

(2019) 06 MAN CK 0001

In the Manipur High Court

Case No : Writ Petition (c) No. 177, 187, 207, 214, 226, 245, 437, 882, 931 Of 2018

Oinam (N) Ningthoujam (O) Sunolata Devi And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1), 309

Citation : (2019) 06 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : H.S. Paonam, S. Biswajit Meitei, K. Rabei, Momota Devi Oinam

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri H.S. Paonam, learned Senior Advocate appearing for the petitioners in all the writ petitions except WP(C) No.177 of 2018 and WP(C) No.931 of 2018; Shri S. Biswajit Meitei, learned Advocate appearing for the petitioners in WP(C) No.177 of 2018; Shri K. Rabei, Advocate appearing for the petitioners in WP(C) No.931 of 2018 and Smt. Momota Devi Oinam, learned Addl. Advocate General for the respondents.

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

WP(C) No. 187 of 2019

[3.1] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the impugned Office Memorandum dated 31-01-2018 issued by Under Secretary (Works), Government of Manipur as illegal and to issue a writ of mandamus or any other appropriate writ to direct the respondents to allow the petitioners to resume their

services in their respective circle/ division offices for the end of justice.

[3.2] Facts and circumstances as narrated in the writ petition, are that pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, Government of Manipur for appointment to the posts of LDC, Electrician, Driver, Foreman Mechanic, Mechanic, Supervisor, Fitter, Surveyor, Tracer/DM-III, Road Mohorrior, Plumber, Peon, Sweeper, Chowkidar, Khalasi and Jugali, the Public Works Department, Government of Manipur (hereinafter referred to as "the PWD, Manipur") took up the recruitment process by holding written Test, computer/ typing test as well as interview/ viva voce on the dates notified by it. The candidates who were found successful in the written test held on 30-10-2016, were eligible to sit for the computer/ typing test and interview/ viva voce.

[3.3] The petitioners being the candidates as sponsored by the employment exchange, were suitable and successful candidates in the written test held on 30-10-2016 in the office of the Chief Engineer, PWD, Manipur. Vide Notification dated 27-12-2016 issued by the Chief Engineer /PWD, the candidates who were successful in the computer/ typing test held on 22-12-2016, were informed to appear in the interview/ viva voce to be held on 30-12-2016. The Chief Engineer, PWD, Manipur, on the basis of the recommendation vide Notification dated 31-12-2016 by which 82(eighty two) candidates including the petitioners, were recommended by the DPC for appointment to the post of LDC, issued an order dated 31-12-2016 appointing them as LDCs. On 31-12-2016 itself, the PWD, Manipur issued offer forms for appointment to the post of LDC subject to the terms and conditions mentioned therein. The petitioners joined their services as LDCs by submitting their joining reports to the Chief Engineer, PWD on 03-01-2107. On 16-03-2017, the Chief Engineer, PWD issued an order No.290 dated 16-03-2017 by which the candidates appointed as LDCs on temporary capacity, were given their postings at the circle/ division offices in the PWD, Manipur shown against their names therein until further order. After the said candidates having been appointed and posted as aforesaid, they were issued their identity cards with the signature and seal of the issuing authority. After completing all formalities including the issuance of identity cards, the Chief Secretary, Government of Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders issued in many departments on or after 15-03-2017, should be kept in abeyance till further instructions and no further order of appointment and transfer & posting should be issued, followed by another order dated 15-04-2017 stating that the Government order dated 18-03-2017 had been reviewed and that all the departments might issue orders of appointment and transfer and posting with the approval from the competent authority. Pursuant to the letter dated 17-04-2017 of the Chief Engineer, PWD, the Under Secretary (Works), Manipur wrote a letter dated 19-04-2017 to the Chief Engineer, PWD conveying the approval of the Government for issuing orders of transfer and posting and appointment in respect of the new appointees of different categories of Class-III and IV posts in the PWD, Manipur.

[3.4] The Chief Engineer, PWD issued an Office Order No.12 dated 20-04-2017 stating that the LDCs appointed on temporary basis were posted at circle/division offices in PWD shown against their names with immediate effect and until further orders. Pursuant to the said order dated 20-04-2017 and in continuation of their earlier joining reports, the petitioners submitted their joining reports again on the same day i.e. 20-04-2017 to their respective circle/division offices, PWD and various orders were issued for transferring and posting of LDCs in their respective circle/division offices. All the petitioners continued to attend their respective circle/division offices rendering their services as LDCs but to their shock and surprise, the Under Secretary (Works), Manipur wrote a letter dated 29-04-2017 to the Chief Engineer, PWD informing that the approval conveyed for transfer and posting and appointment of new recruits in different categories of Class-III and IV posts in the PWD, Manipur be kept in abeyance till the screening of the said recruitment process was over.

[3.5] A letter dated 13-09-2107 was addressed to the Commissioner (CAF & PD), Manipur by the Joint Secretary(DP), Manipur informing that the matter relating to recruitment which was undertaken by it, had been minutely examined by the State Government and that the SIT which was formed, would investigate into the matter. By the said letter, the Commissioner (CAF & PD), Manipur was requested to take necessary steps to cancel all irregular and excess appointments by issuing a speaking order after taking advice from the Law Department and fresh process would be initiated with the approval of the Cabinet. The Under Secretary (Works), Government of Manipur issued an Office Memorandum dated 31-01-2018 which was published in the local newspapers including the Sangai Express in its publication dated 23-02-2018 with regard to the proposed cancellation of the appointment of 351 persons in different posts in the PWD, Manipur on the ground of recommendation made in excess of the advertised posts by the State Government. By the said Office Memorandum dated 31-01-2018, the petitioners were informed to submit their claims and objections within 15 days therefrom. Being aggrieved by the said Office Memorandum dated 31-01-2018, the instant writ petition was filed by the petitioners.

[3.6] An affidavit in opposition on behalf of the respondent Nos.1 & 2 was filed on 15-03-2018 contending that the letter dated 09-03-2018 issued by the Under Secretary (Works), Government of Manipur be permitted to be placed on record to assist this Court. Thereafter, an affidavit on behalf of the respondent Nos.1 to 4 was filed wherein it has been stated that although the DPCs for filling-up of 239 Grade-III & IV posts were held between October, 2016 and December, 2016, as many as 348 were appointed. The Screening Committee constituted vide order dated 16-05-2017 examined the matter and the proceedings of its meeting held on 12-06-2017 stated that no appointment was done after the model code of conduct was enforced and the only irregularity was in respect of the excess appointment. The learned Advocate General, Manipur was consulted and he gave his opinion to cancel the DPC proceeding allowing the appointment of all 351 persons mainly on two grounds that the filling up of vacancies in excess of the

notified vacancies amounted to violation of the law laid down by the Hon'ble Supreme Court in the case of State of Orissa Vs. Rajkeshore Nanda & Ors., 2010 6 SCC 777 and that since the DPC proceedings did not mention anything about the written test being held, it amounted to violation of the Office Memorandum dated 17-12-2005 which was in force. Accordingly, the PWD, Manipur issued the Office Memorandum dated 30-01-2018 giving notice to the petitioners to submit their claims/objections to the decisions for cancellation of the proceedings. As many as 264 objections were received from the appointees in respect of the various posts and it would be appropriate for the department to dispose of the objections post-wise, as there had been different 14 DPC proceedings. Objections had been checked and verified and in order to dispose of the objections/ claims, various issues were discussed but because of the interim order dated 01-03-2018 passed by this Court, the objections/ claims could not be disposed. Another affidavit on behalf of the respondent Nos. 1 to 4 was filed on 21-01-2019 and in addition to what had been stated in the earlier affidavit, it has been stated that in order to dispose of the said objections, the relevant documents of the DPC were examined minutely and a joint inspection by a team comprising the Commissioner(Works), Manipur; the Deputy Secretary(Works), Manipur; the Under Secretary(Works), Manipur and the Chief Engineer, Manipur was conducted on 15-01-2019 and during the course of inspection, no documents such as OMR of the written test, typing test and driving test of drivers, worksheets of the DPC, were found in the office of the Chief Engineer, PWD except the DPC proceedings of various posts along with the corresponding assessment of marks/scores of the candidates. The DPC proceedings in respect of the LDC did not show the number of total applicants and their respective score marks which should be visible from the working sheets. Assessment of marks/scores in respect of the LDC has shown only the selected list, waiting list and unselected list which is neither a working sheet of DPC nor is it a merit list. Hence, the State Government decided to cancel the recruitment process for filling up of 239 posts of Grade-III posts in the PWD, Manipur which was held between December 2000 and January 2017 and the subsequent orders on the following grounds:

- (i) The appointments was done over and above the notified vacancies amounts to violation of the settled law alid down by the Hon'ble Supreme Court of India in (2010) 6 SCC 777 (State of Orissa Vs. Rajkishore Nanda) and other catena of cases;
- (ii) The DPC Proceedings for recruitment of Class-III posts do not mention for holding a written test and it amounts to violation of DP's OM No.1/22/2005-DR-III/DP dated 17-12-20005 which is in force;
- (iii) And, during the inspection also, no other documents such as OMR sheet of written test, typing test and driving test of drivers, working sheet of the DPC were found in the office of the Chief Engineer, PWD except only one file containing DPC proceedings along with corresponding assessment of marks/

scores which is irregular as mentioned in para 14 above.

WP(C) No. 177 OF 2018

[4.1] The validity and correctness of the State Government letter's dated 29-04-2017 issued by the Under Secretary (Works), Government of Manipur is under challenge in this writ petition.

[4.2] According to the petitioners, they being eligible and qualified for appointment to the post of LDC and being sponsored by the Employment Exchange, applied for appointment pursuant to the Notification dated 26-09-2016 issued by the Chief Engineer, PWD. The written test was held on 30-10-2016 and the result thereof was declared on 19-12-2016. The petitioners being successful in the written test, were found qualified for the interview/ viva voce. While the recruitment process was going on, the Chief Engineer, PWD issued another Notification dated 21-12-2016 inviting applications in respect of 52 more posts being added with the rider that those candidates who had already applied but not selected for appointment to the posts already advertised, need not apply.

[4.3] The computer/ typing test was held on 22-12-2016, the result of which was declared on 27-12-2016. The petitioners being found successful and qualified, were informed to appear for the interview/ viva voce to be held on 30-12-2016 at 9.30 am in the office of the Chief Engineer, PWD, Manipur. On the recommendation of the DPC and in pursuance of the Notification dated 31-12-2016, the petitioners along with 80 other candidates, were appointed to the post of LDC and accordingly, they submitted their joining reports to the Chief Engineer, Manipur. The Chief engineer, PWD issued an order dated 16-03-2017 giving transfer and postings to the appointed candidates including the petitioners, followed by a similar order dated 20-04-2017.

[4.4] The petitioners came to know that the State Government vide its order dated 08-06-2017 constituted a Special Investigation team to inquire into the irregularities in the recruitment process in respect of 15 Departments. Although the petitioners were not aware of what was the outcome of the inquiry, they came to know about a newspaper report being published in the local dailies including the Sangai express on 24-02-2018 that the Under Secretary (Works) had issued an OM dated 31-01-2018 intimating the selected candidates to submit their objections/ claims. No copies of the said OM were served upon the petitioners but within few days thereafter, the petitioners came to know that there was a correspondence dated 29-04-2017 by which the approval conveyed for transfer and posting of the new recruits including the petitioners, was directed to be kept in abeyance. Hence, the instant writ petition was filed by the petitioners challenging it.

[4.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in WP(C) No.187 of 2018 and therefore, the same are repeated here for the

sake of brevity.

WP(C) No. 207 of 2018

[5.1] The validity and correctness of the O.M dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge in this writ petition.

[5.2] Facts and circumstances of the present case are similar to that of the writ petitions being WP(C) No.187 of 2018 and WP(C) No.177 of 2018 to some extent as regards the recruitment process except that the petitioners therein were recommended by the DPC and the appointment order was issued vide order dated 31-12-2016 in their favour. So far as the petitioners are concerned, they were not found to be included in the list of recommended candidates for the post of LDC because they were in the waiting list. On 03-01-2017 they were appointed vide order dated 03-01-2017 issued by the Chief Engineer, PWD and accordingly, they were given transfer and postings vide order dated 16-03-2017 issued by the Chief Engineer, PWD at various circle/ division offices in the PWD with immediate effect and until further order. The identity cards were issued in their favour.

[5.3] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports. After serving for some days, the petitioners were asked not to sign in their respective registers on the ground that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over vide letter dated 29-04-2017 of the State Government. But their appointment orders were not cancelled nor were they modified. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[5.4] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

[6.1] In this petition, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[6.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The only difference is that the appointment to the post of Surveyor was the subject matter in issue for which the selection was to be made through the interview only, unlike the post of LDC for which the written test and typing/ computer test were to be held for selection.

[6.3] After the eligible candidates being short-listed, the interview for appointment to the post of Surveyor was held on 21-10-2016 wherein the petitioners participated and on the basis of their performance, the recommendation was made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing as many as seven candidates i.e., the petitioners as the Surveyor in the scale of pay as admissible under the rules with immediate effect and until further order. The offer forms were issued vide order dated 28-12-2016 and after accepting the same, the petitioners submitted their joining reports. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD.

[6.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated 29-04-2017 informing the Chief Engineer that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and

being aggrieved by it, the instant writ petition was filed by them challenging it.

[6.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

WP(C) No. 226 OF 2018

[7.1] In this petition also, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[7.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The only difference is that the appointment to the post of Road Mohorir was the subject matter in issue for which the selection was to be made through the interview only, unlike the post of LDC for which the written test and typing/computer test were to be held for selection.

[7.3] After the eligible candidates being short-listed, the interview for appointment to the post of Road Mohorir was held on 21-10-2016 wherein the petitioners participated and on the basis of their performance, the recommendation was made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing as many as twenty-nine candidates, which did not include the petitioners who were in the waiting list, as the Road Mohorir in the scale of pay as admissible under the rules with immediate effect and until further order. However, the petitioners were appointed as Road Mohorir vide order dated 03-01-2017 issued by the Chief Engineer, PWD. The offer forms were issued on 03-01-2017 and after accepting the same, the petitioners submitted their joining reports on the same day. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD.

[7.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners in continuation of their earlier joining reports, submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated

29-04-2017 informing the Chief Engineer, PWD that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[7.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in the above mentioned writ petitions including the WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

WP(C) No. 245 OF 2018

[8.1] In this petition also, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[8.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The only difference is that the appointment to the post of peon was the subject matter in issue for which the selection was to be made through the interview only, unlike the post of LDC for which the written test and typing/ computer test were to be held for selection.

[8.3] After the eligible candidates being short-listed, the interview for appointment to the post of peon was held on the scheduled date wherein the petitioners participated and on the basis of their performance, the recommendation was made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing as many as fifty-one candidates including the petitioners as the peon in the scale of pay as admissible under the rules with immediate effect and until further order. The offer forms were issued vide order dated 29-12-2016 and after accepting the same, the petitioners submitted their joining reports. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD.

[8.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of

appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated 29-04-2017 informing the Chief Engineer that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[8.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in the above-mentioned writ petitions including WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

WP(C) No. 437 OF 2018

[9.1] In this petition also, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[9.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The only difference is that the appointment to the post of driver was the subject matter in issue for which the selection was to be made through the interview only, unlike the post of LDC for which the written test and typing/ computer test were to be held for selection.

[9.3] After the eligible candidates being short-listed, the interview for appointment to the post of driver was held on the schedule date wherein the petitioners participated and on the basis of their performance, the recommendation was made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing as many as thirty candidates including the petitioners as the driver in the scale of pay as admissible under the rules with immediate effect and until further order. The offer forms were issued vide order dated 28-12-2016 and after accepting the same, the petitioners submitted their joining reports. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the

Chief Engineer, PWD.

[9.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief Engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated 29-04-2017 informing the Chief Engineer that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[9.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in the above-mentioned writ petitions including WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

WP(C) No. 882 of 2018

[10.1] In this petition also, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[10.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The only difference is that the appointment to the post of driver was the subject matter in issue for which the selection was to be made through the interview only, unlike the post of LDC for which the written test and typing/ computer test were to be held for selection.

[10.3] After the eligible candidates being short-listed, the interview for appointment to the post of Driver was held on the scheduled date wherein the petitioners participated and on the basis of their performance, the recommendation was made by the DPC. The Chief Engineer, PWD issued an order

dated 23-12-2016 appointing as many as thirty candidates, without the petitioners herein who were in the waiting list, as the driver in the scale of pay as admissible under the rules with immediate effect and until further order. However, the petitioners were appointed as drivers vide order dated 03-01-2017 issued by the Chief Engineer, PWD. The offer forms were issued vide order on 03-01-2017 and after accepting the same, the petitioners submitted their joining reports on the same itself. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD.

[10.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief Engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated 29-04-2017 informing the Chief Engineer that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide OM dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[10.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in the above writ petitions including WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

WP(C) No. 931 of 2018

[11.1] In this petition also, the validity and correctness of the Office Memorandum dated 31-01-2018 issued by the Under Secretary (Works), Government of Manipur is under challenge.

[11.2] Facts and circumstances of the present case are also similar to that of the cases mentioned above, in the sense that the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD, was common for various posts as mentioned therein. The

petitioners being eligible for appointment to various posts, applied for appointment to the post of Road Mohorir, Fitter, Foreman, Mechanic and Mechanic Supervisor. According to them, the selection in respect of the aforesaid posts was to be made through the interview only, unlike the post of LDC for which the written test and typing/ computer test were to be held for selection.

[11.3] After the eligible candidates being short-listed, the interview for appointment to the said posts was held on the scheduled date wherein the petitioners participated and on the basis of their performance, the recommendation were made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing as many as twenty-nine candidates as the Road Mohorir; two candidates as the Fitter; one candidate as the Foreman Mechanic and one candidate as the Mechanical Supervisor including the petitioners in the scale of pay as admissible under the rules with immediate effect and until further order. The offer forms were issued vide order dated 28-12-2016 and after accepting the same, the petitioners submitted their joining reports. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD.

[11.4] After having completed all formalities, the Chief Secretary, Manipur issued an order dated 18-03-2017 to the effect that all transfer and posting orders be kept in abeyance till further instructions which was followed by an order dated 15-04-2017 stating that the order dated 18-03-2017 was reviewed and accordingly, it was ordered that all Departments might issue orders of appointment and transfer and posting with approval from the competent authority. The Government approval was conveyed on 19-04-2017 with the result that the Chief Engineer, PWD issued an order giving transfer and posting vide its order dated 20-04-2017 on which the petitioners submitted their joining reports again and rendered their services sincerely, diligently and without an adverse remark from the authority. But to their shock and surprise, the State Government forwarded a letter dated 29-04-2017 informing the Chief Engineer that the approval granted by the State Government had been kept in abeyance till the screening of the recruitment process was over. While awaiting an appropriate order for allowing them to resume their duties, a news item came to be published in the local newspapers including the Sangai Express on 23-02-2018 with regard to the proposal for cancellation of the appointment of 351 persons including the petitioners vide O.M dated 31-01-2018 inviting claims/ objections from them which appears to have been done on the advice of the learned Advocate General. But the said OM was never served upon them and being aggrieved by it, the instant writ petition was filed by them challenging it.

[11.5] Two affidavits-in-opposition on behalf of the respondent Nos.1 to 4 have been filed and the averments made therein are similar to that of the affidavits filed in above-mentioned writ petitions including WP(C) No.187 of 2018 and therefore, the same are repeated here for the sake of brevity.

[12] It has been submitted by Shri H.S. Paonam, the learned Senior Advocate appearing for some of the petitioners that none of the petitioners was served with a copy of the said Office Memorandum dated 31-01-2018; that when the petitioners managed to get a copy from the media house, it was found that although the O.M was issued on 31-01-2018, the editors of the local newspapers were requested for publication of the same for one day only on 23-02-2018; that it was the Chief Engineer, PWD and not the State Government who was competent to make appointments in respect of the said different posts and moreover, the report of the SIT which was allegedly constituted by the State Government vide its letter dated 13-09-2017 was not made known to the petitioners leave alone serving a copy thereof; that the submission of the objections and claims would be a mere formality as it would yield no fruitful purpose, since the office memorandum indicated about the decision already being taken by the respondents for cancellation of the appointment orders of the petitioners; that the office memorandum dated 31-01-2018 clearly indicated that the notice in the form of office memorandum was issued with a pre-determination and the issuance thereof was merely a formality to enable them to contend that the petitioners had been given sufficient opportunity to defend their cases; that the office memorandum dated 31-01-2018 was issued in order to cancel the DPC proceedings on the ground that excess appointment had been made; that the office memorandum dated 31-01-2018 was highly misconceived and contrary to their own reason given for the decision in as much as the office memorandum seemed to have been actuated with an ulterior motive guided by the political wisdom of the present Government; that this Court in writ petitions being WP(C) No.146 of 2018 and WP(C) No.152 of 2018 challenging similar show cause notice arising out of the similar circumstances, had passed the interim order by suspending and restraining the respondents from taking adverse action and that the office memorandum having been actuated with vested interest of some high political circle and in complete arbitrary exercise of power, it is liable to be quashed and set aside. The submissions of Shri S. Biswajit Meitei, advocate and Shri K. Rabei, advocate for the other petitioners are similar to that of Shri H.S Paonam and therefore, the same are not repeated here for the sake of brevity. In fact, they have adopted the arguments of Shri H.S. Paonam. Refuting the said contentions, Smt. Momota Devi Oinam, the learned Addl. Advocate General has submitted that the O.M dated 31-01-2018 was a mere show cause notice inviting objections/ claims from the petitioners; that the use of the expression "it is decided" in the OM cannot be said to be a pre-determined one but it was a case of non-use of proper words; that the written test was mandatory for all the posts in terms of the O.M. dated 17-12-2005 and that the O.M dated 31-01-2018 was not issued on account of the change of guards and moreover, the present Government was not bound by the decision of the earlier Government, if it was illegal or contrary to law. From the pleadings as aforesaid and the submissions made by the counsel appearing for the parties, the following issues have arisen for consideration by this court.

(a) Whether the recruitment process initiated pursuant to the Notifications dated 26-09-2016; 01-10-2016 and 21-12-2016 issued by the Chief Engineer, PWD for appointment to various posts, can be said to be illegal or irregular on the ground that the written tests were not held as prescribed under the Office Memorandum dated 17-12-2005 issued by the Chief Secretary, Manipur?

(b) Whether there had been any excess appointment which would render the recruitment process illegal or irregular as it being contrary to the law laid down by the Hon'ble Supreme Court in a catena of decisions?

(c) Whether the impugned Office Memorandum dated 31-01-2018 issued by the Deputy Secretary (Works), Government of Manipur was only a show cause notice inviting objections or a mere formality after the decision for cancellation of the recruitment process having been taken by the State Government?

In Re: Issue (a):

[13.1] Article 16 of the Constitution of India provides for equal opportunity in matters relating to public employment which shall be done in terms of the law enacted by the Government under the provisions of Article 309 of the Constitution of India or the rules framed by the Government under the proviso thereto. In other words, the public employment shall be done in accordance with the constitutional scheme as had been succinctly observed by the Hon'ble Supreme Court in *Secretary, State of Karnataka Vs. Uma Devi*, (2006) 4 SCC 1. The first and foremost step to be taken by the Government towards implementation of the constitutional scheme as aforesaid in matters relating to public employment, is the creation of posts according to its requirement as a policy decision. To fill up the said posts, a proper notice should be given to the public either in the form of advertisement published in the newspaper or any other form available in law inviting applications from amongst the eligible candidates. A Recruitment Committee or Screening Committee or Selection Board or DPC, as the case may be applicable in law, where no State Public Service Commission has been established, shall be duly constituted by the Government. After the examinations as prescribed in the recruitment rules being conducted, it shall submit its recommendation for consideration by the Government including the names of the candidates who can be appointed by the Government. The Government, after the recommendation being considered and approved, shall issue appointment orders. In *Union Public Service Commission Vs. Girish Jayantilal Vaghela & ors.*, (2006) 2 SCC 482 wherein the Hon'ble

Supreme Court held:

"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words 'employment or appointment' cover not merely the initial appointment but also

other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution. (See *B.S. Minhas v. Indian Statistical Institute.*)

[13.2] It is not in dispute that the Notifications dated 26-09-2016; 01-10-2016 and 21-12-2016 were issued by the Chief Engineer, PWD, Manipur inviting applications from amongst the eligible candidates, to be sponsored by the Employment Exchange, for appointment to the posts of LDC, Electrician, Driver, Foreman Mechanic, Mechanic, Supervisor, Fitter, Surveyor, Tracer/DM-III, Road Mohorir, Plumber, Peon, Sweeper, Chowkidar, Khalasi and Jugali. In other words, it was a joint recruitment process for the aforesaid posts. The Notification dated 01-10-2016 specifically stated that the written test as well as the typing/computer test be held in respect of the post of LDC, while nothing was mentioned about such tests in respect of the remaining posts. The PWD, Manipur took up the recruitment process as per the said notifications. According to the petitioners in WP(C) No.187 of 2018, the written test for appointment to the post of LDC was held on 30-10-2016 which was denied by the respondents in their affidavits on the ground that there were no documents like OM sheets, typing test sheets etc. in the office of the Chief Engineer. But on perusal of the order dated nil filed as Annexure-A/3 along with the writ petition, it is evident that the written test was held on 30-10-2016 and the candidates who were found successful therein, were allowed to sit for the computer/ typing test and interview/ viva voce. The Chief Engineer, PWD, Manipur, on the basis of the recommendation vide Notification dated 31-12-2016 appointed 82 candidates as the LDCs. On 31-12-2016 itself, the PWD, Manipur issued offer forms for appointment to the post of LDC subject to the terms and conditions mentioned therein and after having accepted the offer, they joined their services as the LDCs by submitting their joining reports to the Chief Engineer, PWD on 03-01-2107. The Chief Engineer, PWD issued an order No.290 dated 16-03-2017 by which they were given their postings at the circle/ division offices in the PWD, Manipur shown against their names therein until further order. The identity cards were issued in their favour with the signature and seal of the issuing authority. After completing all the formalities including the issuance of identity cards, the

Chief Secretary, Government of Manipur issued an order dated 18-03-2017 to the effect that all orders of transfer and posting issued in the departments on or after 15-03-2017, should be kept in abeyance till further instructions and no further order of appointment and transfer should be issued, followed by another order dated 15-04-2017 stating that the Government order dated 18-03-2017 had been reviewed and that all departments might issue orders of appointment and transfer and posting with the approval from the competent authority. Pursuant to the letter dated 17-04-2017 of the Chief Engineer, PWD, the Under Secretary (Works), Manipur wrote a letter dated 19-04-2017 to the Chief Engineer, PWD conveying the approval of the Government for issuing orders of transfer and posting and appointment in respect of the new appointees of different categories of Class-III and IV posts in the PWD, Manipur. The Chief Engineer, PWD issued an Office Order No.12 dated 20-04-2017 stating that the LDCs appointed on temporary basis, were posted at circle/ division offices in PWD shown against their names with immediate effect and until further orders. Pursuant to the said order dated 20.04.2017 and in continuation of their earlier joining reports, the petitioners submitted their joining reports on the same day i.e. 20-04-2017 to their respective circle/ division offices, PWD and various orders were issued for transferring and posting of LDCs in their respective circle / division offices. All the petitioners continued to attend their respective circle/ division offices rendering their services as LDCs.

[13.3] In respect of the remaining posts, after the eligible candidates being short-listed, the interview for appointment to the post of Surveyor, Road Mohorir, peon etc. was held on 21-10-2016 wherein all the petitioners except in respect of the petitioners applying for the post of LDC, participated and on the basis of their performance, the recommendations were made by the DPC. The Chief Engineer, PWD issued an order dated 23-12-2016 appointing a large number of candidates as the Surveyor, Road Mohorir etc. in the scale of pay as admissible under the rules with immediate effect and until further order. The offer forms were issued vide order dated 28-12-2016/ 29-12-2016 and after accepting the same, they submitted their joining reports. The identity cards were issued in their favour. They were given postings at circle/ division offices vide order dated 16-03-2017 issued by the Chief Engineer, PWD. The rest of the facts and circumstances are almost the same as that of the LDC and therefore, there is no point of repeating the same for the sake of brevity.

[13.4] It may be noted that the averments made in the writ petitions as regards the recruitment process, have not been denied in the affidavits filed on behalf of the respondents except that since the written tests had not been held as required under the Office Memorandum dated 17-12-2005, the recruitment process was bad and the appointment orders issued in favour of the petitioners were liable to be cancelled and that since the appointments were made in excess of the number of post notified in the advertisement, it was violative of the law laid down by the Hon'ble Supreme Court. So far as the second part namely the allegation as regards the excess appointment is concerned, the same will be

dealt with later while dealing with the second issue. The respondents have relied heavily upon the OM dated 17-12-2005 to contend that the written tests were to be conducted in respect of the posts of Grade-III and IV in the State. It is true to that extent but it may further be noted that such requirement is not there in the notifications published in the newspapers except in respect of the post of LDC. Moreover, it has been contended by Shri H.S. Paonam, learned counsel appearing for the petitioners in some of the cases that except in respect of the LDC, the written test is not prescribed in the relevant recruitment rules. The respondents who are the custodian of the recruitment rules, have not produced any recruitment rules in respect of the other posts to show that the written test is prescribed therein. As has been submitted by him, pursuant to a decision taken by the cabinet, the Department of Personnel & Administrative Reforms issued an order dated 28-03-2017 directing for discontinuation of the stage of interview in direct recruitment for Grade-III & IV posts. The written test in respect of the LDC was held on 30-10-2016 and the candidates who were successful therein, were allowed to sit for the typing/ computer test held on 22-12-2016 and in the interview/ viva voce held on 30-12-2016. The averments made in the petition which are based on documents, could not be seriously controverted by the respondents and therefore, the contention of the respondents in this regard appears to be incorrect. Moreover, an attempt was made by the respondents, in their affidavit filed on 21-01-2019, to justify their contention that a team comprising the Commissioner (Works); the Under Secretary (Works) and the Chief Engineer, PWD conducted a search in the office of the Chief Engineer, PWD but no materials such as OMR sheets, working sheets etc. were found except the proceedings. It is surprising to note that the written test in respect of the LDC was held on 30-10-2016 and a search was conducted only on 15-01-2019 i.e., after about two and half years therefrom. There is no material on record to show that such records are to be maintained by the Department for two years and on top of that, the then Chief Engineer, PWD who had conducted the written test, was not asked to explain about it. It is who could provide the detailed information as regards the said recruitment process. The State Government appears to have not done that. It is nothing but a post mortem being conducted by the respondents to dig out an issue. The OM dated 17-12-2005 is an executive instruction and not a statutory rule, the non-compliance of which will not render the recruitment process illegal. Assuming for the sake of argument that the provisions of the said OM are mandatory, it is the PWD which had taken up the recruitment process and at the most, it can be said that it is the PWD which had committed the mistake which cannot be attributed to the petitioners. There is no material on record to show that any action has been taken against the officials who are allegedly responsible for such a lapse. After the recruitment process was over, the respondents could not be permitted to take the advantage of their own mistakes. Law is well settled by the Hon'ble Supreme Court on the issue. In *Indore Development Authority Vs. Shailendra*, 2018 (2) Scale 1, the Hon'ble Supreme Court held that it is well settled proposition that one cannot be permitted to take advantage of his own wrong. The doctrine of "commodum ex-

injuria sua nemo habere debet' means convenience cannot accrue to a party from his own wrong. No person ought to have advantage of his own wrong. In *M/ S Advanta India Ltd. Vs. B.N. Shivanna*, AIR 2018 SC 1073, the Hon'ble Supreme Court held that after going through the record, we find that the BCI has shown undue indulgence to the respondent by allowing him to take advantage of his own wrong, in the guise of exercising its review power. It is a case of *Nullus Commodum Capere Potest De Injuria Sua Propria* meaning thereby a party cannot take advantage of its own wrong.

[13.5] So far as the posts notified vide Notifications dated 26-09-2016 and 01-10-2016 are concerned, there was nothing wrong in the recruitment process, as it had been done in tune with the constitutional scheme. The only thing that can be noted by this Court, is that the recruitment process appears to have been done hurriedly but by that itself, it cannot be said to be illegal. After the recruitment process was over, the appointment orders were issued and thereafter, they were given postings. In fact, the petitioners joined their services and while they were discharging their duties, their appointment orders were kept in abeyance. A Screening Committee constituted by the State Government, examined the validity and correctness of the recruitment process but it found no irregularities in it except in respect of excess appointment. An SIT was constituted to investigate into the matter but its report was not made known to the petitioners. It is thus seen that the State Government left no stone unturned in order to see that the recruitment process is cancelled but in vain. Only on the basis of the opinion of the learned Advocate General, Manipur, a decision appears to have been taken to cancel it. The validity and correctness of the recruitment process initiated pursuant to the Notification dated 21-12-2016 which stood merged at a later stage with the other one, is concerned, it will be considered along with issue (b) hereinbelow.

In Re: Issue (b):

[14.1] A specific plea taken by the respondents is that since the excess appointments have been made, the recruitment process was bad and accordingly, the decision was taken by them to cancel it. Before going into the correctness of the contention of the respondents, it may be appropriate for this court to revisit the law laid down by the Hon'ble Supreme Court in this regard. It may be noted that this court in *R.K. Kokngangsana Singh Vs. State of Manipur & ors.*, WP(C) No. 482 of 2017 has examined the law laid down by the Hon'ble Supreme Court on the issue and the relevant paragraphs thereof read as under:

"[8] After the first issue having been decided in the negative, this court proposes to deal with the second issue as to whether the declaration of result will be confined to the number of posts notified in the advertisement or to the total vacancies as has been projected by the State Government. It is well settled that no appointment can be made beyond the advertised number of posts, as the law having been laid down by the Hon'ble Supreme Court in a catena of decisions, some of which may be referred to hereinbelow. In *Secretary, A.P. Public Service*

Commission Vs. B. Swapna & ors., (2005) 4 SCC 154, the Hon'ble Supreme Court held:

"10. There are two principles in service laws which are indisputable. Firstly, there cannot be appointment beyond the advertised number and secondly norms of selection cannot be altered after the selection process has started. In the instant case 15 posts were to be filled up. The vacancies in the different zones were as follows:

Zone IV

ST

1

Zone III

BC-A

1

Zone V

BC-C

1

11. Fourteen vacancies were indented on 14.4.1997. Obviously, they were not existing vacancies on the date of advertisement i.e. 8.1.1995. The selection list was operative till 1.7.1997. The 14 vacancies which were indented on 14.4.1997 were as follows:

Zone III

BC 'A' - 1, OC - 1

Zone IV

ST - 1, OC - 2

Zone V

BC 'C' - 1, SC - 1, BC 'D' - 1, OC - 3

Zone VI

SC - 1, OC - 1, BC 'D' - 1.'

A similar view has been taken by the Hon'ble Supreme Court in Mukul Saikia & ors. Vs. State of Assam & ors., (2009) 1 SCC 386, the para 33 of which is as under:

"33. At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than

the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The select list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the appellants appeared in the select list dated 17-7.2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularisation of the private respondents.'

In *Rakhi Ray & ors. Vs. High Court of Delhi & ors.*, (2010) 2 SCC 637, the Hon'ble Supreme Court held:

"7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as 'the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution', of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to 'improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale', otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law. (Vide *Union of India v. Ishwar Singh Khatri*, *Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat*, *State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986*, *Prem Singh v. Haryana SEB* and *Ashok Kumar. v. Banking Service Recruitment Board*).'

The above law laid down in *Rakhi Ray* case, has been followed in *State of Orissa Vs. Rajkishore*, (2010) 6 SCC 777 and *K. Lakshmi Vs. state of Kerala & ors.*, (2012) 4 SCC 115. In *Kulwinder Pal Singh & anr. Vs. State of Punjab & ors.*, (2016) 6 SCC 532, the Hon'ble Supreme Court held:

"10. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide *Food Corporation of India v. Bhanu Lodh*, *All India SC & ST Employees' Assn. v. A. Arthur Jeen* and *UPSC v. Gaurav Dwivedi* .

12. In *Manoj Manu v. Union of India*, it was held that (SCC p. 176, para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to the government to fill up the vacancies. As noticed earlier, because twenty-two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 6-7-2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.'

In *Anurag Kumar Singh & ors. Vs. State of Uttarkhand & ors.*, (2016) 9 SCC 426, the Hon'ble Supreme Court held:

"11. It is clear from the pleadings and the various documents filed by the Appellants that no additional posts were created between 1-7-2008 and 30-6-2009. It is significant that the Rules refer to the recruitment year. It is a well-accepted principle of service law that only the number of vacancies that are advertised can be filled up. If the advertisement gives liberty to the Government to vary the number of posts, such power cannot be exercised for filling up future vacancies. If additional posts were created during the recruitment year i.e. between 1-7-2008 and 30-6-2009, the Government could have directed the Second Respondent to include those posts also in the selection list that was made pursuant to the advertisement dated 19-9-2009.'

[9] The fact that the law has been settled by the Hon'ble Supreme Court is not denied by the learned counsels appearing for the petitioners and all that they have submitted, is that an exception has been carved out by the Hon'ble Supreme Court in the law itself. In support of their contention, they have relied upon the decision rendered by the Hon'ble Supreme Court in *Prem Singh Vs. State of Haryana*, (1996) 4 SCC 319 wherein the Board decided to fill up 62 posts of Junior Engineer by direct recruitment, for which an advertisement was published inviting applications. The Selection Committee recommended the names of 212 candidates. The Board considering the latest vacancy position, decided to fill up 147 posts but the Chief Engineer could appoint on 138 candidates. Some of the candidates who were not selected/ appointed and one person who became eligible soon after the last date for receiving applications challenged the selection/ appointment by filing writ petitions. One of the issues which is relevant for this court, was whether it was open to the Board to prepare a list of as many as 212 candidates and appoint as many as 137 out of that list

when the number of posts advertised was only 62. The High Court held that the Board committed a breach of the equality clause contained in Article 14 and 16 of the Constitution because it was not fair and open to the Board to take into consideration 85 more posts which became available after the date of the advertisement while preparing the select list and making appointments. When the matter came up before the Hon'ble Supreme Court, it held:

"25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.'

On the facts of that case, the Hon'ble Supreme Court held that as the Board could have taken into account not only the actual vacancies but also the vacancies which were likely to arise because of retirement etc. by the time the process was completed, it would not be just and equitable to invalidate all the appointment made on posts in excess of 62. In the special facts and circumstances, the Hon'ble Supreme Court held that it did not think it proper to invalidate the appointment made on those 25 additional posts but the appointments made by the Board on posts beyond 87 were held invalid.

[10] Admittedly, the case of the petitioners is that the recruitment process was initiated for filling up 12 posts of Assistant Election Supervisor, and other posts which are not relevant for this case, and while the recruitment process was in progress, the State Cabinet took a decision for creation of 43 posts of Assistant Election Supervisor, for which an order dated 03-102-015 was issued by the Chief Secretary, Manipur. Before the completion of the recruitment process, another 12 vacancies arose due to retirement of some incumbents who were working as Assistant Election Supervisor in the Department of Election. Therefore, the prayer in the writ petitions is to direct the respondents to declare the results of the examination in respect of 67 posts. It may be noted at this juncture that while carving an exception, the Hon'ble Supreme Court has observed that the court may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of the persons seeking public employment and that what relief should be granted in such cases would

depend upon the facts and circumstances of each case. Despite the observation being made by it, the Hon'ble Supreme Court had declared the appointments made beyond 76 as invalid, meaning thereby that the appointments made only against the posts advertised and the posts which arose because of death, retirement etc. were valid. In the present case, the number of posts advertised was 12 and another 12 posts arose due to retirement and therefore, in terms of the decision rendered in Prem Singh case (supra), the result can be declared only in respect of 24 posts. So far as 43 posts which were created while the recruitment process was going on, are concerned, there is no material on record to show that there was an urgent need of them except that the Department was to be strengthened and in other words, there was no any exceptional circumstance which warranted appointment against the newly created 43 posts. Similar pattern of creating posts while the process of recruitment was going on and declaring results thereof, was being followed by the State Government in respect of all the direct recruitments which were carried out, prior to the election, in many Departments. Article 16 of the Constitution provides for equal opportunity in matters relating to public employment while Article 14 mandates that the Government or its instrumentalities ought to act fairly and reasonably. If 43 posts are to be filled up from amongst the only candidates who have participated in the present recruitment process, the persons who became eligible after the last date of advertisement will be denied equal opportunity as envisaged under Article 16 of the Constitution. A mere policy decision taken by the State Government cannot take away the right, in this manner, as envisaged under Article 16 of the Constitution. This needs to be kept in view for the reason that in a small State like Manipur, such recruitment does not take place every year, rather once in some years and moreover, a direct recruitment is to be conducted only when the ban on direct recruitment is lifted by the State Government, from time to time, keeping in mind the urgent and unavoidable need which is not there in the present case.'

[14.2] In the present cases, as per the Notification dated 26-09-2016 issued by the Chief Engineer, PWD, the following posts were available for appointment:

- 1 LDC/LDC(Typist) 75
- 2 Electrician 4
- 3 Driver (Jeep) 30
- 4 Foreman Mechanic 1
- 5 Mechanic Supervisor 1
- 6 Fitter 2
- 7 Surveyor 8
- 8 Tracer/DM-III 4
- 9 Road Mohorir 29

10 Plumber 1

11 Peon 51

12 Sweeper 1

13 Chowkidar 28

14 Khalasi 2

15 Jugali 2

The said Notification was followed by the Notification dated 01-10-2016 which specifically notified that the written test for the post of LDC would be held on 23-10-2016. But the written test was in fact held on 30-10-2016 as contended by the petitioners on the strength of the documents filed by them. In respect of the other posts, since the written test was not to be held, the interview/ viva voce was held on 21-10-2016.

Only after the written test for the post of LDC and the interview/ viva voce for the remaining posts having been held as aforesaid, the Chief Engineer, PWD issued another Notification dated 21-12-2016 showing the categories of posts and their vacancies for recruitment which is as under:

1 LDC (Bill Clerk/ Auditor/ Cashier/ 52

Record Assistant)

2 Stenographer (Grade-III) 6

3 Driver (Light) 11

4 Chowkidar 16

5 Peon 44

6 Sweeper 11

7 Road Mohorir 30

8 Surveyor 5

9 Barkandaj 6

It is nowhere indicated in the Notification dated 21-12-2016 that the vacancies shown therein were created for the first time or were anticipated vacancies which would arise, in the near future, on the retirement of the incumbents. But from the order dated 31-12-2016 issued by the Chief Engineer, PWD, it is evident that the said vacant posts were created on only 20-12-2016. In other words, they were not the anticipated vacancies. Since the written test had already been held on 30-10-2016 before the Notification dated 21-12-2016 came to be issued, it is not clear to this court as to whether another written test in respect of the post of LDC as notified on 21-12-2016, was held thereafter or not for the reason that in

the order dated 16-03-2017, the names of as many as 122 candidates appointed vide order dated 31-12-2016 and 03-01-2017 were enumerated therein giving posting at different places. It may be noted at this juncture that the said appointments were made on the basis of the recommendation of the DPC held on 31-12-2016. It is thus seen that in respect of the post of LDC as notified on 21-12-2016, there is no material on record to show that the written test was ever conducted by the authority. Similarly, it is not clear as to when the meeting of the DPC was held in respect of the remaining posts as notified on 21-12-2016. As seen from the decisions of the Hon'ble Supreme Court referred to hereinabove, the excess appointment is impermissible and the only exception thereto is in respect of the anticipated vacancies which can be filled up by way of a policy decision through the ongoing process. This exception does not apply to posts newly created by the Government after the recruitment process being initiated by it because to do so would violate the provisions of Article 14 of the Constitution of India. A separate and independent process in respect of the posts notified on 21-12-2016 ought to have been initiated and completed without the same being merged with the recruitment process already initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by the Chief Engineer, PWD. No appointment can be made in excess of the total number of posts notified by the Government and if any found to have been made by it, the same will be rendered bad in law. In the present cases, the appointments have been made in excess of the posts notified by the State Government and in other words, the appointments have been made against the posts notified vide Notification dated 21-12-2016 and created while the recruitment process initiated vide Notification dated 26-09-2016 was going on, which is impermissible in law. Therefore, the consequence ought to follow it.

In Re: Issue (c):

[15.1] It has been vehemently submitted by the counsel appearing for the petitioners that the Office Memorandum dated 31-01-2018 was nothing but a mere formality as it would yield no fruitful purpose, since it indicated about the decision already being taken by the respondents for cancellation of the appointment orders of the petitioners. It has further been submitted that the office memorandum dated 31.01.2018 clearly indicated that it was issued with a pre-determination and the issuance of the same was merely a formality to enable them to contend that the petitioners had been given sufficient opportunity to defend their cases. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in *Siemens Ltd. Vs. State of Maharashtra & ors*, (2006) 12 SCC 33 wherein a demand was made terming the same as a show cause notice. When the matter came up before the Hon'ble Supreme Court, it held:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by

this Court in some decisions including *State of U.P. v. Brahm Datt Sharma, Special Director v. Mohd. Ghulam Ghouse* and *Union of India v. Kunisetty Satyanarayana*, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See *K.I. Shephard v. Union of India*.) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in *V.C., Banaras Hindu University v. Shrikant*, stating: (SCC p. 60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In *K.I. Shephard v. Union of India* this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.'

(See also *Shekhar Ghosh v. Union of India* and *Rajesh Kumar v. D.C.I.T.*)

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable.'

On the other hand, the stand of the State Government is that it was a show cause notice only and therefore, the instant writ petitions shall not be entertained by this court. In order to substantiate her arguments, reliance has been placed in *Union of India & anr. Vs. Kunisetty Satyanarayana*, (2006) 12 SCC 28 and *Secretary, Ministry of Defence & ors. Vs. Prabhash Chandra Mirdha*, (2012) 11 SCC 565.

[15.2] On perusal of the said decisions of the Hon'ble Supreme Court, it is seen that there can be no any dispute as regards the law laid down by the Hon'ble Supreme Court in the aforesaid cases. In *Union of India Vs. Kunisetty Satyanarayana* case (supra), it has been held that a mere charge-sheet or show cause notice does not give rise to any cause of action, unless the same has been issued without any jurisdiction. In other words, a show cause notice does not infringe the right of anyone and the writ lies only when the right of any person is infringed. A similar view has been taken in *Secretary, Ministry of Defence Vs.*

Prabhash Chandra Mirdha case (supra). But in Siemens Ltd. case (supra), the Hon'ble Supreme Court, after referring to its decisions rendered in Union of India Vs. Kunisetty Satyanarayana and other similar cases, held that when a notice is issued with premeditation, a writ would be maintainable and in such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful result.

[15.3] In the present cases, the O.M dated 31-01-2018 was issued purportedly in the form of a show cause notice inviting claims and objections from the petitioners. On going through it as a whole, the State Government appears to have determined to cancel the appointment orders and in particular, the paragraph 6 which reads as under:

"6. Whereas, it is decided to cancel the DPC proceedings and the subsequent appoint of all 351 candidates of Class-III and IV posts subject to giving prior notice to the interested person.'

The averment made in this paragraph has clearly shown that the decision for cancellation of the DPC proceedings was already taken and that the actual cancellation of it ought to be done only after giving prior notice to the interested persons. Since the State Government being administered by well educated and qualified officials, it will be too much to say that it would have been a non-use of proper words. The fact that a decision has already been taken, is evident from the averments made in the affidavits dated 29-09-2018 and 21-1-2019 filed on behalf of the respondent Nos.1 to 4 wherein it has been stated that the said OM dated 31-01-2018 was issued inviting objections/ claims to the decision for cancellation of the proceedings and the subsequent appointment orders. It is thus seen that the decision had already been taken by the Government and only the notice was to be given as a mere formality before the appropriate and administrative order being issued by it in that regard. Moreover, the decision of the State Government appears to have been taken on the basis of the views expressed by the learned Advocate General, Manipur to the effect that all the proceedings of the DPCs for appointment of the said 351 candidates are irregular and violative of all due process of direct recruitment and consequently, the same are liable to be cancelled. The other argument advanced by the counsel appearing for the petitioners is that the copies of the said O.M were not served upon them and it is not denied by the respondents. The O.M not being a public notification, ought to have been served upon them individually and this is all the more necessary because the petitioners have already joined their respective circle/ division offices. Considering the overall submissions of the learned counsel appearing for the parties and the materials on record, this Court is of the view that there is no merit at all in the stand of the State Government. Accordingly, the Office Memorandum dated 31-01-2018 is bad in law and is liable to be quashed and set aside by this Court.

[16] For the reasons stated hereinabove, the above writ petitions are allowed in part and the impugned Office Memorandum dated 31-01-2018 and the letter

dated 29-04-2017 issued by the Under Secretary (Works), Government of Manipur are quashed and set aside with the following directions:

(a) The respondents and in particular, the Chief Engineer, PWD, Manipur, in supersession of the earlier appointment orders issued by him, shall issue fresh appointment orders in favour of the candidates confining to the number of vacancies for different posts as notified vide Notification dated 26-09-2016 issued by him so that they could join their services again at an early date;

(b) The Chief Engineer, PWD shall issue the appointment orders in favour of the candidates strictly in accordance with the select list as contained in the recommendation made by the DPC on the basis of the recruitment process initiated pursuant to the Notifications dated 26-09-2016 and 01-10-2016 issued by him;

(c) Keeping in mind the hardship and mental agony suffered by the petitioners, the whole exercise as mentioned in direction (a) and

(b) above, shall be completed by the Chief Engineer, PWD within thirty days from today;

(d) In respect of the vacancies for the posts as notified vide Notification dated 21-12-2016 issued by the Chief Engineer, PWD, a separate recruitment process shall be initiated by him in accordance with law.

There shall be no order as to costs.