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**(2019) 03 MAN CK 0004**  
**In the Manipur High Court**  
**Case No : Writ Petition (c) No. 52 Of 2019**

Letkhomang Khongsai

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

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**Date of Decision : 29-03-2019**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 226, 309  
Civil Service Regulations. 1993 — Article 520, 520(ii)  
Evidence Act, 1872 — Section 45

**Citation : (2019) 03 MAN CK 0004**

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

**Bench : Single Bench**

**Advocate : Ajoy Pebam, N. Kumarjit, N. Ibotombi**

**Final Decision : Dismissed**

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## Judgement

Kh. Nobin Singh, J

[1] Heard Shri Ajoy Pebam, learned Advocate appearing for the petitioner; Shri N. Kumarjit, learned AG, Manipur appearing for the State respondents and Shri N. Ibotombi, learned Senior Advocate appearing for the private respondent.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of quo warranto to declare the appointment/ extension of service of the private respondent to the post of OSD as well as Ex-Officio Chief Engineer, Water Resources Department, Manipur as illegal and unconstitutional and consequently, to quash the order dated 02/02/2018 issued by the Under Secretary (WR), Government of Manipur; order dated 23/07/2018 issued by the Commissioner (WR), Government of Manipur and order dated 11/01/2019 issued by the Secretary (WR), Government of Manipur and also to direct the State respondents to cancel the said orders.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner is a Village Chief of S. Bongjang Village and that the instant writ

petition is being filed by him after making a thorough inquiry and collecting relevant materials.

[3.2] In respect of the appointment of the Chief Engineers of all Engineering Departments under the Government of Manipur, the Governor of Manipur, in exercise of power conferred under proviso to Article 309 of the Constitution of India, made the rules to regulate the method of recruitment to the post of Chief Engineer vide Notification dated 20/10/2016 (hereinafter referred to as "the Recruitment Rules, 2016") and as per the said Recruitment Rules, 2016, the method of recruitment to the post of Chief Engineer (WRD/IFCD), Manipur is by way of promotion from the post of Additional Chief Engineer with 3 (three) years of regular service in the grade, failing which Addl. Chief Engineer with 3 years regular service in the grade including the period on in-charge basis and 20 years of regular service in group 'A' posts in the service failing which 20 year of regular service in group 'A' service. It has later been contended in the rejoinder that as per the Recruitment Rules, 1994, the method of recruitment by promotion from the post of Addl. Chief Engineer with 3 years of regular service in the grade in the Department concerned, failing which the Addl. Chief Engineer with 7 (seven) years of regular service in the grades of Addl. Chief Engineer and Superintending Engineer or its equivalent put together. But the Recruitment Rules, 1994 have no relevance, as the same have been superseded by the Recruitment Rules, 2016.

[3.3] The private respondent, at the relevant time, was serving as the Chief Engineer in the Water Resources Department, Manipur and had retired from service on attaining the age of superannuation vide order dated 01/12/2017 w.e.f. 31/12/2017. On his retirement, Shri Ksh. Pritam Singh, the Addl. Chief Engineer (WR) of the Water Resources Department, Manipur was directed to act on in-charge basis in addition to his normal work without any extra remuneration with immediate effect as an interim arrangement and until further orders. Pursuant to a cabinet decision taken in its meeting held on 04/01/2018, the private respondent was engaged as the OSD of the Water Resources Department, Manipur on contract basis for a period of 6 (six) months w.e.f. 02/01/2018 to 30/06/2018 vide order dated 02/02/2018 issued by the Under Secretary (WR), Government of Manipur. On 12/07/2018, the existing Water Resources Department was bifurcated into 2 (two) Divisions, viz. (i) Management of Projects and Barrages (WR-I) and (ii) Flood Control (WR-II) with the creation of one additional post of Chief Engineer in the Water Resources Department. The term of engagement of the private respondent was extended for another period of 6 (six) months w.e.f. 02/07/2018 to 31/12/2018 vide order dated 23/07/2018 by appointing him as the Ex-Officio Chief Engineer of the Management of Project and Barrage Division (WR-I) of the Water Resources Department, Manipur subject to the terms and conditions mentioned therein. The service of the private respondent was extended again as the OSD as well as the Ex-Officio Chief Engineer of the Water Resources Department, Manipur vide order dated 11/01/2019 by which the private respondent was vested with full financial and

administrative power as the Chief Engineer.

[3.4] Being aggrieved by the said orders, the instant writ petition has been filed by the petitioner on the inter-alia grounds that the appointment or the engagement of the private respondent was/is in violation of Rule 56(d) of the Fundamental Rules and the provisions of Recruitment Rules, 2016; that it is well settled that the writ petition praying for a writ of quo warranto, can be filed by any citizen; that if the appointment of the private respondent is allowed to continue, the people will certainly lose their faith and confidence in the democratic system of the country and that the extension of the private respondent was/ is against the public policy.

[4] In the affidavit-in-opposition filed on behalf of the State respondents, it has been stated that considering the urgency and the need of timely completion of the projects and taking into account the urgent necessity of a person having technical/ scientific knowledge and expertise in the scientific field of execution and completion of the projects in time, the State Government took policy decisions to engage the private respondent as the OSD of the Water Resources Department, Manipur initially for six months which was extended from time to time. The engagement of the private respondent as the OSD and Ex-Officio Chief Engineer was made in exercise of power conferred under second proviso to FR 56(d), as the service of an engineering expert comes within the meaning of "scientific"

as mentioned therein. The reasons as to why the policy decision was taken by the State Government, are that two projects-one, Dolaithabi Barrage Project and two, Thoubal Multipurpose Project, are funded by the Accelerated Irrigation Benefit Project (AIBP) which is at 90:10 proportion and have been included in the list of 90 prioritised projects of the Government of India. If these projects are not completed within the targeted period, the grant components will be converted into interest bearing loans which will have an adverse impact on the State budget. The private respondent who retired from service on attaining the age of superannuation, was associated with the execution of the said projects right from the year 1987 and there is no officer at the rank of Chief Engineer in the Department of Water Resources who is able to handle these projects effectively. The instant writ petition has been filed by petitioner with an ulterior motive and that too, for the cause of some of the beneficiaries as is evident from the averments made therein and with no clean hands. Since the petitioner having acted as the agent of some persons who are expecting promotion to the post of Chief Engineer, he cannot be treated as the one at whose instance a writ of quo warranto can be issued by this court. An affidavit-in-opposition has also been filed by the private respondent but the stand taken by him is similar to that of the State Government and therefore, the same are not repeated here for the sake of brevity.

[5] From the aforesaid pleadings, three main issues which arise for consideration by this Court, are as under:

(a) Whether the invocation of the jurisdiction of this court under Article 226, by the petitioner, for issuance of a writ of quo warranto in respect of the engagement of the private respondent as the OSD and Ex-Officio Chief Engineer, Water Resources Department, Manipur is justified?

(b) Whether the State Government, while engaging the private respondent as the OSD and Ex-Officio Chef Engineer, Water Resources Department, has violated the Recruitment Rules, 2016?

(c) Whether the engagement of the private respondent as the OSD and Ex-Officio Chief Engineer, Water Resources Department has been done by the State Government under the second proviso to FR 56(d)?

[6] The law relating to the issuance of quo warranto under Article 226 of the Constitution of India as laid down by the Hon'ble Supreme Court, has been examined by this Court in WP(C) No. 985 of 2014 Dr. Thounaojam Surendra Singh, Vs. the Manipur University vide its judgment and order dated 17-11-2015, the relevant paragraphs of which are given herein below. The law is well settled and therefore, this court need not go into the details to delve it.

"[6] Before advertng to and considering the rival contentions and in order to enable this court to decide the issues involved herein, it becomes necessary for this court to examine and refer to the principles laid down by the Hon'ble Supreme Court as regards the issuance of a writ of quo warranto. In the case of University of Mysore & anr. vs. C.D. Govinda Rao & anr., reported in AIR 1965 SC 491, the Hon'ble Supreme Court held:

"7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in

accordance with law or not."

In the case of B.R. Kapur vs. State of Tamil Nadu & anr., reported in (2001) 7 SCC 231, the Hon'ble Supreme Court held:

"80. ....The writ of 'quo warranto' is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf. McKittrick v. Murphy.

Information in the nature of 'quo warranto' does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v. Thatcher."

In the case of High Court of Gujarat & anr. vs. Gujarat Kishan Mazdoor Panchayat & ors., reported in (2003) 4 SCC 712 the Hon'ble Supreme Court held:

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana.)"

In the case of B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Assn. & ors., reported in (2006) 11 SCC 731 (II), the Hon'ble Supreme Court held:

"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules."

In the case of Haribansh Lal vs. Sahodar Prasad Mahto & ors., reported in (2010) 9 SCC 655, the Hon'ble supreme Court held that a writ of quo warranto lies only when appointment is contrary to a statutory provision and for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

In the case of Centre for PIL & anr. vs. Union of India & anr., reported in (2011) 4

SCC 1, the Hon'ble Supreme Court held:

"64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction. We do not wish to multiply the authorities on this point."

In the case of Central Electricity Supply Utility of Odisha vs. Dhobei Chandra Jena & ors., reported in (2014) 1 SCC 161, the Hon'ble Supreme Court, after referring to its earlier decisions, has observed that from the aforesaid exposition of law it is clear that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

[10] As has been stated in the preceding para, the Hon'ble Supreme Court, after referring to its earlier decisions and in the case of Central Electricity Supply Utility of Odisha vs. Dhobei Chandra Jena & ors. (supra), has observed that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules....."

[7] As regards the second issue, it has been submitted by Shri Ajay Pebam, the learned counsel appearing for the petitioner that a Chief Engineer shall be appointed in terms of the Recruitment Rules, 1994 made for all posts of Chief Engineers in the Engineering Departments under the Government of Manipur and as per the said Recruitment Rules, the method of appointment of a Chief Engineer is by way of promotion failing which by deputation. A person to be eligible for appointment as the Chief Engineer is the Addl. Chief Engineer having three years regular service in the grade, failing which Addl. Chief Engineer having seven years in the grades of Addl. Chief Engineer and Superintending Engineer or its equivalent put together. His contention has been refuted by the learned Advocate General, Manipur contending that the engagement of a person who has retired as the Chief Engineer will not have to be made in terms of the Recruitment Rules, 1994 but in terms of the second proviso to FR 56. On perusal of the Recruitment Rules, 1994, it is seen that the learned counsel appearing for the petitioner is right to the extent that a Chief Engineer shall be appointed on regular basis in accordance with the Recruitment Rules, 1994. But the subject matter in issue relates to the validity and correctness of the engagement of the private respondent as the OSD and Ex-Officio Chief Engineer and not to his appointment as a Chief Engineer on regular basis. Therefore, the Recruitment

Rules, 1994 or for that matter, Recruitment Rules, 2016, will have no application and since the Recruitment Rules, 1994 or the Recruitment Rules, 2016 are not relevant for the present case, his contention appears to have no merit at all and is not acceptable to this court.

[8] As regards the third issue, it has been submitted by Shri Ajay Pebam, the learned counsel appearing for the petitioner that the engagement of the private respondent as the OSD and Ex-Officio Chief Engineer is contrary to FR 56 (d) which provides that no Government servant shall be granted extension in service beyond the age of retirement of 60 years. It has further been submitted by him that there is no any post of OSD or Ex-Officio Chief Engineer in the Water Resources Department, Manipur and in the Recruitment Rules, 1994 made under Article 309 of the Constitution of India, there is no provision for a retired person to hold the post of Chief Engineer on contract basis. Therefore, to hold the post of the Chief Engineer with financial power by the private respondent is absolutely without any authority and is illegal. In support of his contention, he has heavily relied upon the decision rendered by this court in WP(C) No. 295 of 2014, Dr. Kangujam Rajo Singh Vs. State of Manipur, wherein the engagement of the respondent No.2 therein as the Director of Health Services, Manipur on contract basis for a period of six months, was questioned on the ground that such engagement after retirement is in contravention of Fundamental Rule 56, this Court held:

"4. Undisputedly, the respondent No.2 at the time of retirement was working as in-charge Director. From the counter affidavit, it is also clear that there was no officer who had the requisite years of service either in Grade-I or combined service in Grade-I & Grade-II to be appointed as the Director. Therefore, the State Government was resorting to in-charge arrangement for holding the two posts of Director, i.e. the Director (Medical & Health) and the Director of Family Welfare, Govt. of Manipur. Since the respondent No.2 was eligible to be appointed as a Director and had been kept as in-charge Director on his retirement, he could not have been appointed as the Director as the Rules do not provide for such appointment having not got the requisite qualification. Apart from above, F.R.56 (d) clearly lays down that no Government servant shall be granted extension in service beyond the age of retirement of sixty years except in few cases as enumerated therein. The respondent no.2 does not come within the purview of the proviso under which extension could be granted. Under these circumstances, I am of the view that appointment of respondent no.2 after retirement as Director is not sustainable as it not only contravenes F.R.56 but also is against the Rules which provide that an Officer who has completed 3 years regular service in MHS Grade-I or 8 years' combined service in Grade-I & II who could only be considered for promotion to the post of Director. Since the respondent no.2 did not have the said qualification, he had been posted as in-charge Director and therefore, on his retirement he could not be appointed as a Director."

Reliance also has been placed in WP(C) No.196 of 2014, Shri Rajkumar Bhejendra Singh & ors. Vs. State of Manipur wherein the re-engagement of the respondent No.3 therein as the Executive Engineer (Electrical) on contract basis for one year after his superannuation, was assailed on the ground that it amounted to extension of his service after retirement which is not permissible under FR 56 (d), this Court held:

"The issue involved, therefore, is whether the appointment/re-engagement of respondent No. 3 on contractual basis is permissible under the Rules or not.

The post of Executive Engineer is admittedly a post to be filled by promotion. Learned counsel for the respondents have not been able to show any provision under the relevant rules which provides for appointment to the post of Executive Engineer on contractual basis. The fact remains that this is an appointment after a person has already reached the age of superannuation. In the State of Manipur the age of superannuation is 60 years. Therefore, if a person is to be appointed beyond the age of superannuation, the same must be specifically provided under the Rules. However, there is no such provision or rule except the provisions of F.R. 56(d). The provisions of F.R. 56(d) can be invoked only under the conditions mentioned therein, which however, are not fulfilled in the present case. The only contention of the State respondents is that the re-engagement is purely on contract basis in the public interest for smooth completion of the project in which the respondent No. 3 was already involved. The decision of the State Government to re-engage respondent No. 3 was taken bonafide. However, the lack of malafide will not validate any action if such action is not permissible under the Rules.

As mentioned above, the respondents have not been able to show any Rule which permit re-engagement of any person after reaching the age of superannuation in the manner sought to be done by the authorities. Evidently, the only Rule applicable is F.R. 56(d), and as per F.R. 56(d) the service of a Government servant can be extended beyond the age of retirement only in the case of persons who are dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period of time, or a specialist in medical or scientific fields, etc., who may be granted extension of service. In the present case, the respondent No. 3 does not belong to any of the above categories of employment on the basis of which the authorities could have invoked the provisions of F.R. 56(d). Thus, in the absence of any other rule enabling the State Government to re-engage a retired Government servant on contract basis and also in view of the fact that the case of the respondent No. 3 does not fall under any of the categories of employees mentioned in F.R. 56(d), this Court is not inclined to uphold the decision of the Government. Accordingly, the impugned letter dated 27.2.2014 (Annexure - A/6) is set aside."

Review petitions being R.P No.3 & 4 of 2015 came to be filed on the ground that the provisions of FR 56 (d) would not apply in that case but it would be governed by the Office Memoranda dated 22-08-2009 and 27- 12-2013 which provide for



re-engagement of a retired employees on contract basis and that the same could not produced at the time of hearing the writ petition. It was also submitted that in Article 520(ii) of Civil Services Regulations, the basis of re-engagement of any person on contractual basis was found, which was clarified in the letter dated 06-12-1949 of the Government of India. Rejecting the submissions of the counsel appearing for the review petitioners, this court held:

"8. Heard the learned counsel for the parties and also perused the materials on record as regards the issue whether Rules or Regulations exist for re-employment of any person on contractual basis. On perusal of the two office memoranda as well as the Article 520 of the Civil Service Regulations, these would indicate that State Government has been authorised to re-engage any retired person on contractual basis. It has to be examined whether these two Office Memoranda as well as the Civil Service Regulations will be applicable in the present case, where the respondent No.3 in the writ petition has been appointed as an Executive Engineer(Electrical), Electrical Division No.II, PWD, Manipur on contract basis for supervision of electrical and electronics work of mega projects. This Court has perused a copy of the agreement entered between the Government of Manipur and the private respondent (Review Petitioner in Review Petn.No.4 of 2015) by which he was re-engaged as an Executive Engineer(Electrical), Electrical Division No.II, PWD, Manipur dated 4th March, 2014 on contractual basis. This document clearly shows that the nature of contractual engagement of the respondent No.3 is by way of appointing as Executive Engineer (Electrical), Electrical Division No.II, PWD, Manipur on contract basis. The question, therefore, arises is whether the aforesaid Office Memoranda and the Civil Service Regulations would allow a retired person to be appointed as an Executive Engineer(Electrical), Electrical Division No.II, PWD, Manipur though on contract basis as has been done. It is not in dispute before this Court that the post of Executive Engineer (Electrical), Electrical Division No.II, PWD, is not a direct recruit post but is a post to be filled up by promotion from eligible Assistant Engineers. Therefore, the question which also arise is whether a promotional post may be filled up by way of contract appointment by a person who does not belong to the feeder grade, as has been done in the present case. This Court is of the view that the aforesaid Office Memoranda as well as the Civil Service Regulations would be applicable only for such post which may be appointed by way of direct recruitment not to a post which is to be filled up exclusively by promotion. It is also an admitted position that there is a set of recruitment rules framed under Article 309 of the Constitution of India governing recruitment to the post of Executive Engineer which provides for appointment to the post of Executive Engineer only on the basis of promotion or by way of deputation. Therefore, an officer holding a feeder post could be appointed as an Executive Engineer on ad-hoc or temporary or in-charge basis but appointment as an Executive Engineer on contractual basis would be impermissible. Otherwise also, the two office memoranda being merely executive orders cannot be invoked which may be contrary to the statutory provisions of the Rules framed under

Article 309 of the Constitution of India. Therefore, this Court is of the view that even though the State Government would have a legitimate authority to appoint any person on contractual basis on the basis of the aforesaid two memoranda or the Civil Service Regulations such appointment cannot be contrary to the statutory rules framed under Article 309 of the Constitution of India.

Mr. A. Romenkumar, learned counsel, however, submits that the recruitment rules for the post of Executive Engineer does not prohibit appointment on contract basis. However, this Court cannot accept the said view considering the fact that contractual appointment can be made only to direct recruitment post or any other such posts but to a post which is to be filled up by way of promotion. Therefore, this Court is of the view that these two Office Memoranda as well as the Civil Service Regulations which have been relied on by the review petitioners would be of no help as regards the appointment in this case is concerned, in which the respondent No.3 (Review Petitioner in Review Petn.No.4 of 2015) has been engaged on contract basis as Executive Engineer(Electrical), Electrical Division No. II, PWD, Manipur. However, if the Review Petitioner in Review Petn.No.4 of 2015 is appointed in any other capacity such as Officer on Special Duty or a Technical Advisor, etc., to assist the affairs of the authority, the situation may be otherwise. The State authorities will be entitled to invoke the said two Memoranda, or Article 520 of the Civil Service Regulations or FR 56(d) so long as conditions stipulated therein are fulfilled and not otherwise. In the present case, none of these provisions can be invoked to appoint any person as an Executive Engineer on contract basis."

On the other hand, the learned Advocate General, Manipur has submitted that the engagement of the private respondent as the OSD and Ex-Officio Chief Engineer has been done in exercise of power conferred under second proviso to FR 56 and that too, after taking a conscious policy decision. Since the issue relates to the interpretation of the second proviso

to FR 56, the same is reproduced herein below:

"F.R. 56. [(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that the Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.]

[Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.

[or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.]

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Note. - In this clause, a workman means a highly-skilled, skilled, semiskilled, or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment.

[(bb) The age of superannuation in respect of specialists included in the Teaching, Non-Teaching and Public Health Sub-cadres of Central Health Service shall be 62 years.

[(d) No Government servant shall be granted extension in service beyond the age of retirement of 60 years:

Provided that a Government servant dealing with budget work or working as full time member of a Committee which is to be wound up within a short period of time may be granted extension of service for a period not exceeding three months in public interest.

Provided further that a specialist in medical or scientific fields may be granted extension of service up to the age of sixty-two years if such extension is in public interest and the grounds for which extension are recorded in writing:

[Provided also that an eminent scientist of international stature may be granted extension of service up to the age of 64 years, if such extension is in public interest and the grounds for such extension are recorded in writing.]

Provided also that the appropriate authority shall have the right to terminate the extension by giving a notice in writing of not less than three months in the case of a permanent or a quasi permanent Government servant, or, of one month in the case of a temporary Government servant, or, pay and allowances in lieu of such notice.]

[Provided also that the Central Government may, if it considers necessary in public interest so to do give extension in service to the Cabinet Secretary, Defence Secretary, Home Secretary, Director of Intelligence Bureau, Secretary, Research and Analysis Wing and Director, Central Bureau of Investigation for such periods as it may deem proper on case to case basis, subject to the condition that the total term of the incumbents of the above posts, who are given such extension in service does not exceed two years.]

[Provided also that the Central Government may, if considered necessary in public interest so to do, give extension of service to the Secretary, Department of Space and the Secretary, Department of Atomic Energy, for such period or periods as it may deem proper subject to a maximum age of 66 years.]"

On perusal of the provisions of FR 56, it is clear that the general rule as envisaged in FR 56 (d) is that no Government servant shall be granted extension in service beyond the age of retirement of 60 years. Certain exceptions have been carved out of it in the form of provisos, of which the second proviso which

is relevant for the present case, is that a specialist in medical or scientific fields may be granted extension of service up to sixty-two years if such extension is in public interest and the grounds for such extension are recorded in writing. To exercise a power by the State Government conferred under second proviso, four conditions are required to be fulfilled-one, a person shall be a specialist in medical or scientific field; two, the extension of service shall be upto sixty-two years; three, such an extension shall be in public interest and four, the grounds for such extension shall be recorded in writing. So far as the last three conditions are concerned, their wordings are plain, unambiguous and require no interpretation at all. As regards the first condition, the expression "a specialist in medical or scientific fields" needs the interpretation to understand its true meaning. The word "medical" need not be examined because it is not relevant so far as the issue involved herein is concerned. But the words "specialist?" and "scientific" are relevant and since they are not defined in the rule, its meanings are required to be examined and understood on the basis of dictionary. The word "scientific" is adjective of the word "science" and in other words, it is derived from the word "science" which means a systematically organized body of knowledge on a particular subject. The meaning of 'science?' and 'scientific?' as given in some of the Dictionaries, reads as under:

Shorter Oxford English Dictionary:

"Science- Knowledge acquired by study; acquaintance with or mastery of a department of learning; A branch of study which is concerned either with a connected body of demonstrated truths or with observed facts systematically classified and more or less colligated by being brought under general laws, and which includes thrust worthy methods for the discovery of new truth within its domain."

Collins Dictionary of English Language:

"Science - The systematic study of the nature and behavior of the material and physical universe, based on observation, experiment and measurement, and the formulation of laws to describe these facts in general terms."

"Scientific - Of an art, practice, operation, or method: based upon or regulated by science, as opp. to mere traditional rules or empirical dexterity. Of a worker or agent: guided by a knowledge of science, acting according to scientific principles."

It is not clear from the meaning of the word "science" as given in the dictionaries as to whether the 'engineering?' would come within the meaning of 'scientific fields?' and this court being not an expert body, is not well equipped to give its opinion on that nor was any material being furnished by either of the counsel appearing for the parties. The meanings of the word "engineering" as given in the Dictionaries read as under:

"Webster's Comprehensive Dictionary- Engineering in the broader sense, is that branch of human endeavour by which the forces of nature are brought under

human control and the properties of matter useful in structures and machines.

Advanced Law Lexicon- The activity of functions of an engineer; the science by which the properties of matter and the sources of energy in nature are made useful to man in structures, machines and products; relating to engineering.

Law Lexicon- The activity or the function of an engineer, the science by which the properties of matter and the sources of energy in nature are made useful to man in structures, machines and products.

The New Shorter Oxford English Dictionary- The work done by or the occupation of, an Engineer, the application of the science for directly useful purposes as, construction, propulsion, communication, or manufacture. The action of working artfully to bring something about. A field of study or actively concerned with deliberate alteration or modification in some particular area."

The above meanings have shown that the word "engineering" appears to be within the meaning of the word "science", although it is not possible for this court to give a clear-cut finding on that. Even assuming for the sake of argument that the word "engineering" comes within the meaning of the word "science", the further question that arises is as to whether the private respondent is a specialist in engineering. What are his qualifications? There is no material on record to know about it. The learned counsel appearing for the parties have not produced relevant materials to assist the Court while giving a finding nor have they brought to the notice of this court any decision of the Hon'ble Supreme Court in this regard. In State (through CBI/ New Delhi) Vs S.J. Choudhury, (1996) 2 SCC 428, the Hon'ble Supreme Court had the occasion to examine the word "science" in the context of Evidence Act observing that the meaning of the science as understood ordinarily with reference to its dictionary meaning must be attributed to the word as used in Section 45 of the Evidence Act.

Para 8 and 9 of the decision read as under:

"8. It is clear from the meaning of the word 'science' that the skill or technique of the study of the peculiar features of a typewriter and the comparison of the disputed typewriting with the admitted typewriting on a particular typewriter to determine whether the disputed typewriting was done on the same typewriter is based on a scientific study of the two typewritings with reference to the peculiarities therein; and the opinion formed by an expert is based on recognized principles regulating the scientific study. The opinion so formed by a person having the requisite special skill in the subject is, therefore, the opinion of an expert in that branch of the science. Such an opinion is the opinion of an expert in a branch of science which is admissible in evidence under Section 45 of the Indian Evidence Act.

9. There cannot be any doubt that the opinion of an expert in typewritings about the questioned typed document being typed on a particular typewriter is based on a scientific study of the typewriting with reference to the significant peculiar

features of a particular typewriter and the ultimate opinion of the expert is based on scientific grounds. The opinion of a typewriter expert is an opinion of a person specially skilled in that branch of the science with reference to which the court has to form an opinion on the point involved for this conclusion is inevitable; and for supporting that conclusion, it is not necessary to rely on the further reason that the word 'handwriting' in Section 45 would also include typewriting."

The above decision also does not help this court much on the issue involved herein. In *Dr. Kangujam Rajo Singh* case, this court observed that the respondent No.2 therein did not come within the purview of the proviso under which the extension could be granted. No reason was assigned by this court to make such an observation, although the word "medical" is used in the second proviso to FR 56. The respondent No.2 who is a doctor, was holding the post of Director and therefore, it can definitely be said that the duty being discharged by him, was medical. The observation that had been made by this court, was that he did not come within the purview of the proviso. But it is not clear as to how the said observation was made. Was it because of the fact that the respondent No.2 therein, despite he being a doctor, did not come within the meaning of the word "specialist". The details are not discernible from the decision. In any case, from the perusal of both the decisions, it is seen that this court did not examine and consider the meaning of the word "scientific" as mentioned in second proviso to FR-56 in order to see whether the word "engineering" would come within its purview. In *Rajkumar Bhegendra Singh* case also, this court observed that the respondent No.3 therein did not belong to any of the categories of employment on the basis of which the authorities could have invoked the provisions of FR 56(d). The facts of that case are almost identical to that of the present case except the difference in respect of the post being held by them. The respondent No.3 therein was holding the post of Executive Engineer while the private respondent herein was holding the post of Chief Engineer. But the issue decided by this court in *Rajkumar Bhegendra* case was as to whether the appointment/re-engagement of the respondent No.3 therein was permissible under the rules or not and not the issue as to what would be the meaning of the expression "scientific fields" or in other words, whether the word "engineering" will come within the meaning of the word "scientific?". It is well settled that the judicial propriety and discipline mandates that a decision rendered by a court earlier shall be honored and respected by it.

But a decision cannot be blindly honoured by a court without knowing as to what was the issue being decided earlier therein. Since this court has not examined the issue as aforesaid in its true perspective in the said two cases, the decisions rendered therein cannot be said to have provided a correct and appropriate answer to the issue involved herein and therefore, the issue will be kept open to be decided by this court in an appropriate case in future.

[9] The other contention of the learned Advocate General, Manipur which needs to be considered by this Court is that the engagement of the private respondent

as the OSD and Ex-Officio Chief Engineer is done on the basis of the policy decision taken by the State Government and therefore, this court may not interfere with it. He has placed reliance in some of the decisions rendered by the Hon'ble Supreme Court. The first decision is the one rendered in Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, (2006) 10 SCC 337 wherein the legality of certain terms in inviting offers for implementation of a scheme under the ICDS was question, the Hon'ble Supreme Court held:

"11."5. While exercising the power of judicial review of administrative action, the court is not the Appellate Authority and '[t]he Constitution does not permit the court to direct or advise the executive in [the matter] of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory powers'.(See Asif Hameed v. State of J&K, SCC p. 374, para 19, Shri Sitaram Sugar Co. Ltd. v. Union of India)

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or [is violative of] the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt (sic decide) which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental rights is not shown the courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Co. v. City of Chicago: (L Ed p. 734)

'The problems of Government are practical ones and may justify, if they do not require, rough accommodations,-illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review.' " (See State of Orissa v. Gopinath Dash5, SCC p. 497, paras 5-8.)"

In State of Uttar Pradesh & ors. Vs. Chaudhary Ran Beer Singh & anr., (2008) 5 SCC 550 wherein the issue relates the creation of a new district, i.e., Baghpat in

the State of Uttar Pradesh, the Hon<sup>ble</sup> Supreme Court held:

"13. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

In Dilip Kumar Garg & anr. Vs. State of Uttar Pradesh & ors, (2009) 4 SCC 753 wherein the validity of Rule 5(ii) of the Rules, 2004 was questioned on the ground of violation of Article 14 of the Constitution of India, the Hon<sup>ble</sup> Supreme Court held:

"15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See Union of India v. Pushpa Rani and Official Liquidator v. Dayanand.)

16. The decision to treat all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

17. In Tata Cellular v. Union of India it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a rule under Article 309 of the Constitution."

In Parisons Agrotech Private Ltd & anr. Vs. Union of India & ors, (2015) 9 SCC 657, the Hon<sup>ble</sup> Supreme Court held:

"14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out



whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review."

In *Centre for Public Interest Litigation Vs. Union of India & ors*, (2016) 6 SCC 408, the Hon<sup>ble</sup> Supreme Court held:

"21. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In *Jal Mahal Resorts (P) Ltd. v. K.P. Sharma*, the Court underlined the principle in the following manner: (SCC pp. 861-62, paras 137-38)

"137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsman questioning the entire exercise undertaken by an extensive body which includes administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in *M.P. Oil Extraction v. State of M.P.*, at p. 611 has unequivocally observed that: (SCC para 41)

'41. ... The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'

138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "Laxman rekha" while examining the correctness of an administrative decision taken by the State or a Central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision.

22. Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in *Narmada Bachao Andolan v. Union of India* and reiterated in *Federation of Railway Officers Assn. v. Union of India* in the following words: (SCC p. 289, para 12)

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

On the other hand, the learned counsel appearing for the petitioner has relied upon the decision rendered in *Brij Mohan Lal Vs. Union of India & ors.*, (2012) 6 SCC 502, the Hon<sup>ble</sup> Supreme Court held:

"103. The correct approach in relation to the scope of judicial review of policy decisions of the State can hardly be stated in absolute terms. It will always depend upon the facts and circumstances of a given case. Furthermore, the court would have to examine any elements of arbitrariness, unreasonableness and other constitutional facets in the policy decision of the State before it can step in to interfere and pass effective orders in such cases.

104. A challenge to the formation of a State policy or its subsequent alterations may be raised on very limited grounds. Again, the scope of judicial review in such matters is a very limited one. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic rule of law or the statutory law in force. This is what has been termed by the courts as the philosophy of law, which must be adhered to by valid policy

decisions."

[10] It is well known that the formulation of a policy decision is the exclusive domain of the Government and that the judicial review thereof is very limited. In other words, as has been held by the Hon<sup>ble</sup> Supreme Court, the scope of judicial review is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution of India. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic rule of law or the statutory law in force.

[11] Article 226 of the Constitution of India confers extraordinary jurisdiction on the High Court to issue high prerogative writs. In other words, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situations. The jurisdiction of this court under Article 226 of the Constitution of India is discretionary to be exercised for the end of justice. In the present case, the petitioner is not the aggrieved person and he being the head of a village, has brought to the notice of this court that the private respondent is holding the post without any authority warranting invocation of the writ jurisdiction of this court for issuance of a writ of quo warranto. The stand of the State Government as averred and indicated in their counter affidavit, is that keeping in mind the peculiar circumstances as stated therein, a policy decision was taken by it and in exercise of power conferred under second proviso to FR 56, the private respondent No.2 was engaged as OSD and Ex-Officio Chief Engineer to complete the projects. In other words, it can be said that both the parties have acted in public interest. The intention of the State Government is to complete the projects within the targeted period as prescribed by the authority concerned. Scarcity of drinking water in Manipur is well known and if the project is completed within targeted period, the State Government feels that it will be able to provide drinking water and water for irrigation to a great extent. No officer at the level of Chief Engineer who can provide knowledge and expertise towards the completion of the projects, is available. After the Water Resources Department being bifurcated into two divisions, in respect of the division of management and projects and barrages, there is none who can handle the project effectively which prompted the State Government to engage the private respondent. It may be noted that the bifurcation of the Water Resources Department has not been challenged by anyone. In view of the peculiar facts and circumstances of the present case, this court is not inclined to interfere in the matter and that this court is of the view that it shall refrain from exercising its writ jurisdiction.

[12] For the reasons stated hereinabove, the instant writ petition is dismissed with the following directions:

(a) The period of engagement of the private respondent shall not, in any case and at any cost, be extended by the State Government beyond 30-06-2019;

(b) If the projects will not be in a position to be completed by 30-06-2019, the State Government shall take appropriate steps, from now onwards, to ensure that the private respondent is replaced by another person and if need arises, another person who is likely to replace him, shall be kept under training and associated with the projects so as to avoid any technical problems in future;

(c) The interim order granted earlier by this court shall stand vacated. There shall be no order as to costs.