
(2017) 04 MAN CK 0008
In the Manipur High Court
Case No : 246 of 2015

R.K. Premee Devi

APPELLANT

Vs

The State of Manipur & ORS.

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Constitution of India, Article 14, Article 309 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Recruitment and conditions of service of persons serving the Union or a State

Citation : (2017) 04 MAN CK 0008

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Th. Babita, K. Jagat, R.K. Umakanta, H.S. Paonam, L. Raju, R.K. Deepak

Judgement

1. Heard Ms. Th. Babita, the learned counsel appearing for the petitioner; Shri K. Jagat, the learned Government Advocate appearing for the State respondents; Shri R.K. Umakanta, the learned Government Advocate appearing for the respondent No. 2, the MPSC; Shri H.S. Paonam, the learned Sr. Advocate assisted by Shri A. Arunkumar, the learned counsels appearing for the private respondent No. 5; Shri L. Raju, the learned counsel appearing for the private respondent No. 7 and Shri R.K. Deepak, the learned counsel appearing for the Chief Engineer, PHED, Manipur.

2. 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. 3. 1. By this writ petition, the petitioner has prayed for a direction for quashing and setting aside the DPC or restrain the State respondents from holding the DPC on 17-03-2015 for promotion to the post of Superintending Engineer, PHED, Manipur and also for quashing and setting aside the proceedings/recommendations of the DPC in its meeting to be held on 17-03-2015 for promotion to the post of Superintending Engineer, PHED, Manipur.

3.2. According to the petitioner, she joined her service under the Government of Manipur as Section Officer Grade-I in the year, 1982 and was thereafter appointed as Assistant Engineer against the direct recruitment quota in PHED, Manipur in the year, 1985. On 20-07-2006, the petitioner was promoted to the post of Executive Engineer and since then, she has been working in that capacity. One post of Superintending Engineer fell vacant on 04-01-2014 on account of Shri Haobam Sunil Singh, the then Superintending Engineer being promoted to the post of Additional Chief Engineer, PHED, Manipur w.e.f. 04-01-2014.

3.3. To fill up the said vacant post of Superintending Engineer, the meeting of a DPC was held on 01-04-2014 in the office chamber of the Hon'ble Member, Manipur Public Service Commission (hereinafter referred to as "the MPSC") but the said DPC could not draw any conclusion as it found some documents to be incomplete. Accordingly, the MPSC addressed a letter dated 02-04-2014 to the Principal Secretary, (PHE), Manipur requesting him to re-examine the documents and re-submit the same along with complete documents so as to enable it to fix the date for the next DPC and in the said letter dated 02-04-2014, it was not disclosed by the MPSC as to what are those documents which were found to be incomplete. But from the letter dated 07-04-2014 addressed to the Chief Engineer (PHE), Manipur by the Joint Secretary (PHE), Manipur, it is crystal clear that many irregularities were found in the ACRs of some of the Executive Engineers and thereafter, the Joint Secretary (PHE), Manipur addressed four separate letters dated 29-04-2014, enclosing therewith the ACRs of the said four Executive Engineers namely (a) Ph. Yaima Singh; (b) Th. Lokeshwor Singh; (c) H. Bigadhon Singh and (d) Ninganung Lungleng, to the Chief Engineer, PHED, Manipur wherein the nature of the irregularities was clearly indicated which was followed by a reminder dated 15-05-2014. The Chief Engineer (PHE) vide its letter dated 15-05-2014 returned the ACRs to the Principal Secretary (PHE), Manipur after the ACRs of the said four Executive Engineers having been re-written.

3.4. The petitioner, after having learnt from the reliable sources about the said letters dated 15-05-2014, 17-06-2014 etc. being addressed to the Principal Secretary (PHE) by the Chief Engineer (PHE), submitted a representation to the Secretary, MPSC with copies endorsed to the Chief Secretary, Manipur; the Additional Secretary (DP) and the Principal Secretary (PHE), Manipur requesting it to apprise about the real happening and to look into the matter for the ends of justice. Without any action being taken on the said representation, the PHE Department sent a requisition to the MPSC vide its letter dated 02-03-2015 for holding a second DPC for promotion to the said post of Superintending Engineer, PHED and the meeting of the DPC was fixed on 17-03-2015. Being aggrieved by the actions of the State Government as well as the MPSC, the instant writ petition was filed by the petitioner on the inter-alia grounds that the relevant rules do not permit holding of a DPC for appointment to the said post of Superintending Engineer on the basis of the re-written ACRs; that re-writing of ACRs was contrary to the Office Memorandum dated 06-07-2011 by which the

writing of ACRs ought to be completed by 31st December of the relevant assessment year; that the DPC in its meeting held on 01-04-2014 ought to have assessed the merits of the eligible officers based on the materials placed before it and ought to have prepared the select list/panel by drawing a conclusion and that the recommendation, made by the DPC on the basis of the said re-written ACRs, would be bad in law and would be liable to be quashed and set aside.

4. 1. The instant writ petitioner has been filed by the petitioner praying for quashing the order dated 17-03-2015 issued by the Under Secretary (PHE), Government of Manipur appointing Shri Th. Lokeshwar Singh, the private respondent No. 5 to the post of Superintending Officer, PHED and also praying for directing the State respondents to produce and place before this court the proceedings of the DPC held on 01-04-2014 and 17-03-2015 for perusal by this court.

4.2. The facts and circumstances which have led to the filing of the present writ petition are that although the writ petition being W.P. (C) No. 246 of 2015 was filed on 16-03-2015 after copies thereof, probably, being served upon the office of the learned Government Advocates, the same came up for consideration before this court only on 18-03-2015 and by then, the DPC had already held its meeting on 17-03-2015 and on its recommendations, the State Government had issued the impugned order dated 17-03-2015, on the same day, appointing Shri Th. Lokeshwar Singh as the Superintending Engineer. The petitioner was compelled to file the present writ petition questioning the said order dated 17-03-2015 on the inter-alia grounds that in the DPC meeting held on 17-03-2015, the Deputy Secretary (DP), Government of Manipur attended and participated contrary to the provisions of the statutory rules; that at the time when the first DPC was held on 01-04-2014, only five Executive Engineers were eligible for consideration but when the second DPC was held on 17-03-2015, in place of Shri Ph. Yaima Singh, the name of Shri N. Gambhir Singh was included extending the field of choice; that the DPC held on 17-03-2015 assessed the merits of the officers on the basis of rectified/modified and re-written ACRs which was in total violation of the relevant rules and that the manner in which the hectic actions were taken by the State Government and the MPSC towards holding the said DPC, was the clear illustration of their being collusive between them.

4.3. To counter the averments made in the writ petition, an affidavit-in-opposition on behalf of the respondent Nos. 1 and 4 has been filed wherein it is stated that there was no irregularity while holding the meeting of the DPC on 17-03-2015 for promotion to the post of Superintending Engineer, PHED, Manipur as the same was held by following due process of law and following strictly the Office Memorandum dated 15-05-2014 issued by the Department of Personnel. It is further stated that the DPC is competent to devise its own method and procedure for objective assessment of suitability of candidates and it is the discretion of the DPC either to postpone the DPC or otherwise, if they do not

satisfy with the documents placed before it and to ask the authority concerned to re-submit the same. There is no irregularity or illegality in writing the letter dated 02-04-2014 by the MPSC. There is no rule that ACRs cannot be re-written and re-writing is permissible in case of adverse remark and below benchmark ACRs. As per the Office Memorandum dated 14-03-2014, if the Administrative Secretary (DP) is unable to attend the DPC, he can authorise an officer of the DP who is not below the rank of Deputy Secretary (DP), to attend the same. Even otherwise as per the Rules of Business, the term "Secretary" means the Chief Secretary and it includes the Special Secretary, the Additional Secretary, the Joint Secretary, the Deputy Secretary and the Under Secretary. Since Shri Ph. Yaima Singh has retired, his name was not included in the zone of consideration for the DPC held on 17-03-2015. Due to urgent need for filling up the said post of Superintending Engineer, the State Government accepted the recommendation of the DPC and issued the order on the same day. There is no hard and fast rule preventing the State respondents from filling up the post on the day itself and therefore, the allegation made by the petitioner is wholly misconceived. The affidavit filed by the private respondent No. 5 is similar to that of the State respondents and one additional submission that he made, is that as per the Office Memorandum dated 15-05-2014, the bench mark would be "Very Good" and as per Clause 7(e) of the said Office Memorandum, the DPC shall determine the merit of those being assessed for promotion with reference to the procedure prescribed bench-mark and accordingly, grade the officers as "fit" or "unfit". There shall be no supersession in promotion amongst those who are graded fit and even assuming that the ACRs of the respondent No. 5 are found to be defective, the DPC has to consider the ACRs of two years preceding the period in question and if in any case, these are not available, the merit of the officer is to be evaluated as per the Special Assessment Report Rule by the DPC in terms of Clause 5.4.(c)

5. 1. The instant writ petition has been filed by the petitioner praying for a direction to the respondents not to hold any DPC for promotion to the post of Superintending Engineer till the disposal of the said writ petitions being W.P. (C) No. 246 of 2015 and W.P. (C) No. 310 of 2015.

5.2. While the writ petitions being W.P. (C) No. 246 of 2015 and W.P.(C) No.310 of 2015 were pending for consideration by this court, one post of Additional Chief Engineer fell vacant and apprehending that the same would be filled up by giving promotion from amongst the Superintending Engineers so that the consequential vacancy, arising out of it in respect of the post of Superintending Engineer, might be filled up from amongst the Executive Engineers whose ACRs were found to be irregular, the petitioner submitted a representation dated 15-04-2015 to the Principal Secretary (PHE), with due information to the Hon'ble Minister, PHED, requesting him not to fill up the consequential vacancy in respect of the Superintending Engineer. But from the letter dated 08-05-2015 of the MPSC, it is seen that a DPC for promotion to the post of Additional Chief Engineer had already been held on 12-05-2014 and accordingly, with no loss of time, the PHE

Department sent a proposal dated 15-05-2015 with a request to convene the DPC for promotion to the post of Superintending Engineer. Being aggrieved by the actions of the State respondents, the instant writ petition has been filed by the petitioner.

6. From the aforesaid pleadings, two issues have arisen for consideration by this court - one, whether the ACRs of the said four Executive Engineers, other than the petitioner, have been re-written or not and two, if yes, whether the proceedings of the DPC based on the said re-written ACRs will become bad in law or not and in other words, whether the recommendations of the DPC will become bad in law or not.

7. Before advertng to the rival contentions, this court proposes to re-visit as regards the concept of "Annual Confidential Report" which is nothing but the report prepared annually in respect of the public servants in accordance with the guidelines contained in various office memoranda. It may be noted that in the case of *Dev Dutt Vs. Union of India*, reported in (2008) 8 SCC 725, the Hon''ble Supreme Court has held that the object of writing the confidential reports and making entries is to give an opportunity to the public servant to improve his performance. The value of a proper system of confidential reports has been recognised in the Office Memorandum dated 23-06-1978 issued by the State Government in respect of the preparation and maintenance of confidential reports. This OM provides for the manner as to how the confidential reports be prepared, maintained and adverse remarks be communicated to the concerned officer etc. Moreover, Ms. Th. Babita, the learned counsel appearing for the petitioner has relied upon the Swamy's compilation on Confidential Reports of Central Government Employees wherein the details as regards the object, periodicity of writing ACRs, the person who should write reports, communication of entries, representation against adverse remarks etc. have been exhaustively provided. Both are almost identical and there is no controversy about them and moreover, the learned counsels appearing for the respondents have not raised any objection to her relying upon the Swamy's Compilation. In the office memorandum dated 06-07-2011 issued by the State Government, a duty is cast upon the officer to get his ACR recorded by the Reporting/ Reviewing/ Accepting Authorities within 31st December of the year to which it pertains failing which the overall grading shall be treated as "good". The Office Memorandum dated 31-07-2013 provides that it is the responsibility of the officer reported upon to download the blank APAR from the website of the DP and thereafter, he/she shall complete the details and get them authenticated from the Administrative Department followed by self appraisal and submission to Reporting Authority and a time schedule is prescribed therein to be strictly adhered to by all concerned for completion of the entire ACR process. There is no dispute amongst the parties about these office memoranda. The submission of the learned counsel appearing for the petitioner is that the ACRs of the said four Executive Engineers, except for the petitioner, have been re-written which is impermissible in law and therefore, the same cannot be used and relied upon by the DPC. In other words, the re-

written ACRs cannot be made the basis for recommending an officer for promotion to the next higher post. Her submission is based on the facts and circumstances as narrated in the writ petition, to which Shri H.S. Paonam, Senior Advocate, appearing for the private respondent No. 5 fairly admitted that the ACRs cannot be re-written at all but his contention is that minor changes without affecting the overall grading can be made in the ACRs. On instructions received from the private respondent No. 5, he further submits that in the present case, the ACRs appear to have not been re-written and only a change as regards the designation of the private respondent No. 5 may have been made by the State Government. In this regard, the learned counsels appearing for the State respondents including the Government Advocate, did not bring to the notice of this court any provision of law enacted by the State Legislature under Article 309 of the Constitution or of a rule framed under the said article of the Constitution by which the ACRs could be re-written after the same having been accepted by the Accepting Authority and moreover, it is nowhere provided in any of the said Office Memoranda that the State Government is empowered to re-write the ACRs after the process of writing them is over. The only stand of the State respondents as reflected in their counter affidavit is that there is no rule that the ACRs cannot be re-written and the re-writing of ACRs is permissible in respect of adverse remark/below bench mark ACRs. The State Government being an institution, it ought to act in accordance with law and it cannot exercise any power which is not conferred upon it by law. The State Government cannot take any action which is not backed by law. This is what the rule of law mandates. From the provisions of the Office Memorandum dated 23-06-1978 itself, it is seen that it is the duty of the Heads of Departments to scrutinise the ACRs to see whatever written therein, are in accordance with the instructions and if there is any defect in a report, it should be returned to the Reviewing Officer concerned for rectification. It is thus seen that the rectification of defects in the ACRs is permissible till that stage only and not thereafter. Having seen the instructions contained in the aforesaid Office Memoranda, it can be easily inferred that if the process of writing ACRs is completed till the stage of acceptance by the Accepting Authority, such ACRs cannot be re-written at all thereafter. If the State Government is permitted to keep on re-writing the ACRs, at its own sweet will and at any time, without any authority of law, it will create chaos resulting heartburning amongst the officers and no finality thereof can also be attained at all and ultimately, it is the administration which will definitely suffer casualty.

8. In order to find out the truth and also to decide the first issue, it becomes necessary for this court to peruse the original records pertaining to ACRs for which the learned counsels appearing for the State respondents as well the MPSC were directed to produce the same for perusal by this court which they did it. On perusal of the original records produced before this court by the State Government as well as the MPSC, it is evident that the ACRs have in fact been re-written. In respect of Shri Th. Lokeshwar Singh, his ACRs for the periods 2010-2011, 2011-2012 and 2012-2013 have been re-written and even the front

page of the re-written ACRs bears the endorsement of "after re-write". Even the wordings in the original ACRs and that of the re-written ACRs are slightly different. In the original ACRs for the period 2010-2011 and 2011-2012, the Reviewing Officer was the Principal Secretary (PHE) whereas in the re-written ACRs, the Chief Engineer (PHE) was shown to be the Reviewing Officer with their different remarks. In the ACR for the period between 01-04-2012 and 31-03-2013, the Reviewing Officer does make remarks "doubtful integrity - no performance personally- self-appraisal does not show any personal outstanding work-only normal work" which are found to be missing from the re-written ACRs. In respect of Shri H. Bigadhon Singh, the Chief Engineer (PHE) was shown to have given reports as the Reporting Officer in the original ACRs who has been replaced by the Addl. Chief Engineer (PHE) in the re-written ACRs with different remarks. In respect of Shri Ningang Lungleng, since only the original ACRs are being produced, it is not possible for this court to state whether these ACRs have been re-written or not but the only thing that this court finds is that for the period between 01-04-2012 and 31-03-2013, the Reviewing Officer and the Countersigning Officer/Accepting Authority are one and the same which appears to be not proper in terms of the letters dated 29-04-2014 addressed to the Chief Engineer (PHE) by the Joint Secretary (PHE). So far as Shri N. Gambhir Singh is concerned, only Special Assessment Reports and not the ACRs in the prescribed forms, are being produced for perusal. In any case, this court finds that the ACRs of Shri Th. Lokeshwar Singh whose name has been recommended and appointed as the Superintending Engineer, have been re-written as stated herein above. The ACRs having been re-written without any authority of law, the same are to be treated as non est in the eyes of law.

9. Since the answer to the first issue having been found to be in the affirmative as stated herein above, the second issue will now be considered but the answer for this issue appears to be not far to seek. Having held that the ACRs and in particular, that of Shri Th. Lokeshwar Singh are re-written, it is obvious and corollary that the proceedings of the DPC based on the said re-written ACRs are bad in law and are consequently rendered illegal. There are two reasons for this conclusion. Firstly, the ACRs having been re-written without any authority of law, the proceedings of the DPC prepared on the basis of the re-written ACRs, being non est, will become illegal and two illegal actions of the State Government as well as that of the MPSC cannot make their actions legal. Secondly, the manner in which the DPC having been held in association with the MPSC, is highly unreasonable and unwarranted, as are evident from the facts and circumstances of the present case. It is not in dispute that for the purpose of holding a DPC for promotion to the post of Superintending Engineer, relevant papers including the ACRs were placed before it on 01-04-2014 but since the DPC found some documents to be incomplete, the MPSC informed the State Government about it without disclosing the details thereof. It may be relevant to mention here that in the O.M. dated 20-04-2004 issued by the Union of India and referred to in the Swamy's Complete Manual on Establishment and Administration, it is provided

that no proposal for holding a DPC or Selection Committee should be sent to UPSC until and unless all the ACRs complete and up-to-date are available and it should be ensured that information furnished to the UPSC/DPC is factually correct and complete in all respects. It is further provided that cases where incorrect information has been furnished, should be investigated and suitable action taken against the person responsible for it. It is evident from the letter dated 29-04-2014 of the Joint Secretary (PHE), Government of Manipur addressed to the Chief Engineer (PHE) that the incomplete documents are nothing but the ACRs in respect of the said Four Executive Engineers. It is surprising to note as to how the Joint Secretary (PHE) could identify the incomplete documents without the same being disclosed by the MPSC. In the file maintained by the MPSC also, it is nowhere disclosed as to what are those documents which were found to be incomplete. It may be noted that the knowledge of an institution like the State Government, is to be based on records for the reason that it has no heart and soul and is manned by individuals. The only probable conclusion that can be arrived at, is that the Joint Secretary (PHE) might have been informed orally either by the Principal Secretary (PHE) or by any other person who was present in the meeting of the DPC. This attitude of the MPSC as well as the State Government is totally contrary to the principles of fairness which is one of the facets of Article 14 of the Constitution and is against the concept of transparency and accountability sought to be applied for by the State Government in its administration. As has been held in the preceding para, the ACRs are found to be re-written and on the basis of the said re-written ACRs, the recommendation was made by the DPC. Instead of resorting to illegal method of re-writing ACRs, the State Government as well as the MPSC could have proceeded in accordance with the alternative remedy made available in the office memoranda. The power of the DPC, as prescribed in the relevant Office Memorandum to devise its own method and procedure for objective assessment of suitability of candidates does not include the power of getting itself involved in getting the ACRs re-written by the State Government for its own purpose and use. It may be noted that the holding of DPC on 17-03-2015 came to be challenged by the petitioner by way of a writ petition being W.P. (C) No. 246 of 2015 which was filed on 16-03-2015, probably, after copies thereof being served upon the office of the Government Advocates who knew that the same would be listed either on 17-03-2015 or on 18-03-2015 for consideration by this court. That would clearly show the high possibility that the PHED was also aware of it. Therefore, the meeting of the DPC can be said to have been held on 17-03-2015 with a conscious mind and its recommendation was submitted on the same day. The Administrative Department i.e., PHED, Government of Manipur immediately on receipt thereof, did process the file on 17-03- 2015 itself, may be, passing through the tables of various high officials including that of the Hon"ble Minister and issued the order dated 17-03-2015 appointing the private respondent No. 5 as the Superintending Engineer. It is no doubt true that there is no rule which prevents or prohibits the Administrative Department from issuing the appointment order the same day on which the recommendation was received

from the DPC. But normally in such cases where two institutions are involved like the State Government and the MPSC herein, it takes reasonable time for completing the process of selection and appointment but in the present case, the actions are taken at a rocket's speed which is quite unusual and the MPSC and the State Government appear to have taken immediate steps to ensure that the appointment order is issued on 17-03-2015 itself so as to avoid any order being passed by this court. In other words, the MPSC and the State Government appear to have desired to see that the private respondent No. 5 is appointed at any costs as the Superintending Engineer, PHED. It will not be too much to say that there was a collusion between the State Government and the MPSC, as its shadow is visible from the facts and circumstances as stated herein above. In fact, there was no need of doing it hurriedly in that fashion and if the private respondent No.5 was really entitled to promotion in accordance with law, nobody could have interfered with it. It is not the case here that the sky might fall, if the appointment order dated 17-03-2015 was not issued by the State Government on the same day itself.

10. Two alternative submissions have been made by Shri H.S. Paonam, the learned Senior counsel appearing for the private respondent No. 5, the first one being that the assessments having been made by the DPC, this court shall not interfere with the decision of the State Government taken on the basis of the opinion of the experts, for which he has relied upon the decisions rendered by the Hon'ble Supreme Court in *Badrinath Vs. Govt. of Tamil Nadu* reported in (2000) 8 SCC 395 and *Greater Kailash Part-II Welfare Association & ors. Vs. DLF Universal Ltd & ors.* reported in (2007) 6 SCC 448. In *Badrinath's* case, the appellant was an IAS officer who was promoted to the selection grade w.e.f. 1-11-1972 although his juniors were promoted the selection grade w.e.f. 15-5-1971. The appellant was considered for promotion to super-time scale on two occasions and was found to be not suitable on account alleged pendency of the disciplinary proceedings. He preferred an appeal to the Central Government which remanded the matter for reconsideration by a Joint Screening Committee which placed its assessments in sealed covers. When the sealed covers were opened, it was found that the appellant had not been found fit for super-time scale. The State Government accepted the recommendations and on its report, the Central Government rejected the appellant's appeal. Being aggrieved by actions of both the State Government as well as the Central Government, the appellant approached the Hon'ble High Court by way of writ petitions which were later transferred to CAT which was pleased to dismiss them. On appeal preferred by the appellant, the Hon'ble Supreme Court allowed the appeal and held inter-alia: "38. Normally, this Court does not enter into question of the correctness of assessment made by Departmental Promotion Committees (or Joint Screening Committees).

40. Unless there is a strong case for applying the *Wednesbury* doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion.

But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

41. While the courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that courts or Tribunals may not - by quoting this case as an easy precedent - interfere with assessment of merit in every case. Courts and Tribunals can neither sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases."

In Greater Kailash Part-II Welfare Case, the appellants approached the Hon'ble High Court of Delhi by way of writ petitions, inter-alia, complaining of the change of user of Savitri Plot by converting into a multiplex-cum-commercial complex which would result in traffic congestions. The learned Single Judge came to the conclusion that the respondent authorities had mechanically granted sanction to the plan submitted by the respondent No. 1 and disposed of the writ petitions restraining the respondent No. 1 from acting upon the sanction until certain directions issued by it, were complied with. On appeal preferred by the appellants herein, the Division Bench took the view that the learned Single Judge had practically sat as a court of appeal over the decisions of the executive authorities and set aside the judgment of the learned Single Judge by observing that it did not find any illegality in the orders passed by the Municipal Corporation of Delhi or other authorities. On further appeal preferred by the appellants, the Hon'ble Supreme Court dismissed the appeals by justifying the observations of the Hon'ble High Court that the learned Single Judge had in effect sat over the decisions of the executive authorities which he was not entitled to do in law. There can be no any dispute about the law laid down in the said decisions but the same had been rendered by the Hon'ble Supreme Court on certain issues which are not involved herein and therefore, the same will not be applicable to the facts and circumstances of the present case. In the present case, the recommendations of the DPC are being questioned on the ground that the same have been based on the re-written ACRs and similarly, the appointment order dated 17-03-2015 is being questioned because the same has been issued on the basis of the said illegal recommendations. Being conscious of the fact that

except in exceptional cases, the judicial review is not available to the Court to examine the validity and correctness of the assessment of the DPC, this Court does nothing in that regard and all that this court held, is that the proceedings/recommendations of the DPC are bad in law on account of their being based on the re-written ACRs. His second submission, relying upon the principles of useless formality laid down by the Hon'ble Supreme Court in the case of Ashok Kumar Sonkar Vs. Union of India reported in (2007) 4 SCC 54, is that even assuming that there was an irregularity in the proceedings of the DPC, there is no need of holding a fresh DPC for the reason that the result will remain the same and such an exercise will be rendered futile. His submission is based on the circumstances that the private respondent No. 5 is the senior most from amongst the eligible officers; that the grading of his ACR is in any case above the benchmark "very good" and that he has retired from service on attaining the age of superannuation. In Ashok Kumar Shankar's case, the appellant applied for appointment to the post of Lecturer and admittedly, as on that day, he had not completed his MD in Sharir Kriya. He was allowed to appear before the Selection Committee despite the fact that he did not hold the requisite qualification till the date of filing the application. He being selected, joined the post. A writ petition came to be filed by the respondent No. 4 questioning the said appointment. Since the writ petition having been dismissed on the ground that he had an alternative remedy, he moved the President of India in his capacity as the "Visitor". The President of India annulled the appointment of the appellant. Being aggrieved by it, the appellant filed a writ petition which was dismissed by the High Court. On an appeal preferred by the appellant, the Hon'ble Supreme Court dismissed the appeal holding that it did not find any merit. One of the issues involved therein was as regards the compliance with the principles of natural justice and the Hon'ble Supreme Court held: "26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

The facts of this case are not similar to that of the present case and therefore, the principle laid down in Ashok Kumar Sonkar's case will not be applicable to the facts and circumstances of the present case. In the Ashok Kumar Sonkar case, the Hon"ble Supreme Court rendered the decision in the context of the fact that the appellant therein did not hold the requisite qualification as on the cut-off date and was not eligible for consideration. The underlined idea appears to be that no purpose would be served, even though the appellant was given an opportunity of being heard for the reason that the exercise would be rendered futile because the appellant was not eligible at all for consideration. But it is not so in the present case wherein no one is sure as to what will be the outcome in the event of a fresh DPC being held by the State Government in association with the MPSC and therefore, this court consider it unnecessary to make any observation in this regard. It is for the State Government to take a decision as regards the holding of a fresh DPC in accordance with law. The submissions of Shri H.S. Paonam, Senior Advocate have been adopted by the counsels appearing for the other respondents. But in addition to what has been submitted by him, Shri R.K. Deepak, Advocate appearing for the Chief Engineer (PHE) has submitted that for no fault of theirs, the private respondents be not penalised and his contention is not acceptable to this court for the reason that there is no question of the private respondents being penalised by this court and all that this court examined and considered, is as to whether the actions of the State respondents including that of the MPSC are illegal or not. If their actions are found to be illegal by this court, the consequences ought to follow and the private respondents cannot take an advantage out of it.

11. In view of the above and for the reasons stated herein above, the writ petitions being W.P. (C) No. 246 of 2015 of 2015, W.P. (C) No. 310 of 2015 and are allowed and consequently, the proceedings/recommendations of the DPC in its meeting held on 17-03-2015 and the impugned appointment order dated 17-03-2015 issued by the Under Secretary (PHE), Government of Manipur are quashed and set aside. However, it is open to the State respondents and the MPSC to take appropriate steps for holding a fresh DPC in accordance with law keeping in mind the observations made herein above. There shall be no order as to costs.