view of these consideration it has been defined in consultation with the U.P.S.C. as under in supersession of the Department's O.M. No. 1/4/55-RPS dated 16-5-1957 and all other Memoranda having any bearing on the matter herein dealt with.

(emphasis added)

(a) The Departmental Promotion Committee (DPC) shall for the purpose of determining the number of officers who should be considered from out of those eligible officers in the feeder grades(S) restrict the field of choice as under, with reference to the number of clear regular vacancies purposed to be filled in the year.

(b) Where, however, the number of eligible officers in the feeder grade(S) is less than the number in Col. (2) above, all the officers so eligible should be considered.

(c)

4. PREPARATION OF YEAR-WISE PANELS BY D.P.C. WHERE THEY HAVE NOT MET FOR A NUMBER OF YEAR.

(a) Instructions already exist that D.P.Cs. should meet at regular annual intervals for the preparation of select lists and where no such meeting is held in any year, the appointing authority should record a certificate that there were no vacancies to be filled during the year. Administrative Ministries should obtain periodical information/certificates on the regular holding of DPCs.

(b) Where, however, for reasons beyond control, DPC could not be held in any year even though the vacancies arise during that year (or years) the first DPC that meets thereafter should follow the following procedure.

(i) Determine the actual number of regular vacancies that arose in each of the previous years/year immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each years those Officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a "Select list" for each of the year starting with the earliest year onwards.

(iv) Prepare a consolidated "Select list" by placing the select list of the earlier year above the one for the next and so on.

Illustration: DPC meets in 1980. Number of vacancies in the year 1978 and 1979 were 8 & 7 respectively. It is proposed to fill also 9 more vacancies during 1980. There are 100 eligible Officers.

Panel for 1978:

Panel list will be Sl. No. 20, 1, 2, 3, 4, 5, 6, 8.

Panel for 1979:

Number of vacancies 7. Field of choice 21. This comprises officers No. 7, 9 to 19, 21 to 29 (Total 21).

The DPC classified No. 7 as "not fit" and rest "Very Good"

Panel will comprise of Sl. Nos. 9 to 15

Panel for 1980:

No. of vacancies 9. Field of Choice 27. This will comprise of Nos. 7, 16 to 19, 21 to 42.

No. 40 is graded "Very Good" and the rest as "Good"

Consolidated selected list Sl. Nos. 20, 1 to 6, 8, 9 to 15, 40, 7, 16 to 19, 21 to 23.

(emphasis added)

....."

22. It is very clear from paragraph Nos. 3, 4(a) and 4(b) above referred that the DPCs. are to be convened at regular annual intervals and in the event of not convening of DPC for a number of years, the DPC is to consider filling up the posts on the basis of yearwise vacancies. These instructions do not contemplate clubbing together of vacancies to be considered together at the time of consideration. Separate select lists are to be prepared for every year/yearwise vacancies. Therefore, it is very clear that a statutory duty is cast upon the appointing authorities to make recommendation for promotion on the basis of yearwise vacancies. These instructions are to supplement or fill the gaps in the relevant recruitment rules. Since there is no specific provision as regards consideration of yearwise vacancies or provisions contrary to these guidelines/instructions, these guidelines/instructions have to be read as supplementing and part of the recruitment rules of 1977 of the posts of Accounts Officers and cannot be ignored (See Union of India & Ors. Vs. Somasundram Viswanath & Ors., , (1989) 1 SCC 175).

Accordingly, a statutory duty is cast upon the recruiting authority to fill up the vacancies on the basis of yearwise vacancies. In that event, as the two vacancies against which the petitioners were promoted arose on 01.04.1997 and 23.08.1997, these vacancies were to be filled up by treating these to be vacancies of the year 1997 and the DPC ought to have been convened at that time to fill these vacancies, in which event, it would have been on the basis of recruitment rules existing at the relevant period. This legal obligation had already arisen before the MFS Rules, 1998 had been enforced. Since the petitioners had

become eligible and were within the zone of consideration for being considered for promotion to the posts of Accounts Officers when the said two vacancies arose as evident from the proceedings of the DPC held on 23.10.99, this Court is of the opinion that the decisions relied on by Mr. Debendra, learned G.A. in Deepak Agarwal (supra) will not support the case of the respondents, rather it will support the petitioner.

23. Even if for the sake of argument, the promotions of the two petitioners as Accounts Officers are considered to be in violation of the Manipur Finance Service Rules, 1998 as held by the respondent in terms of the Cabinet decision, this Court is of the view that it is not a fatal illegality but a curable defect and irregularity which could be cured by invoking Rule 33 of the MFS Rules which provides that where the Government is of the opinion that it is necessary or expedient so to do, the Government may, by order, for the reasons to be recorded in writing, and in consultation with the MPSC relax any of the provisions of these rules with respect to any class or category of persons. Schedule II to the MFS Rules specifies the feeder posts for appointment by promotion to the MFS Grade-III posts. These include the Superintendents who have put in 3 years regular service in the grade as well as Head Clerks who have put in 5 years regular service. Therefore, this Court is of the opinion that since the petitioners were also already eligible for appointment to MFS Grade-III posts of Accounts Officers as the feeder posts they were holding earlier are included in Schedule II of MFS Rules with the requisite regular years of service in the respective grades and since they had been already adjudged suitable on merit by another set of duly constituted Departmental Promotion Committee, the case of the petitioners can be clearly examined for appointment/absorption of these posts of Accounts Officers under the new MFS Rules, 1988 by invoking the provisions of Rule 33 of the MFS Rules.

Though this Court normally would not direct the authority to invoke the aforesaid power to relax as it is within the wisdom and discretion of the authority concerned to exercise this power to relax, this Court considers that in the present facts of the case, this Court can issue a direction to invoke such power under Section 33 of the MFS Rules, 1998 in view of the fact that not only the petitioners were already eligible for appointment as Accounts Officers but also in a similarly situated case, the authority had issued the order for absorption of a person, namely, Smt. Memthoibi Devi who was earlier working as a Head Clerk in the Directorate of Craftsmen Training under the Labour Department but subsequently promoted as an Accounts Officer in the same Directorate on the basis of the old recruitment rules and not under the new MFS Rules, 1998. The authority decided to absorb the service of the said Memthoibi Devi, Accounts Officer of Directorate of Craftsmen Training, Manipur into the service of MFS Grade-III w.e.f. 3.8.2006 vide order dated 26.7.2010 issued by the Department of Personnel and Administrative Reforms (Anenxure-A/26(1) in W.P.(C) No. 86 of 2013) even though the authorities were fully aware of such irregularity as clearly mentioned in paragraph Nos. 1 and 3 of the said order dated 26.7.2010 which

are reproduced herein below:-

"No. 3/8/2009-MFS/DP: Whereas, Labour Department had, on the recommendation of a DPC held in association with MPSC on 03-08-2006, appointed on Smt. K. Memthoibi Devi, the then Head Clerk of the Directorate of Craftsman Training on promotion to the post of Accounts Officer in the scale of pay of Rs. 6,500-10,500/- p.m. in the Directorate of Craftsman Training, Manipur vide their Order No. 76/5/80-ITI(Pt) dated 03-08-2006;

2.;

3. Whereas, Labour Department and MPSC had committed an irregularity in conducting the DPC on 03-08-2006 for appointment on promotion to Accounts Officer in Craftsman Training (an MFS-III post) without consulting Department of Personnel which is the cadre controlling authority of MFS."

As regards this contention of the petitioners, the respondent authorities have not denied the correctness of the factual position of the same.

24. It has been, however, the contention of the Ld. GA that passing of similar order of absorption of the petitioners would amount to perpetuation of an irregular and illegal act. This Court has already held that appointment of the petitioners as Accounts Officers is valid. At best it could be deemed to be irregular as to be member of the Manipur Finance Service, he has to be absorbed formally in terms of Rule 6 of the MFS Rules. If the DPC had been held in time after the vacancies arose and if the petitioners had been recommended for promotion to the posts of Accounts Officers, after coming into force the Manipur Finance Service, they could have been inducted to the Manipur Finance Service under Rule 6(1) of the MFS Rules. It is not that the promotion of the petitioners as Accounts Officers were wholly opposed to the fundamental principles of service jurisprudence relating to promotion. The petitioners had already rendered more than 9 years of regular service when they were given promotion in the year 1999. Though the ACRs of the petitioners are not before this Court, the petitioners were recommended for promotion by the duly constituted Departmental Promotion Committee under the old recruitment rules after assessing their service records along with seven other eligible candidates. The petitioners were recommended for promotion to the posts of Accounts Officers by following the principle of merit-cum-seniority. Their suitability was duly assessed under the old Recruitment Rules. In other words, all requirements for assessment of the suitability and merit of the candidates were duly undertaken by another competent authority and thereafter, these two petitioners were recommended for promotion to the posts of Accounts Officers. The only procedural defect was reliance on a different set of recruitment rules by the authorities concerned. To that extent, this Court is of the view that even if their promotion to the posts of Accounts Officer are considered not be in conformity with the MFS Rules of 1998, (though this Court has already held their promotion to Accounts Officers to be valid), it cannot be said to be wholly illegal but merely

irregular qua the Manipur Finance Service Rules, 1998, which could be rectified by resorting to Rule 33 of MFS Rules as already discussed above.

25. Before this Court parts with the case, it may be appropriate to mention a few words about the downsizing of posts of Accounts Officers in the Industries Department as mentioned in the proceedings of the Committee of Officers held on 31.12.2011. At the time of enforcement of the MFS Rules, 1998, the number of posts of Accounts Officers in the Industries Department is shown to be 11 in Schedule I of the MFS Rules. The Committee in their proceeding observed that the Finance Department had identified 9 posts for abolition out of the said 11 posts. However, the said 11 posts were retained in the Schedule I of the MFS Rules till 2004. The number of posts of Accounts Officers in the Industries Department was reduced to 4 (four) after the Manipur Finance Service (4th Amendment) Rules, 2004 was notified. Thus, till 2004 there were 11 posts of Accounts Officers in the Industries Department. Hence, the petitioners were already appointed as Accounts Officers in the year 1999. Hence, even if the posts of Accounts Officers in the Industries Department has been reduced to 4 now, since they were already appointed as Accounts Officers before the actual downsizing, their posts could not have been abolished without due process of law. Hence, if their appointments as Accounts Officers are held valid, they have a vested right to hold these posts. Accordingly, the Respondent authorities are under obligation to create ex-cadre posts, if necessary, to accommodate the petitioners.

26. Accordingly, for the reasons discussed above, the writ petitions are allowed. The impugned order dated 09.08.2012 issued by the Principal Secretary, Commerce & Industries, Government of Manipur under Order No. 2/11/95-IND is set aside. The respondents are directed to pass appropriate orders for absorbing the services of the 2 (two) petitioners, namely, Shri L. Mohen Singh and Smt. R. Ningtamla, Accounts Officers of the Commerce & Industries into the Manipur Finance Service Grade-III w.e.f. 04.12.1999 as had been done in the case of Smt. K. Memthoibi Devi, Accounts Officer within a period of 1 (one) month from today and the petitioners shall be entitled to all consequential benefits.

1State of Rajasthan v. R. Dayal, , (1997) 10 SCC 419 : 1997 SCC (L & S) 1631

2Y.V. Rangaiah v. J. Sreenivasa Rao, , (1983) 3 SCC 284 : 1983 SCC (L & S) 382 : AIR 1983 SC 852

3B.L. Gupta v. MCD, , (1998) 9 SCC 223 : 1998 SCC (L & S) 532

4P. Ganeshwar Rao v. State of A.P., , 1988 Supp SCC 740 : 1989 SCC (L & S) 123 : (1988) 8 ATC 957

5Arjun Singh Rathore v. B.N. Chaturvedi, , (2007) 11 SCC 605 : (2008) 2 SCC (L & S) 387