

(2016) 07 MAN CK 0003

In the Manipur High Court

Case No : Writ Petition(C) No. 287 of 2013

Maisnam Chanu Liklainu

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLT 643

Hon'ble Judges : Mr. S. Serto, J.

Bench : Single Bench

Advocate : Mr. A. Arunkumar, Advocate, for the Petitioners; Mr. Shyam Sharma, G.A, for the Respondents

Final Decision : Dismissed

Judgement

Mr. S. Serto, J.—This writ petition under Article 226 was filed by 3 (three) petitioners who are members of Manipur Finance Service Grade - III praying for quashing the proceeding of DPC held on 06.11.2012 for promotion of Grade - III Officers of MFS to Grade - II of the service and promotion order dated 04.12.2012 issued in pursuance of the recommendation of the DPC on two grounds :

- (i) That, the DPC was held before final seniority list was prepared and notified;
- (ii) That, the DPC was in violation of the rule provided under MFS Rule governing promotion of MFS Grade - III to Grade - II.

2. The case of the petitioners as submitted by their learned counsel is as follows :

That, the petitioners were initially appointed to Manipur Finance Service Grade - III on the recommendation of the Manipur Public Service Commission (in short MPSC) along with most of the private respondents in this case vide order dated 14.08.2007. In the said order, they were placed at Sl. No. 9, 10 and 23 as per the merit list. A copy of the order as annexed to the petition is reproduced here

below :

"Annexure A/1

Government of Manipur

Department of Personnel & Administrative Reforms

(Personnel Division)

.....

Orders by the Governor : Manipur

Imphal, the 14th August, 2007

No. 8/1/2007- Exam/DP(iii) : On the recommendation of the Manipur Public Service Commission, the Governor of Manipur is pleased to appoint the following persons provisionally, in order of merit, temporarily in Grade - III of the Manipur Finance Service in the pay scale of Rs. 6500-200- 10500/- plus other allowances as admissible under rules with effect from the date of their joining duties in public interest.

Sl. No.

Name of Candidate

1.

Karanjit Singh Ngangbam

2.

Vivek Singh Elangbam

3.

Ningthoujam Madhunimai Singh

4.

Rinita Keisam

5.

Priya Nongmaithem

6.

Ngangbam Roman Singh

7.

Rojendrakar Nongthomba

8.

Sorokhaibam Geetmala

9.

Maisnam Chanu Liklainu

10.

Laishangbam Sanjitskumar Singh

11.

Konsam Prince Singh

12.

Kongkham Herojit Singh

13.

Sandhyarani Ningthoujam

14.

Nandeibam Ranendra

15.

Nongthombam Sudip Singh

16.

Ningthoujam Suranjan Singh

17.

Md. Ziour Rahaman

18.

Kshetrimayum Imokanta Singh

19.

Pangambam Premjit Khuman

20.

K. Rebecca Vaiphei (ST)

21.

Ramgnaning Zimik (ST)

22.

G.S. Joyrita (ST)

23.

Mayophy Kashung Simray (ST)

24.

Zosanglur Joute (ST)

25.

Zamthianniang Thomte (ST)

26.

Lohri Nenuo Joseph (ST)

27.

Thangbiaklian (ST)

28.

Haotinkhup Haokip (ST)

29.

Ashihru Dikho (ST)

30.

Ningreingam Shimray (ST)

2. It is further ordered that the appointment is subject to the following conditions :

- i. Verification of character and antecedents by the Police Department;
- ii. That the appointee is medically fit for the service;
- iii. That the appointee accepts the standard terms and conditions of service.

3. The appointees will be on probation for two years with effect from the date of their joining duties.

4. On their appointment to the Grade-III of the Manipur Finance Service, they will report for duty to the Under Secretary (DP), Government of Manipur on 18.08.2007 and to the Director General, State Academy of Training, Takyelpat on 20.03.2007 for the Foundation Course.

By orders & in the name of the Governor

Sd/-

(K.C. Laishram)

Under Secretary (DP)

Government of Manipur"

3. That, the next higher post for promotion from the post of Manipur Finance Service Grade-III is Manipur Finance Service Grade - II. Promotion to Grade - II from Grade - III of Manipur Finance Service is governed by a rule called Manipur Finance Service Rules, 1998 and the relevant rule is Rule 30(ii) of the said rule states as follows :

"A member of the service in Grade - III shall be eligible for consideration for promotion to Grade - II after he has served in the Grade - III for a minimum period of five years subject to passing of a departmental examination prescribed under rule 22. The appointment shall be made in consultation with the MPSC on the basis of merit with due regard to seniority".

However, the said rule was amended and the amendment was notified vide notification dated 20.01.2009 published in the Extra Ordinary Manipur Gazette. The amended rule is as follows :

"Rule 30 (ii) - A member of the service in Grade - III shall be eligible for promotion to Grade - II after he has put in a minimum period of 4 years in Grade - III subject to passing of departmental examination prescribed under rule 22."

Under the existing rule, the requirement of consultation with the MPSC and the basis for promotion i.e. merit with due regard to seniority has been removed.

4. That, the petitioners passed the departmental examination as required for promotion to the Manipur Finance Service Grade - II. In support of their claim, they have filed two documents i.e. order dated 05.01.2012 (Annexure, A/4) wherein petitioners No. 2 and 3 have been given subsequent increment on passing the departmental examination and order dated 26.04.2012 wherein it is shown that the petitioner No. 1 has passed the departmental examination. The same are reproduced here below respectively :

"Annexure, A/4

Government of Manipur

Department of Personnel & Administrative

Reforms (Personnel Division)

Orders by the Governor : Manipur

Imphal, the 5th January, 2012

No. 8/1/2006-MFS(Exam)/DP : The Governor of Manipur is pleased to grant second and subsequent increment to the following MFS Grade - II officers with effect from 14.08.2009 consequent upon their passing the prescribed limited Departmental Examination vide Notification No. 7/5/2011-MFS(Exam) dated 22.10.2011 :

Sl. No.

Name of the MFS Officer along with present place of posting

3.

L. Sanjitkumar Singh Finance Office (Police)

11.

Mayophy Kashung Shimray F/O (Horti/Agri)

By orders & in the name of Governor,

Sd/-

(Ch. Shachi)

Under Secretary (GAD)

Government of Manipur"

"Annexure, A/5

Manipur Public Service Commission

Notification

Imphal, the 26th April, 2012

No. 7/20/2011-MPSC(Exam) : On the basis of the Limited Departmental Examination held by Manipur Public Service Commission from 13.12.2011 to 16.12.2011, the following candidates are declared to have passed the paper(s) indicated against their respective names :

IAS/MCS/SDC/(in order of Roll No.)

Sl. No.

Roll No.

Name

Designation

Paper passed

58.

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Maisnam Chanu Liklainu

MFS

Paper - I Paper - IV

5. That, the tentative inter-se-seniority list of Manipur Finance Service was published on 30.08.2012 and in the same notification objections were invited.

Being aggrieved by the nature of determination of seniority in respect of officers belonging to category of absorption and en-cadrement in the Manipur Finance Service, a writ petition was filed in the Gauhati High Court, Imphal Bench. The writ petition was registered as W.P.(C) No. 699 of 2011 and the Hon"ble Gauhati High Court in that case passed an interim order dated 21.12.2012 wherein it was ordered as follows :

"In the interim, it is provided that the inter-se-seniority list of members of Manipur Finance Service shall not be finalized without leave of the Court."

However, during the pendency of the above stated writ petition, but, after the above stated interim order was passed, another tentative inter-se-seniority list of Manipur Finance Service was published on 19.04.2012 in which the name of the petitioners appeared at Sl. No. 52, 53 and 69 respectively while the name of the private respondents in this case appeared at Sl. No. 55, 56, 57, 58, 59, 60, 62, 63, 64, 66, 70, 71, 72, 73 and 74. As per this seniority list, the petitioners No. 1 and 2 are senior to all the private respondents while the petitioner No. 3 is senior to private respondents No. 13 - 17. The said tentative seniority list as filed by the petitioners is given here below :

"Annexure, A/8

Government of Manipur

Department of Personnel & Administrative Reforms

(Personnel Division)

Orders by the Governor : Manipur

Imphal, the 19th April, 2012

No. 3/2/2009-MFS/DP : Following the absorption/en-cadrement of officers from the Planning and Economics & Statistics Departments into the Manipur Finance Service (MFS) after the amendment the Manipur Finance Service Rules, 1998 vide Government Notification No. 1/45/99-MFS-DP dated 09.08.2011 notified in the State Gazette on the same day i.e. 09.08.2011, the Governor of Manipur is pleased to notify the tentative & inter-se-seniority list of the Manipur Finance Service (MFS) Officers as in the Annexure appended herewith.

2. All MFS Officers concerned are, therefore, requested to submit to the undersigned, any claim/objection to the said tentative seniority list latest by 31st May, 2012 positively.

3. Objections received after the stipulated date shall not be entertained.

4. Further, the Government of Manipur is also pleased to order that the interse final seniority list of the members of the Manipur Finance Service shall not be finalized without leave of the Hon"ble Gauhati High Court, Imphal Bench in view of the interim order dated 21.12.2011 passed in its Writ Petition (C)No. 629 of 2011 (The Manipur Finance Service's Association and 3 Others v. the State of

Manipur & 18 Others).

Yours faithfully,

Sd/-

(Ch. Shachi)

Under Secretary (GAD)

Government of Manipur

.....

.....

MFS Grade - II :

Sl.No.

Name of officer

Date of Birth

Date of appointment to the post of MFS Grade - II

Method of Recruitment

Date of holding the duty post or date on which he/she was appointed to his/her corresponding grade

Remarks

52.

Maisnam Chanu Liklainu

01.03.1978

14.08.2007

Direct

14.08.2007

53.

L. Sanjitkumar Singh

01.04.1974

14.08.2007

Direct

14.08.2007

55.

Kongkham Herojit Singh

08.02.1980

14.08.2007

Direct

14.08.2007

56.

Sandhyarani Ningthoujam

23.09.1979

14.08.2007

Direct

14.08.2007

57.

Ranendra Nandeibam

01.02.1978

14.08.2007

Direct

14.08.2007

58.

Nongthombam Sudip Singh

19.08.1969

14.08.2007

Direct

14.08.2007

59.

Ningthoujam Suanjan

01.01.1975

14.08.2007

Direct

14.08.2007

60.

Md. Ziour Rahaman

01.02.1983

14.08.2007

Direct

14.08.2007

62.

Pangambam Premjit Singh

06.03.1978

14.08.2007

Direct

14.08.2007

63.

Salam Somorendro Singh

03.05.1974

29.09.2007

Direct

29.09.2007

64.

Konsam Binku

19.12.1978

24.11.2007

Direct

24.11.2007

66.

M. Rubina Devi (SC)

10.01.1981

10.01.2008

Direct

10.01.2008

69.

Mayophy Kashung Shimray (ST)

06.03.1978

14.08.2007

Direct

14.08.2007

70.

Zosanglur Joute (ST)

21.02.1982

14.08.2007

Direct

14.08.2007

71.

Zamthianniang Thomte (ST)

26.03.1976

14.08.2007

Direct

14.08.2007

72.

Lohrii Nenuo Joseph (ST)

21.02.1982

14.08.2007

Direct

14.08.2007

73.

Thangbiaklian (ST)

07.03.1976

14.08.2007

Direct

14.08.2007

74.

Haotinkhup Haokip (ST)

01.02.1982

14.08.2007

Direct

14.08.2007

6. That, before finalizing the inter-se-seniority list, but after publication of the above stated tentative seniority list, a DPC was conducted on 06.11.2012 for the purpose of recommending eligible officers MFS Grade - III for promotion to MFS Grade - II. And as per the recommendation of the said DPC, an order dated 02.12.2012 was issued by which the private respondents were promoted to MFS Grade -II superseding the petitioners in spite of their seniority and the fact that they have cleared the departmental examination. A copy of the order annexed at Annexure, A/9 is reproduced here below :

"Annexure A/9

Government of Manipur

Department of Personnel & Administrative Reforms

(Personnel Division)

.....

Orders by the Governor : Manipur

Imphal, the 4th December, 2012

No. 1/80/90-MFS/DP/(Pt.-I) : On the recommendation of the Screening Committee Meeting held on 06.11.2012, the Governor of Manipur is pleased to appoint in order of merit, on promotion the following MFS Grade-III Officers to MFS Grade-II in the PB:2, Rs. 9,300-34,800 + GP: Rs. 5400 plus other allowances as admissible under rules with immediate effect :

Sl. No.

Name of the recommended officer

1.

R.K. Khurkishor Singh

2.

Vivek Singh Elangbam

3.

Rinita Keisam

4.

Priya Nongmaithem

5.

Ngangbam Roman Singh

6.

Rojendrakar Nongthomba

7.

Sorokhaibam Geetmala

8.

Kongkham Herojeet Singh

9.

Sandhyarani Ningthoujam

10.

Nandeibam Ranendra

11.

Nongthombam Sudip Singh

12.

Ninghtoujam Suranjan

13.

Md. Ziour Rahaman

14.

Pangambam Premjit Khuman

15.

Salam Somorendro Singh

16.

Konsam Binku

17.

M. Rubina Devi

18.

Ramnganing Zimik

19.

G.S. Joyrita

20.

Zosanglur Joute

21.

Zamthianniang Thomte

22.

Lohrii Nenuo Joseph

23.

Thangbiaklian

24.

Haotinkhup Haokip

2. All the Officers will continue in their present posts until further orders.

By orders & in the name of the Governor (Yumnam Robita)

Deputy Secretary (DP), Government of Manipur"

7. The learned counsel for the petitioners submitted that the rule governing the service condition and promotion of MFS, 1998 was framed under Article 309 of the Constitution of India, therefore, it cannot be override by mere executive order like the corrigendum dated 20.04.1999 issued by Department of Personnel Government of Manipur. If such rule has to be amended it has to be done by the same authority authorised to do so under the same law. Therefore, irrespective of the corrigendum dated 20.04.1999 the rule that holds the field is still the amended rule notified and published through Extra Ordinary Manipur Gazette dated 20.01.2009 stated above. Thus, the DPC held in violation of the same cannot be valid and the order issued in pursuance of the recommendation of the DPC deserves to be quashed.

8. The learned counsel also submitted further that it is accepted principle of law that before any DPC is held for promotion from one Grade to another, the seniority of the Government servants in the cadre has to be determined and notified. But in this case while an interim order of the Hon"ble Gauhati High Court passed in W.P.(C) 629 of 2011 prohibiting finalization of the inter-se-seniority list was still subsisting a tentative seniority was prepared and on that basis the DPC was held. This is in clear violation of the well settled principle of law and the order of the Hon"ble Gauhati High Court.

9. Against the case of petitioners stated above, the respondent No. 2 filed a counter affidavit stating as follows :

That, the word "Grade - II" has been inserted to Rule 30(i) of the Manipur Finance Service Rules, 1998 vide Corrigendum No. 1/8/90(MFS)/DP dated 20.04.1999 of Department of Personnel Government of Manipur. Further, vide Para No. 2 of the said corrigendum the words "The appointment shall be made in consultation with MPSC on the basis of merit with due regard to seniority appearing in the last sentence of sub Rule (ii) of Rule 30 of MFS Rules, 1998 has been deleted. Now, Rule 30(i) shall be read as follows :

"Appointment of the members of the Service to Grade - II, Grade - I and Selection Grade shall be made on the recommendation of a Screening Committee to be constituted by the Government and on the basis of merit with due regard to seniority".

The selection committee, as per the rule given above, considered the case of all the eligible officers on the basis of merit with due regard to seniority and recommended the persons as per their merit. As such, the contention of the petitioners that room for supersession of a senior by junior has been entirely taken away is wholly incorrect rather it is merit which is still given prime importance while considering promotion of MFS Officers from lower Grade to higher Grade.

10. That, for promotion to important responsible post like MFS Grade - II, merit has to be given importance over seniority. It was keeping this in view and the rule prescribed for the same that the private respondents were promoted and the petitioners were denied promotion. Therefore, there is no violation of the existing rule while holding the DPC and issuing the impugned order.

11. That, though the final inter-se-seniority list of the members of Manipur Finance Service could not be prepared and notified due to the interim order dated 21.12.2011 passed in W.P.(C) No. 629 of 2011 by the Hon"ble Gauhati High Court but to do justice to the eligible officers of MFS Grade -III, for promotion to MFS Grade - II, a tentative seniority list was prepared so as to enable the Government to hold a DPC for promotion to MFS Grade - II. It was, thereafter, that the DPC was held and the persons whose names appeared in the order challenged in this petition were selected based on their merit. Reasons and Conclusions :

12. Now, coming to the two grounds on which the petitioners have challenged the proceeding of the DPC and sought for quashing of the same and the order of promotion dated 04.02.2012 issued pursuant to recommendation made there in, and the submissions made on behalf of the parties by the Id. counsel representing them are taken up one after the other as follows :

(i) Whether the proceedings of the DPC held for promotion to MFS Grade II on 6-11-2012 without first finalizing the seniority list of Grade - III officers of MFS can be sustained or is required to be quashed.

There is no denying the fact that the DPC was held without first notifying the

final seniority list of the MFS Grade - III officers but it was held on the basis of tentative seniority list prepared and notified vide notification date 19.04.2012

In the pleadings of the petitioners and submission of the learned counsel representing them, no mention is made that they (petitioners) have been put to disadvantage or have suffered disadvantage in the DPC due to the placement in the tentative seniority list. As submitted by the Id. counsel of the petitioners, in the tentative seniority list published, the petitioners were placed at Sl. No. 52,53, and 69 respectively, and they were within the zone of consideration. It is also submitted that the petitioner No.1 &2 are senior to all the private respondents while the petitioner NO.3 is senior to private respondents NO. 13 to 17. This shows that the petitioners were not only among the eligible persons for consideration of promotion to Grade - II of MFS but they were even senior to some of them and, they were also considered for promotion to Grade-II of the service along with the others by the said DPC. Since the petitioners have not shown in any way that they have suffered in the DPC proceeding due to the non-publication of the final seniority list, the proceeding of the DPC and the order of promotion issued in consequence of the same cannot be quashed on that ground alone. In other words, since it is not the case of the petitioners that they have suffered any disadvantage in the DPC proceeding for promotion to Grade-II of MFS due to the tentative list of seniority or none finalization and publication of the final list of seniority, the DPC proceeding cannot be quashed on that ground alone. Further, when the tentative seniority list was notified, the petitioners, if they were not satisfied, should have challenged it. But they have neither done it then nor in this case. Therefore, the prayer of the petitioners to quash the proceeding of the DPC on that ground alone does not have the force of law.

(ii) The second ground on which the petitioners have sought quashing of the DPC proceeding held on 06.11.2012 and the appointment order issued in pursuant to it is that the recommendation of the DPC was in violation of the amended clause (ii) of Rule 30 of the Manipur Finance Service Rules, 1998 notified vide notification dated 20.01.2009 published in the Manipur Gazette on 30.01.2009. On the other hand, the submission of the Government respondents is that the D.P.C. followed/applied while selecting the officers of Grade-III of MFS for promotion to Grade-II of the same service, the relevant rule 30 (i) and (ii) of Manipur Finance Service Rules, 1998 read with the corrigendum issued by Department of Personnel dated 20.04.1999, published in Manipur Gazette on 14.05.1999. Therefore, the question of violation of any rule by the DPC does not arise. To be able to appreciate the contentions of both sides, the original rule 30 (ii) of Manipur Finance Service Rules, 1998 notified by the Government of Manipur, Department of Personnel & Administrative Reforms (Personnel Division) vide notification dated 13.04.1998, and the amended rule 30(ii) as notified vide notification dated 20.01.2009 are given here below :

"Rule 30 (before amendment) :

(ii) A member of the Service in Grade - III shall be eligible for consideration for

promotion to Grade - II after he has served in the Grade - III for a minimum period of five years subject to passing of a departmental examination prescribed under rule 22. The appointment shall be made in consultation with MPSC on the basis of merit with due regard to seniority.

"Amendment of rule 30(ii) of MFS Rules, 1998 :

The existing rule 30(ii) may be replaced as below :

Rule 30 (ii) : A member of the service in Grade -III shall be eligible for promotion to Grade - II after he has put in a minimum period of 4 years in Grade - III subject to passing of the departmental examination prescribed under Rule 22."

From the plain reading of the rule before and after its amendment as presented by the learned counsel of the petitioners, it is quite clear that if the amended rule as given above is to be applied officers of MFS Grade - III will be eligible for promotion to Grade - II of the service on completion of 4 (four) years of service in the Grade provided they have cleared the Departmental Examination and the basis of promotion would be seniority. In that event, the contention of the petitioners that promotion to Grade - II from Grade - III of MFS is solely based on the seniority-cum-merit would have been absolutely right. But, the fact that before 2009 amendment, there was a corrigendum issued by the Government of Manipur, Department of Personnel & Administrative Reforms (Personnel Division) dated 20.04.1999 published in the Manipur Gazette dated 14.05.1999 cannot be ignored though the petitioners have contended that such notification is mere executive order, therefore, cannot override the rule made under Article 309 of the Constitution of India. According to the respondents the DPC constituted for considering officers of MFS Grade III for promotion to Grade II of the same service followed the rule as would be read with the corrigendum issued. The copy of the Manipur Gazette in which the corrigendum was published and was submitted by Mr. Shyam Sharma, learned G.A. is reproduced here below :

"Manipur Gazette

No. 91 Imphal, Friday, May 14, 1999 (Vaisakha 24, 1931)

Government of Manipur

Department of Personnel and Administrative Reforms

(Personnel Division)

Corrigendum

Imphal, the 20th April, 1999

No. 1/8/90(MFS)/DP : Please insert the word "Grade-II" in between the words "to" and "Grade-I" appearing in the first line of Sub-Rule (i) of Rule 30 of Manipur Finance Service Rules, 1998, issued under the Government Notification of even number dated 13.04.1998.

2. Further, please delete the words, "The appointment shall be made in consultation with MPSC on the basis of merit with due regard to seniority", appearing in the last sentence of Sub-Rule (ii) of Rule 30 of the Manipur Finance Service Rules, 1998 issued under the Government Notification of even number dated 13.04.1998.

Deputy Secretary (DP), Government of Manipur"

If we are to read together the Manipur Finance Service Rules, 1998 along with the corrigendum notified in the Manipur Gazette and the Rule as amended in 2009, it would be as follows :

"Rule 30 (i) : Appointment of the members of the service to Grade-II to Grade-I, and Selection Grade shall be made on the recommendation of a screening committee to be constituted by the Government and on the basis of merit with due regard to seniority.

Rule 30 (ii) : A member of the service in Grade - III shall be eligible for consideration for promotion to Grade - II after he has put in a minimum period of 4 (four) years in Grade - III subject to passing of the Departmental Examination prescribed under Rule 22."

The rule as stated above leaves no room for any doubt that officers of Grade - III of MFS will be eligible for promotion to Grade - II of the service when he/she has completed 4 (four) years of service in the Grade subject to passing of the Departmental Examination prescribed under Rule 22. But, the basis for promotion will be merit with due regard to seniority.

The contention of the petitioners is that the rule which should govern the promotion of MFS Grade - III officers to MFS Grade - II is the one as amended in 2009 but without the corrigendum dated 20.04.1999 because the corrigendum is a mere executive order whereas the principle rule was made under Article 309 of the Constitution, therefore, it cannot override the main/principle rule. In support of this contention, the case of "Naseem Bano (Smt.) v. State of U.P. and ors." reported in 1993 Supp (4) SCC 46 is cited. Relevant para of the judgment referred to is reproduced here below :

"6. The High Court has found that the appellant was not eligible for promotion to L.T. grade on August, 29, 1977 when the post of L.T. grade teacher in Home Science was created for the reason that the appellant was not a trained graduate on the relevant date as required under notification dated October 3, 1974. In the view of the High Court, by holding the qualifications mentioned in Appendix "A" of the Regulations, a person could claim appointment only in the C.T. Grade. We find it difficult to subscribe to this view. Promotion from C.T. grade to L.T. grade is minimum five years" continuous substantive service on the date of qualifications for teaching the subject in which the teacher in the lecturer qualifications referred to in clause (1) of the Regulation 6 are the minimum qualifications which are prescribed in the Regulations for appointment as teacher

to teach the concerned subject which would mean the minimum qualification as laid down in the appendix to the Regulations. Clause (1) of Regulation 6 cannot be construed as referring to the notification dated October 3, 1974 because the notification, is only an executive order and the qualification prescribed therein cannot override the qualifications prescribed in the Regulations which are statutory in character. The notification can, therefore, have no application to promotion to L.T. grade dealt with the Regulation 6(1) and must be confined in its application to appointment by direct recruitment only."

There is no need of any further discussion on the principle of law submitted by the learned counsel of the petitioners since it is a settled principle of law and since no counter submission is made on the point by the learned counsel representing the Government respondents. The only question is whether the corrigendum was issued with the authority of the one who is given the power to make such rule. The learned counsel representing the Government respondents submitted that it was issued under the authority of the one who has the power to make such rule under Article 309 of the Constitution and the fact that it is published in the Government Gazette makes it evidently clear. He further submitted that the Court has to presume genuineness of the Government Gazette submitted by him in which corrigendum of rule 30 (i) and (ii) of MFS Rule, 1998 were published. The learned counsel in support of his submission referred to Section 81 of Indian Evidence Act, 1872 which reads as follows :

"81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other document : The Court shall presume the genuineness of every document purporting to be the London Gazette, or [any Official Gazette, or Government Gazette] of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament [of the United Kingdom] printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody."

In view of the law given above, unless it is proved otherwise the scale of presumption appears to be tilted on the side of the submission of the learned counsel of the Government respondents that corrigendum was issued under the authority of the one who has the power under Article 309 of the Constitution. Therefore, it has to be accepted as such, until and unless it is declared null and void or quashed/struck down. It may also be mention here that officers of Grade - II of MFS are assigned with very important and responsible posts, therefore, promotion to such Grade would have been contemplated solely on the basis of seniority appears to be not so convincing thus, difficult to accept unless it is shown without any room for doubt. Further, since the petitioners have not challenged the validity of the rule read with the corrigendum, this Court is not inclined to go any further into the question of whether the corrigendum was issued under the authority of the one who has the power to make such rule

under Article 309 of the Constitution or not. Because doing so would mean going beyond the scope of the issue or issues involved in the case therefore, a futile exercise. As a matter of fact, the Gazette notification in which the corrigendum was notified is dated 14.05.1999. Since it was published in the Government Gazette that too so long ago, it would be presumed that the petitioners were aware of it and had accepted it. If they have not accepted it, they would/should have challenged it. Ignorance of law does not entitle any one to any benefit.

13. In view of the above, the DPC proceeding which is stated to have been drawn in accordance with or following the provisions of Rule 30(i) and (ii) of MFS Rule, 1998 read with the corrigendum dated 20.04.1999 published in Government Gazette dated 14.05.1999 and as amended in 2009 deserves no interference. As such, the question of quashing the promotion order dated 14-12-2012 does not arise. Therefore, the writ petition is dismissed.

14. No order as to cost.