

(2010) 03 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (C) No. 194 (SH) of 2008

Randolf Howard Pariat

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Meghalaya Health Services Rules, 1990 — Rule 9, 9(3), 9(8)

Citation : (2010) 3 GLT 388

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : V.G.K. Kynta, R.G Nongbet and K. Wahlang, for the Appellant; S. Sen and H.S. Thangkhiew, for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—The Petitioner is principally aggrieved by the order dated 2.6.2008 issued by the State-Respondents promoting him to the post of Medical Officer Grade-I which, according to him, has the effect of depriving him of the promotion to the same post already granted to him by the order dated 22.9.2005 and of the consequential benefits, financial or otherwise, already accrued to him therefor.

2. To appreciate the controversy, the facts prompting the Petitioner to file this writ petition may be briefly noticed. After serving as Casualty Officer of the Civil Hospital, Shillong, which is a Grade-III post in the Meghalaya Health Service, for sometime, on regular basis, the Petitioner was promoted to Grade-II of the Meghalaya Health Service on 21.9.1992. In the year 2005, on the recommendation of the Departmental Promotion Committee, the State-Respondents issued the notification dated 22.9.2005 promoting him to Grade-I with effect from 9.5.1998 and was posted as Deputy Director (Health Education Board). Thus, according to the Petitioner, his seniority shall have to be reckoned with effect from 9.5.1998. It is Stated by the Petitioner that he assumed charge of the post of Deputy Director (HEB) at Shillong on 23.9.2005 as evidence from the copy of the transfer of certificate and the pay slip issued by the Accountant

General, Meghalaya vide Annexures-3 and 4 to the writ petition. While holding the post of Deputy Director (HEB) at Shillong, the State-Respondents issued the order bearing No. Health. 230/2007/Pt.1/2, dated 2.6.2008 transferring him to the post of District Medical and Health Officer, East Khasi Hills and again issued the order dated 28.7.2008 transferring him as Superintendent, Mairang Civil Hospital, West Khasi Hills District, which he was at the time of filing the writ petition was yet to join. It is contended by him that as he has put in almost ten years of regular service in Grade-I post of the Meghalaya Health Services, he had the right to be considered for promotion to the next higher grade of Joint Director, Health Service or any other analogous posts in the Senior Grade of the Meghalaya Health Services. He was then duly considered for promotion by the DPC, and was accordingly promoted by the order dated 22.9.2005. However, much to his surprise, the State-Respondents, in supersession of the said order dated 22.9.2005, issued the order bearing No. Health 286/2007/1, dated 2.6.2008 (the impugned order) temporarily promoting the private Respondent from Grade-II post to Grade-I post with effect from 9.5.1998 (notional date and with financial benefits from the date of issue of the order). Another notification was issued by the State-Respondents on the same day bearing No. Health 286/2007/2 temporarily promoting the Petitioner, among others, to Grade-I in the scale of pay of Rs. 8750-13100/- with effect from 9.5.1998 (notional benefit) and with financial benefits from the date of issue of the order. This, according to the Petitioner, has the effect of abrogating his promotion and of the consequential service and financial benefits accrued to him in terms of the order dated 22.9.2005 as he had by then already assumed the charge of Grade-I post and drawn the pay of Grade-I post w.e.f. 23.9.2005. As he joined the post of Grade-I with effect from 22.5.2005, the Petitioner contends that he cannot be equated with other Medical Officers like the private Respondent, who failed to join their promotional posts on or after 22.9.2005 and that as he had already been rendering continuous service with effect from 23.9.2005 in the post of Grade-I of the Meghalaya Health Services, he is already within the zone of consideration for the promotion to the next higher post in terms of Rule 9(8) of the Meghalaya Health Services Rules, 1990.

3. Both the State-Respondents and the private Respondent contested the writ petition and have filed their respective counter-affidavits. The contention of the State-Respondents is that the promotion order dated 22.9.2005 relied upon by the Petitioner was issued on the recommendation of the Departmental Promotion Committee and in pursuance of the judgment and order dated 28.1.2004 but without any financial benefits. However, this order was challenged by the Meghalaya Medical Service Association in W.P.(C) No. 315(SH) of 2005 before this Court, which by the interim order dated 20.10.2005 had stayed the said notification. This Court again by the order dated 22.3.2006 modified the interim order dated 20.10.2005 by allowing the Medical Officers recommended by the DPC to officiate as Medical Officers Grade-I. Subsequently, "the aforesaid Writ Petition filed by the MMSA was disposed off vide Order dated 21.9.2007 by this

Court as withdrawn thereby the Respondents were allowed to fill up all vacancies by way of promotion". As all the postings made by the Government prior to the said order dated 21.9.2007 passed by this Court were made officiating postings, the Medical Officers including the Petitioner, were, in public interest, transferred to different places by issuing the transfer order dated 2.6.2008. As such transfer order was passed by the State-Respondents in exercise of their discretionary powers, the question of violation of the legal right of the Petitioner does not and cannot arise. There is absolutely no infirmity in the impugned order temporarily promoting Medical Officers Grade-II to Grade-I with effect from 9.5.1998 (notional date) and with financial benefits from the date of issue of the order. It is asserted by the answering Respondents that the order dated 22.9.2005 never granted any financial benefits to the Petitioner and, as such, his contention that he lost financial benefits has no basis: "he was never in active service in Grade-I post". It is thus contended that the writ petition has no merit, and is liable to be dismissed with costs.

4. It is the case of the private Respondent, as projected in his writ petition, that his service as Assistant Surgeon was regularized with effect from 18.6.1976, and he was further promoted to Grade-II of the Meghalaya Health Service on 19.6.1992 and posted as Administrative Medical Officer. ESI, Meghalaya He became eligible for promotion to Grade-I as far back as 19.6.1994. On the other hand, the Petitioner joined service on 6.3.1978 nearly two years after him, and was promoted to Grade-II on 21.9.1992 i.e. long after him. He was subsequently promoted to Grade-I by the said order dated 22.9.2005 with effect from 9.5.1998, and was placed at Serial No. 9, while the Petitioner was placed at Serial No. 21. Thus, he is senior to the Petitioner in terms of his date of appointment in the service as well as his date of promotion to Grade-II. The Meghalaya Medical Service Association, however, challenged some promotion orders with the result that this Court by the order dated 26.8.2005 passed a status quo order on those promotions. This status quo order was again reiterated by the order dated 6.9.2005 of this Court. As these orders were operating, the private Respondent did not join. The order dated 22.9.2005 granting promotion to him and the Petitioner, among others, was the subject-matter of another writ petition being W.P.(C) No. 271(SH) of 2005 before this Court, which by the order dated 4.10.2005 issued status quo orders in respect of all those promotions. Thereafter, one Dr. L.S. Kharlukhi filed W.P.(C) No. 330(SH) of 2005 impleading both the Petitioner and the private Respondent whereupon this Court by the order dated 7.10.2005 directed that the private Respondents were not to be regularized to the posts to which they were temporarily promoted. By another order dated 20.10.2005 passed in connection with W.P.(C) No. 392(SH) of 2005 and the order dated 22.2.2006 in connection with Misc. Case No. 33(SH) of 2006 arising out of the said W.P.(C) No. 312(SH) of 2005, this Court made it clear that the status quo was operative and the promotions were not be regularized. This prompted the State-Respondents to move this Court in Misc. Case No. 55(SH) of 2006 for vacating/modifying the order dated 20.10.2005 passed in W.P.(C) No.

312(SH) of 2006. this Court by the order dated 23.3.2006 modified the said order to the extent of allowing only in-charge/officiating arrangement which would be co-terminus with the final orders to be passed by this Court. This led the State-Respondents to issue, in partial modification of the said notification dated 22.9.2005, the notification dated 11.5.2006 converting all the promotion orders into officiating promotion but with effect from 9.5.1998. However, on the application of the Meghalaya Medical Services Association (MMSA), this Court by the order dated 12.6.2006 in Misc. Case No. 110(SH) of 2006 directed that officiating arrangements could not be made with retrospective effect and could only be prospective in operation.

5. It is the specific case of the private Respondent that the said notification dated has been modified by the subsequent notifications dated 11.5.2006 and dated 29.5.2006 and also by the order dated 12.6.2006 by this Court in Misc. Case No. 110(SH) of 2006. According to the private Respondent, the net effect of these modifications is that the promotions of the Petitioner and others including the private Respondent in terms of the said notification dated 22.9.2005 got transformed into mere officiating arrangement with prospective effect, which has never been challenged by the Petitioner. Consequently, the Petitioner is barred by the principles of estoppel, waiver and acquiescence from challenging these notifications. Due to the spate of status quo orders in respect of those promotions passed by this Court from time to time as noticed herein above, it is contended, the claim of the Petitioner that his right flows from the order dated 22.9.2005 does not hold water. With the withdrawal of the pending cases by MMSA which had put a stop to all promotions, the State-Respondents, on the recommendation of DPC read with Rule 9(3) of the Meghalaya Health Service Rules, 1990, issued the impugned order and another order bearing the same date setting at naught the said notification dated 22.9.2005. As the Petitioner and the private Respondent were granted promotion on 2.6.2008 with effect from 9.5.1998, the fact that the Petitioner had joined his promotional post with effect from 23.9.2005 and that a right to the post of Medical Officer Grade-1 has, ipso facto, accrued to him therefor, is inconsequential. In other words, it is his contention that as the promotion order dated 22.9.2005, upon which he bases his case, has been converted into officiating arrangement by the impugned order and by the interim orders dated 30.4.2007, 7.5.2007 and dated 14.5.2007 passed by this Court in Misc. Case No. 138(SH) of 2007 arising out of W.P.(C) No. 312(SH) of 2005, the Petitioner cannot claim seniority over him. According to the private Respondent, the Petitioner is simply trying to unsettle an already settled position which came about after protected litigations and negotiation between MMSA and the State-Respondents. It is thus submitted by the private Respondent, no case is made out by the Petitioner warranting the interference of this Court.

6. In the reply-affidavit, the Petitioner contends that as he joined the promotion post of Grade-I on 23.9.2005 i.e. the day after the promotion order dated 22.9.2005 and as the private Respondent did not join his promotion order, which

was issued on the same day, he is senior to him. Moreover, according to the Petitioner, as the Petitioner has completed more than 27 years of continuous service in Grade-II and Grade-II taken together, he is eligible, under the second proviso to Rule 9 of the Meghalaya Health Service Rules, 1990, for promotion to the post of Grade-I. It is pointed out by the Petitioner that the status quo orders dated 26.8.2005 and dated 6.9.2005 passed by this Court were directed against different causes of action and not against the said promotion Order dated 22.9.2005 and that the status quo order dated 4.10.2005 by this Court in W.P. (C) No. 271(SH) of 2005 was issued only after he assumed charge of the promotion post and drew salary attached to the post of Grade-I and, as such, his status cannot be affected thereby. The private Respondent continued to hold the post of Grade-II Senior Medical and Health Officer and joined the post of Grade-I only in 2008 when the State-Respondents issued the impugned notification. He further contends that whatever interim orders passed by this Court pertain to the writ petitions/Misc. cases, which were filed long after he assumed the charge of the post of Grade-I: he has never been restrained from continuing in the post of Grade-I. It is submitted that this Court, while passing the various interim orders, held that the same were to be co-terminus with the final orders of this Court and that this Court with a view to avoid administrative chaos and in public interest passed interim orders for allowing the Medical Officers to officiate the posts in terms of the notifications, but the private Respondent never joined any of the officiating posts. It is further pointed out by the Petitioner that the writ petitions filed by other Petitioners upon which interim orders had been passed have since been withdrawn by the respective Petitioners therein, and the interim notifications issued by the State-Respondents in accordance with such interim orders have also come to their logical conclusions. According to the Petitioner, it is well settled that an interim order granted by Courts in a writ petition or other proceedings comes to an end with the disposal of the substantive proceeding and it is the duty of this Court in such a case to put the parties in the same position they would have been but for the interim order, in other words, no interim order would survive after the original proceeding comes to an end. The impugned notification dated 2.6.2008 has the effect of virtually wiping out the seniority position already accrued to the Petitioner in Grade-I vis-a-vis the private Respondent, and the same is to that extent illegal and arbitrary. It is pointed out by the Petitioner that even though the private Respondent was promoted to Grade-I post on the recommendation of DPC, he opted not to join the post for the simple reason that he was given posting outside Shillong. These are the sum and substance of the pleadings of the Petitioner.

7. Admittedly, a number of writ petitions were filed by different parties concerning the promotion of Medical Officers of Grade-I and Grade-II. As these writ petitions have been referred to by Mr. H.S. Thangkhiew, the learned Counsel for the private Respondent, time and again to defend the case of the private Respondent, I will at the outset briefly refer to them one by one hereunder:

1. One Dr. M. Chen filed W.P.(C) No. 213(SH) of 2005 challenging the order dated

5.7.2005 promoting seven Medical Officers Grade-I to Senior Grade Medical Officers. this Court by the order dated 7.7.2005 passed an interim order directing that the private Respondents therein be not regularized to the posts in which they had been promoted without the permission of this Court. Neither the Petitioner nor the private Respondents were made party-Respondents in this case. this Court, however, by the order dated 24.3.2008 disposed of the writ petition on withdrawal but by granting the Petitioner therein the liberty to file a fresh case.

2. The Meghalaya Medical Services Association filed W.P.(C) No. 271 (SH) of 2005 questioning the legality of the order dated 5.7.2005 promoting of Specialist Doctors Grade-II and other doctors without finalization of their gradation list and inter-se-seniority. this Court by the order dated 26.8.2005 passed an interim order directing the maintenance of the status quo. The writ petition was subsequently withdrawn. The interim order also stood vacated. The Petitioner was not a party to this writ petition.

3. W.P.(C) No. 214(SH) of 2004 was by one Dr. Lumdingstar Kharlukhi challenging the aforesaid order dated 5.7.2005. An interim order was passed by this Court on 7.7.2005 directing that the services of the private Respondents therein be not regularized. The writ petition was withdrawn on 24.3.2008 but with a liberty to file a fresh case. The Petitioner herein was not impleaded as a party-Respondent.

4. W.P.(C) No. 312(SH) of 2005 was filed by the Meghalaya Medical Services Association challenging three promotion orders all bearing dated 22.9.2005. The Petitioner was not made a party-Respondent. An interim order was passed by this Court on 20.10.2005 directing that the status quo with regard to the promotions of the Respondents as on that day should be maintained and all appointments and promotions of the private Respondents should be subject to the result of the writ petition. It is to be noted that no private Respondents were impleaded in this writ petition. By the order dated 21.9.2007, this Court, on the statement made by the Petitioner therein that he had no interest to pursue the writ petition, closed the same by giving liberty to the Petitioner to file a fresh case. Interim order, if any, also stood vacated.

5. The Meghalaya Medical Services Association again filed W.P.(C) No. 183(SH) of 2007 challenging three officiating promotion orders dated 18.7.2007 and one transfer order dated 18.7.2007. An interim order was passed by this Court on 3.8.2007 in the connected Misc. Case No. 309(SH) of 2007 directing the State-Respondents to maintain the status quo in the matter of posting of the doctors. The writ petition was withdrawn by the Petitioner on 21.9.2007 with a liberty given to the Petitioner to file a fresh case. The interim order was vacated. The Petitioner was not made party-Respondent.

6. Lumdingstar Kharlukhi filed another writ petition being W.P.(C) No. 330(SH) of 2005 challenging the said promotion order dated 22.9.2005 impleading, among

others, the Petitioner as party-Respondent. An interim order was passed by this Court on 7.10.2005 directing that the services of the private Respondents be not regularized. The writ petition was disposed of by this Court on 7.4.2008 on withdrawal.

7. The Petitioner filed W.P.(C) No. 47(SH) of 2008 challenging the posting of the private Respondent as Join Director of Health Services. An interim order was passed on 28.3.2008 directing that the promotion of the private Respondent should be made subject to the outcome of the writ petition. The writ petition was dismissed on 10.9.2008. The Petitioner preferred WA No. 36(SH) of 2008 along with Misc. Case No. 452(SH) of 2008 before the Division Bench. Both the writ appeal and the miscellaneous application were disposed by the judgment dated 4.12.2008 by holding that the observations in the judgment dated 10.9.2008 had the effect of finally determining the issues involved in the instant case i.e. W.P. (C) No. 194(SH) of 2008 and by directing the learned Single Judge to hear and dispose of the writ petition without in any manner influenced by the impugned observations of the learned Single Judge.

8. From the foregoing paragraph, it becomes clear that W.P.(C) Nos. 213(SH) of 2005, W.P.(C) No. 271(SH) of 2005, W.P.(C) No. 214(SH) of 2004 and W.P.(C) No. 183(SH) of 2007 were not directed against the promotion of the Petitioner and, therefore, have no bearing on this case. It is, however, with respect to W.P. (C) Nos. 312(SH) and 330(SH) of 2005 that grievances have been made by the writ Petitioners therein against the order dated 22.9.2005 promoting the Petitioner and others. An interim order was passed by this Court on 7.10.2005 in W.P.(C) No. 330(SH) of 2005 only to the extent that the private Respondents should not be regularized to the post to which they were promoted temporarily. In W.P.(C) No. 312(SH) of 2005, an interim order was passed on 20.10.2005 directing that the status quo with regard to the promotions of the Respondents "as on today" should be maintained and that all appointments and promotions of the Respondents should be subject to the outcome of the writ petition. As noticed earlier, in this case, none of the promoted medical officers were arrayed as party-Respondents. Consequently, there has never been any status quo order in respect of the Petitioner herein. The only interim order affecting the Petitioner appears to be that his temporary promotion should not be regularized. To recapitulate the history of the case, the Petitioner, among others, were temporarily promoted from Medical Officer Grade-II of the General Duty Stream of the Meghalaya Health Service to Medical Officer Grade-I with effect from 9.5.1998 on the recommendation of the Departmental Promotion Committee in terms of the order dated 22.9.2005. A perusal of the aforesaid interim order will plainly show that there was no interim order of this Court staying the temporary promotion of the Petitioner. It is the case of the Petitioner that he assumed charge of the post of Medical Officer Grade-I on 22.9.2005 and has since then been continuing in that post without any intenuption. He also claims that he has also been receiving the pay scale of the post of Medical Officer Grade-I. A pay slip dated 27.9.2006 indicating the receipt of pay scale of the promoted post

w.e.f. 23.9.2005 is annexed to the writ petition at Annexure-4 to substantiate his case. It is the admitted position of the parties that the writ petitions on the basis whereof various interim orders were passed have been disposed of on withdrawal by the parties concerned. The question to be determined is whether the various interim orders passed in connection with those writ petitions would have the effect of nullifying the promotion order of the Petitioner after the said writ petitions have been disposed of. This question came up for consideration before the Apex Court in *State of Gujarat and Others Vs. Dilipbhai Shaligram Patil*, This is what the Apex Court said at paragraph 5 of the judgment:

5. It is well settled that an order of stay granted pending disposal of a writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position, they would have been but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing the party for no fault of his and would also mean rewarding the writ Petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the Courts. (See *Kanoria Chemicals and Industries Ltd. v. U.P. SEB*)

6. The position was also highlighted in *Shree Chanmundi Mopeds Ltd. v. Church of South India Trusts Assn.* It was inter alia noted as follows: (SCC p. 9, para 10)

While considering the effect of an interim order staving the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been staved would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

(Underlined for emphasis)

9. Mr. S. Sen, the learned Counsel for the State-Respondents, has placed before me the file relating to the promotion of the Petitioner. A perusal of the said file will indicate that the order dated 22.9.2005 promoting the Petitioner, among others, to the post of Medical Officer Grade-I was made on the recommendation of a duly constituted Departmental Promotion Committee. Mr. VGK Kynta, the learned Counsel for the Petitioner, contends that the impugned order is illegal inasmuch as it has deprived the Petitioner of all the benefits that had accrued to him by virtue of the promotion order dated 22.9.2005. He also submits that the impugned order temporarily promoting him to Grade-I without taking into account the period he had served in the post of Medical Officer Grade-I with effect from 22.9.2005 is arbitrary and mala fide as his future promotional prospects would be affected. It is, however, the contention of Mr. H.S. Thangkhiew, the learned Counsel for the Respondent No. 3, that though the

Petitioner had joined the promoted post, he has never been issued a regular pay slip for the promoted post but was merely issued a pay slip for his officiating promotion. He also submits that the order dated 22.9.2005, temporarily promoting the Petitioner and others including the private Respondent, was superseded by the subsequent orders dated 11.5.2006 and dated 29.5.2006 and the order dated 12.6.2006 passed by this Court in Misc. Case No. 110(SH) of 2006 which merely allowed the Petitioner and others to officiate against the posts indicated against their names therein: the Petitioner was allowed to officiate as Deputy Director of Health Services (HEB), Shillong. This, according to the learned Counsel, has the effect of wiping out the promotion order dated 22.9.2005, but the Petitioner never challenged these orders dated 11.5.2006 and dated 29.5.2006 and, as such, he is estopped from challenging, and is bound by, the said orders.

10. As already noticed, it is indisputable that this Court has never passed any interim order staying the order dated 22.9.2005 promoting the Petitioner to the post of Medical Officer Grade-I. The only interim order passed by this Court in respect of the Petitioner is the order dated 7.10.2005 in W.P.(C) No. 330(SH) of 2005 directing the State-Respondents not to regularize him to the post in which he was temporarily promoted. But this interim order did not stay his promotion. In fact, he assumed the charge of the post of Medical Officer Grade-I on 22.9.2005 itself. The purpose of granting interim relief is merely for maintaining the status quo and not to create new rights or benefit, which can be done only if the writ petition is allowed. An order which has already been carried out cannot be stayed by an interim order. The fact that the Petitioner joined the post of Medical Officer Grade-I and was issued the pay slip for the promoted post is apparent from the correspondences exchanged between the Commissioner of Health and Family Welfare, Govt. of Meghalaya (the Respondent 2) and the Office of the Accountant General (A and E), Meghalaya. The Respondent No. 2 in his letter dated 29.11.2005 indicated to the Accountant General that long before the Court issued the status quo orders, some Medical Officers of both Grades had already joined their respective grades on promotion and that the status quo orders did not have any bearing on the promotion of those doctors who had joined prior to the Court's orders. He, therefore, requested therein that at least provisional pay slips be issued from the effective dates. Thereafter, the Deputy Accountant General in his letter dated 16.1.2006 requested the Respondent No. 2 to confirm that the status quo order of this Court did not have any bearing on the promotion of the Medical Officers vide the order dated 22.9.2005 to enable his office to authorize their pay on the promoted scale. In reply, the Respondent No. 2 in his letter dated 17.1.2006 confirmed that the status quo orders of this Court would not have any bearing on the promotion of the doctors who had joined prior to the orders of this Court. He made it clear therein that due procedure was followed in the promotion order under reference and that issue of pay authority is only the effect but the cause is promotion for which the Health Department, Government of Meghalaya took full responsibility. He, therefore,

requested that pay authority be issued accordingly in the new posts joined by them prior to the Court order under reference. It was apparently after this letter that the Petitioner, among others, were issued the officiating pay slip by the Office of the Accountant General which was to take effect from 23.9.2005. As already noticed, there is no dispute at the bar that the Petitioner had joined the post of Medical Officer Grade-I on 22.9.2005.

11. At this stage, I may refer to the order dated 12.6.2006 passed by this Court in Misc. Case No. 101 (SH) of 2006. In that case, the officiating arrangement made by the State-Respondents in the notifications dated 28.4.2006 and dated 11.5.2006 with retrospective effect was called into question by the Meghalaya Medical Services Association. This Court had held that officiating arrangement should always be with prospective effect and could not be with retrospective effect and accordingly directed the State-Respondents to delete the words "with effect from 9th May 1998 from the said notifications. It may be noticed that the Petitioner was not impleaded as party-Respondent in that case. It may also be noted that in the order/notification dated 11.5.2006 issued by the State-Respondents, upon which heavy reliance is placed by the learned Counsel for the private Respondent, the Petitioner along with the private Respondent and others were allowed to officiate against the post indicated against each of them with effect from 9.5.1998, which was "Subject to the final orders of the Hon'ble High Court in W.P.(C) No. 312(SH)05 and in pursuance of Hon'ble High Court order dated 22.3.06 in W.P.(C) No. 312(SH)05". I have gone through the case records of W.P.(C) No. 312(SH)05 and examination thereof reveals that no stay or status quo order was passed by this Court. In fact, the order dated 22.3.2006 of this Court recorded that "Though this case was directed to be listed for hearing, affidavit of the State Respondents is yet to be filed. Having regard to the subject-matter involved and the need for expeditious hearing of the writ petition, I direct the State Respondents to file affidavit, if any, within three weeks from today. The writ petition be posted for orders on 13.4.06." No other order was passed by this Court on 22.3.06 in connection with this writ petition. The said notification is "in partial modification to this Department's Notification No. Health 256/2003/Pt.1/1, Dt. 22.9.2005." According to Mr. VGK Kynta, the learned Counsel for the Petitioner, the promotion of the Petitioner to Medical Officer Grade-I in terms of the order dated 22.9.2005 was a regular promotion made on the recommendation of the DPC, and the orders dated 11.5.2006 and dated 29.5.2006 did not affect his status and the same need not be challenged by the Petitioner. The learned Counsel argues that the right of the Petitioner came to be affected only by the impugned notification dated 2.6.2008, which completely ignored the earlier promotion order dated 22.9.2005 therein furnishing him a cause of action.

12. The question which now falls for consideration in this writ petition is whether the impugned order can wipe out the promotion already accrued to the Petitioner in terms of the order dated 22.9.2005. In my judgment, it cannot. As already noticed, the promotion of the Petitioner in terms of the order dated 22.9.2005

was never stayed by any Court: the Petitioner continues to hold the promoted post without any interruption by drawing the salary thereof. Even assuming that his promotion order was at one time stayed by this Court in the afore-noted writ petitions, such stay order or orders came to an end with the disposal of those writ petitions. On the authority of the Apex Court in Dilipbhai Shaligram Patil case, during the operation of the said stay orders, the promotion order dated 22.9.2005 cannot be said to have been wiped out from existence. In fact, it is the duty of this Court to put the Petitioner in the same position he would have been but for the stay order. This observation is so made on the assumption that there was a stay order against the promotion order of the Petitioner. But, as found by me earlier, no such stay order was ever passed by this Court at any time. If the private Respondent, on mistaken/wrong assumption that his promotion order was stayed, did not bother to join the post of Medical Officer Grade-I in 2005, he can only blame himself, for which the Petitioner cannot be faulted with. Moreover, it is quite possible that he did not join the promoted post in 2005 as he was posted outside Shillong as alleged by the Petitioner in his rejoinder-affidavit. The record shows that the Petitioner joined the post of Medical Officer Grade-I with effect from 23.9.2005 in terms of the regular promotion order dated 22.9.2005, and has been paid the salary of this post without any interruption for discharging the duties attached to this post. In my opinion, under the aforesaid circumstances, a vested right to the post of Medical Officer Grade-1 has thus accrued to the Petitioner, which cannot be set at naught by the impugned order. The impugned order, in so far as the Petitioner is concerned, cannot, therefore, be sustained in law and is liable to be quashed. Necessarily, the services of the Petitioner in the post of Medical Officer Grade-I shall have to be reckoned from 9.5.1998 in terms of the order dated 22.9.2005 for all purposes except financial benefits. Conversely, the private Respondent cannot steal a march and claim seniority over the Petitioner.

13. Resultantly, this writ petition succeeds. The impugned order No. Health 286/2007/2 dated 2.6.2008 at Annexure-8 in so far as the Petitioner is concerned is hereby quashed. The Petitioner shall be entitled to all service benefits including seniority with effect from 9.5.1998. but he shall be entitled to financial benefits only with effect from 23.9.2005 when he actually assumed charge of the post of Medical Officer Grade-I. Consequently, the Petitioner shall be entitled to seniority over the private Respondent. Order accordingly. However, on the facts and in the circumstances of the case, there shall be no order as to costs.