



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**KOHIMA BENCH**

**Case No. : WP(C)/40/2026**

SMTI. JENNY NDANG  
ADDITIONAL SECRETARY, NAGALAND LEGISLATIVE ASSEMBLY,  
NAGALAND, KOHIMA - 797001 R/O NEW ASSEMBLY COMPLEX,  
DISTRICT KOHIMA, NAGALAND - 797001

VERSUS

THE SPEAKER, NAGALAND LEGISLATIVE ASSEMBLY  
SECRETARIAT AND 3 ORS  
NAGALAND LEGISLATIVE ASSEMBLY, SECRETARIAT, NAGALAND,  
KOHIMA - 797001

2:THE SECRETARY  
NAGALAND LEGISLATIVE ASSEMBLY SECRETARIAT  
NAGALAND  
KOHIMA - 797001

3:THE JOINT SECRETARY  
NAGALAND LEGISLATIVE ASSEMBLY SECRETARIAT  
NAGALAND  
KOHIMA - 797001

4:SMTI. KHRUOHITUONUO RIO  
SECRETARY  
NAGALAND LEGISLATIVE ASSEMBLY  
NAGALAND LEGISLATIVE ASSEMBLY SECRETARIAT  
NAGALAND  
KOHIMA - 79700

**BEFORE**  
**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the petitioner : Mr. C.T. Jamir, Sr. Adv.  
: Mr. I. Imchen, Adv.

For the respondent nos. 1 to 3 : Mr. T.B. Jamir, Adv.

For the respondent no. 4 : Mr. Taka Masa, Sr. Adv.  
: Mr. Sentilong, Adv.

**Date on which judgment is reserved : 04.05.2026.**

**Date of pronouncement of judgment : 08.05.2026.**

**Whether the pronouncement is of  
the operative part of the judgment? : No**

**Whether the full judgment has been  
Pronounced : Yes**

**JUDGMENT AND ORDER**  
**(CAV)**

Heard Mr. C.T. Jamir, learned senior counsel, assisted by Mr. I. Imchen, learned counsel for the petitioner. Also heard Mr. T. B. Jamir, learned counsel appearing for respondent nos. 1, 2 and 3 as well as Mr. Taka Masa, learned senior counsel, assisted by Mr. Sentilong, learned counsel for respondent no. 4.

*Nature of challenge and prayers in this writ petition:*

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the notification dated 25.03.2026 issued by the Joint Secretary, Nagaland Legislative Assembly Secretariat, by which the Governor of Nagaland was pleased to promote Smt. Khruohituonuo Rio, the respondent no.4 herein to the post of Secretary, Nagaland Legislative Assembly Secretariat w.e.f. 05.07.2022. The petitioner has also prayed for a direction to the respondent authorities to constitute Departmental Promotion Committee for regular promotion by duly considering the case of all those who are in the zone of consideration for the post of Secretary.

*Case of the petitioner, in brief:*

3) The case of the petitioner, in brief, is that the petitioner was appointed as Assistant Research Officer vide Notification dated 30.09.1996 through a proper selection process in the general cadre, whereas the private respondent was appointed as Assistant Transport Officer vide Notification dated 01.10.1996 w.e.f. 03.09.1996 in the transport cadre. Over the course of service, the petitioner earned regular promotions and reached the rank of Additional Secretary. The private respondent, on the other hand, attained the rank of Additional Secretary (Transport) in the year 2019 by way of multiple upgradation of posts, which were personal to the incumbent. Subsequently, by Office Memorandum and Notification both dated 01.11.2021, the private respondent was brought into the general cadre and regularized therein in

the rank of Additional Secretary. The said action was challenged before this Court in W.P.(C) No. 323/2021, and by judgment dated 12.05.2022, the encadrement and regularization were quashed, holding that the private respondent did not belong to the general cadre.

4)                    Thereafter, within six days of the said judgment, the respondent authorities amended the relevant service rules, namely the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1999 (hereinafter referred to as the "1999 Rules" for brevity) by notifying the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service 3rd Amendment) Rules, 2022 (hereinafter referred to as "3<sup>rd</sup> Amendment Rules" for brevity, whereby the distinction between cadres beyond a certain rank was removed, rendering the private respondent eligible for promotion to the post of Secretary. The said amendment was challenged in W.P.(C) No. 92/2022, which came to be dismissed on the ground of maintainability by judgment dated 24.04.2024.

5)                    During the pendency of the said writ petition, the post of Secretary remained vacant and, in that context, the private respondent was granted temporary officiating charge of the said post vide Notification dated 05.07.2022. The petitioner challenged the same in W.P.(C) No. 144/2022, wherein an interim order dated 22.07.2022 was passed suspending the said notification. However, the interim order was subsequently vacated by order dated 12.08.2022. The petitioner preferred Writ Appeal No. 28/2022, which was dismissed by order dated 03.09.2024

with a direction to fill up the post of Secretary in accordance with law. Thereafter, the petitioner withdrew the said writ petition.

6) However, the respondent authorities, by Notification dated 09.03.2026, regularized the private respondent as Secretary with retrospective effect from her officiating date, without constituting a Departmental Promotion Committee (DPC) as required under the service rules. The same was challenged in W.P.(C) No. 33/2026. During the proceedings, a subsequent Notification dated 25.03.2026 was brought on record, whereby the earlier notification was superseded and the private respondent was again promoted to the post of Secretary with retrospective effect from 05.03.2022, still without the constitution of a DPC. In view of this development, the earlier writ petition was withdrawn with liberty to file afresh. It is contended that the respondents suppressed material facts before the Court and issued the subsequent notification to cure the illegality of the earlier action. It is further contended that as per the applicable service rules, promotion to the post of Secretary is required to be made through a duly constituted DPC, and the petitioner, being senior and eligible since 2019, was entitled to consideration prior to the private respondent, who became eligible only after the amendment of the rules in May 2022. The retrospective promotion granted to the private respondent is alleged to be arbitrary, illegal, and violative of Articles 14 and 16 of the Constitution of India, besides being contrary to the direction issued in Writ Appeal No. 28/2022.

*Submissions of the learned senior counsel for the petitioner:*

7) The learned senior counsel for the petitioner has submitted that by notification dated 30.09.1996, the petitioner was appointed to the post of Assistant Research Officer (Class-II Gazetted) w.e.f. 02.09.1996 whereas the respondent no.4 was appointed to the post of Assistant Transport Officer (Class-II Gazetted) w.e.f. 03.09.1996. It is submitted that while the petitioner was an officer under general cadre all throughout and was promoted five times to substantive posts and is presently holding the rank of Addl. Secretary vide notification dated 30.11.2019. However, the respondent no.4 remained outside the cadre all throughout. But the post of the private respondent was upgraded five times, making it personal to the petitioner and she was allowed to hold the rank of Addl. Secretary (Transport) vide notification dated 30.11.2019. Accordingly, it was submitted that the petitioner was promoted to the higher rank on clear vacancies and to substantive post, but the respondent no.4 was upgraded in the Transport cadre, which was made personal to the petitioner due to non-availability of any promotional avenues.

8) It was submitted that the respondent no.4 was brought to the general cadre by O.M. dated 01.11.2021 and notification dated 01.11.2021, which was contrary to the applicable service rules. Accordingly, on a challenge made by the petitioner, the said O.M. dated 01.11.2021 and notification dated 01.11.2021 were set aside and quashed by judgment and order dated 12.05.2022, passed by this Court in WP(C) 323/2021.

9) It was submitted that in a high-handed exercise of power,

despite existence of vacancy in the rank of Secretary, the case of the petitioner for considering her for promotion was kept pending. However, in respect of the respondent no.4, within six days of passing of the judgment and order dated 12.05.2022, the service rules were amended vide notification dated 18.05.2022, thereby removing distinction amongst different cadres, resultantly, making the respondent no.4 eligible for promotion, which was hitherto available only to the employees of the general cadre. Thereafter, by an office order dated 30.05.2022, two previous notifications dated 30.11.2019 were revived, thereby appointing the respondent no.4 to the post of Addl. Secretary.

10) The amendment to the service rules vide notification dated 18.05.2022 was assailed by Nagaland Assembly Secretariat Staff Association, the petitioner and two others and this Court by order dated 24.04.2024, passed by the Division Bench of this Court in WP(C) 92/2022, dismissed the writ petition on merit as well as on maintainability.

11) It is submitted that in the meantime, while the petitioner continued to maintain her service in the general cadre, pursuant to judgment and order dated 12.05.2022, passed by this Court in WP(C) 323/2021, vide office order dated 30.05.2022, the respondent no.4 was reverted back to the Transport Cadre. Moreover, by an order dated 05.07.2022, the respondent no.4, who was placed in the rank of Addl. Secretary, was delegated temporary officiating charge by ignoring the case of the petitioner for promotion to the post of Secretary. The petitioner challenged the order dated 22.07.2022 by filing W.P.(C) 144/2022 and by an interim order dated 22.07.2022, the operation of the

order dated 05.07.2022 was stayed. However, by another order dated 12.08.2022 passed by this Court in I.A.(C) 116/2022 [in W.P.(C) 144/2022] vacated the interim order. The said order dated 12.08.2022 was unsuccessfully assailed in W.A. 28/2022 by the petitioner. However, the Division Bench of this Court by order judgment and order dated 03.09.2024, declined to interfere with the said order dated 12.08.2022. However, the said writ appeal was disposed of with an observation that there should be no further delay in filling up the post of Secretary, Nagaland Legislative Assembly on regular basis in accordance with law. It is submitted that in view of said observations made by the Division Bench of this Court, the writ petition, being W.P.(C) 144/2022 have become infructuous and accordingly, the said writ petition was closed as withdrawn.

12) It was submitted that instead of constituting Departmental Promotion Committee (hereinafter referred to as "DPC" for brevity), the Nagaland Legislative Assembly Secretariat, vide notification dated 09.03.2026, in continuation of the order dated 05.07.2022, regularized the service of the respondent no.4 as Secretary, Nagaland Legislative Assembly Secretariat. In this regard, it has been submitted that the respondent authorities had applied the term "regularized" to disguise the promotion of the respondent no.4 by the impugned order without constituting a DPC in violation of the 1999 Rules (as amended). The said order dated 09.03.2025 was assailed by the petitioner by filing W.P.(C) 33/2026. However, during the pendency of the said W.P.(C) 33/2026, the notification dated 09.03.2026, which was the subject matter of challenge in the said writ petition, was superseded by notification dated 25.03.2026,

thereby granting promotion to the respondent no.4. Accordingly, the said W.P.(C) 33/2026 was closed on being withdrawn with liberty to assail the notification dated 25.03.2026. Accordingly, the present writ petition is filed.

13) In support of his submissions, the learned senior counsel for the petitioner has placed reliance on the following cases-

- a. *Punjab State Power Corporation Limited & Anr. v. Bal Krishan Sharma & Ors.*, (2022) 1 SCC 322,
- b. *Sanjay K. Sinha-II & Ors. v. State of Bihar & Ors.*, (2004) 10 SCC 734,
- c. *Sushil Kumar v. State of Haryana*, (2022) 3 SCC 302,
- d. *Institute of Chartered Accountants of India v. J.R. William Singh*, (2021) 12 SCC 127,
- e. *Ravindra Kumar Shrivastava v. State of Madhya Pradesh & Ors.*, (2016) SCC 738,
- f. *Rama Negi v. Union of India & Ors.*, (2022) 5 SCC 150,
- g. *UPSIDC v. Arun Kumar Mishra*, (2017) 12 SCC 657,
- h. *Employees' State Insurance Corporation v. Union of India & Ors.*, (2022) 11 SCC 392, and
- i. *P.S. Narsimman v. Union of India & Ors.*, (2018) 13 SCC 193.

Submissions made by the learned counsel for the respondent nos. 1, 2 and 3:

14) Per contra, by referring to Rule 14 of the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service 2<sup>nd</sup> Amendment) Rules 2012, the learned counsel for the respondent nos.1 to 3 has submitted that the contention of the petitioner regarding the requirement of constitution of a Departmental Promotion Committee (DPC) for recommending promotion to the post of Secretary is misconceived and not in accordance with the applicable service rules. It was submitted that the DPC contemplated under Rule 14 of the 1999

Rules is not applicable for promotion to the post of Secretary. By referring to the composition of the DPC under Rule 14 of the 1999 Rules, it was contended that the Secretary is to act as the Chairman and the Additional Secretary is one of the members. In the present case, since the promotion in question relates to the post of Secretary, the Additional Secretary, being within the zone of consideration, would be disqualified from participating in the DPC proceedings. Consequently, the DPC, if constituted under Rule 14 for such promotion, would comprise only junior officers, such as, Joint Secretary, Deputy Secretary and Under Secretary, which is not the intent of the Rules. Therefore, it is contended that Rule 14 does not govern promotion to the post of Secretary. Accordingly, it was submitted that the post of Secretary in Nagaland Legislative Assembly was a selection post. It was submitted that under (i) Rule 11 of the 1999 Rules; (ii) Rule 11 of the 1999 Rules (as amended by 1<sup>st</sup> Amendment Rules, 2005); and (iii) the power was vested with the Governor of the State to appoint the Secretary in consultation with the Speaker. However, under Rule 12 of the 1999 Rules (as amended by 2<sup>nd</sup> Amendment Rules, 2012), the power to appoint to the post of Secretary and Additional Secretary of Nagaland Legislative Assembly was vested with the Governor in consultation with the Speaker. But as per Rule 12 of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules, 2022, it was provided that- "*The Secretary and Additional Secretary shall be appointed by the Governor, on recommendation of the Speaker, in consultation with the Chief Minister.*"

15)                    Thus, the learned counsel for the respondent nos.1 to 3 has submitted that the relevant provision governing appointment to the

post of Secretary is Rule 12(1) of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules, 2022). It was submitted that Rule 12(1) is an exhaustive provision, which clearly stipulates that the appointing authority is the Governor and that the appointment is to be made on the recommendation of the Speaker in consultation with the Chief Minister. Therefore, the procedure prescribed under Rule 12(1) alone is applicable for filling up the post of Secretary and hence, those posts are not envisaged to be filled up by conducting DPC under Rule 15 as sought to be contended by the petitioner. It was further submitted that as per settled principles of statutory interpretation, a statute must be read as a whole and not in isolation and that the provisions of a statute must be construed harmoniously. In this regard, reliance was placed on the decision of the Supreme Court of India in *Commissioner of Income Tax v. Hindustan Bulk Carriers*, (2003) 3 SCC 57. It was contended that Rule 12(1) of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules, 2022) must be read in conjunction with Rule 14. Thus, while Rule 12(1) specifically deals with appointment to the post of Secretary and Additional Secretary, Rule 14 (renumbered as Rule 15) deals with promotions to other posts in the Secretariat.

16) It was submitted that if the interpretation of 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules, 2022) as advanced by the petitioner that Rule 15 governs promotion to the post of Secretary, is accepted, the same would render Rule 12(1) redundant and otiose, which is impermissible in law. In support of such submission, reliance is placed on the decision of the Supreme Court of India in *Hardeep Singh v. State*

*of Punjab, (2014) 3 SCC 92.*

17) On the basis of the above submissions, it is contended that the challenge to the impugned Notification dated 25.03.2026 on the ground of violation of Rule 14 (renumbered as Rule 15) is wholly untenable in law. It is accordingly submitted that the writ petition is devoid of merit and is liable to be dismissed.

*Submissions of the learned senior counsel for the respondent no.4:*

18) The learned senior counsel appearing for the respondent no.4, at the outset, raises three preliminary objections on the maintainability of the writ petition. Firstly, it was submitted that the writ petition has been filed on the basis of defective and unconstitutional service rules i.e. 1999 Rules (as amended by 2<sup>nd</sup> Amendment Rules, 2012), and the offending provisions have already been set aside by this Court. Secondly, it was contended that the present writ petition is barred by the principles of *res judicata*, inasmuch as the issues raised herein have already been adjudicated in earlier proceedings, including W.P.(C) No. 92/2022, W.P.(C) No. 144/2022, I.A.(C) No. 116/2022 and W.A. No. 28/2022. Thirdly, it was submitted that the writ petition suffers from non-joinder of necessary parties. In this regard, by referring to Rule 12(1) of the 1999 Rules, (as amended by 3<sup>rd</sup> Amendment Rules, 2022), it was contended that appointment to the post of Secretary is made by the Governor of the State on the recommendation of the Speaker in consultation with the Chief Minister. However, neither the Office of the Governor nor the Office of the Chief Minister have been impleaded as party respondents, rendering the writ petition not maintainable.

19) On merits, the learned senior counsel for the respondent no.4 had submitted that the 1999 Rules have been made under Article 187(3) of the Constitution of India, which confers plenary powers upon the Speaker of Legislative Assemblies, including the power of interpretation under Rule 22, whose decision is final. It was also contended that Rule 12(1) of the 1999 Rules, (as amended by 3<sup>rd</sup> Amendment Rules, 2022) (erstwhile Rule 11 of the 1999 Rules) read with the Third Schedule thereto clearly provides that the post of Secretary is to be filled by way of selection from the grade of Additional Secretary or equivalent, subject to a minimum of two years' continuous service and if deemed fit by the appointing authority.

20) It is further submitted that the post of Secretary is a selection post and not based purely on seniority. The requirement of recommendation of the Speaker and consultation with the Chief Minister under Rule 12(1), coupled with the expression "*if deemed fit by the appointing authority*" in the Third Schedule, clearly indicates that the appointment is based on selection criteria alone in exclusion of DPC. Reliance is also placed on the order dated 12.08.2022 passed in I.A.(C) No. 116/2022, wherein it has been observed by this Court that the post of Secretary is a selection post.

21) The learned senior counsel for respondent no.4 further contends that the provisions relating to DPC under Rule 14 of the 1999 Rules [Rule 15 of the 1999 Rules, (as amended by 3<sup>rd</sup> Amendment Rules, 2022)] are applicable only for promotions to posts up to the rank of Joint Secretary and not for the posts of Secretary and Additional Secretary.

Accordingly, it was submitted that applying DPC provisions for promotion to the post of Secretary would lead to anomalous situations, as the DPC would then have to be chaired by the officers who would be junior to the post in question. Therefore, it is submitted that appointment to the post of Secretary is governed exclusively by Rule 12(1) i.e. by way of selection and not by the DPC mechanism as envisaged under Rule 15 of the 1999 Rules [1999 Rules, (as amended by 3<sup>rd</sup> Amendment Rules, 2022)].

22) With regard to the eligibility of the respondent no. 4, it was submitted that the petitioner and the respondent no. 4 were both initially appointed pursuant to the same selection process, and there was no distinction of cadre at the relevant time. Due to subsequent amendments in the service rules, the respondent no. 4 was placed in a separate cadre, outside the general cadre. Therefore, whenever, the petitioner was promoted, in order to maintain parity, the post of respondent no. 4 was also upgraded. Ultimately, both the petitioner and the respondent no. 4 were promoted to the post of Additional Secretary in the year 2019.

23) It was further submitted that after the amendment of the 1999 Rules (by 3<sup>rd</sup> Amendment Rules, 2022), there is no distinction of cadre above the level of Joint Secretary, and therefore, the respondent No. 4 became fully eligible for consideration for promotion to the post of Secretary. It was also contended that the issue of *inter se* seniority between the petitioner and the respondent no. 4 is yet to be finally determined and as such, the claim of the petitioner based on alleged seniority is untenable. The learned senior counsel for the respondent no.4

has submitted that the respondent no. 4 was earlier granted officiating charge of the post of Secretary vide order dated 05.07.2022, which was upheld in subsequent proceedings. The impugned notification granting promotion with retrospective effect to the respondent no. 4 has a rational basis and does not suffer from any illegality or irregularity.

24) It was further contended that the selection and promotion of the respondent no. 4 to the post of Secretary was carried out by the competent authority in a fair and transparent manner, strictly in accordance with the applicable rules and therefore, does not warrant any interference by this Court.

25) In support of his submissions, reliance is placed on the decision of the Supreme Court of India in *Shiv Chander More v. Lieutenant Governor*, (2014) 11 SCC 744 and *Poonam v. State of U.P.*, (2016) 2 SCC 779.

Discussion and decision:

26) Considered the submissions and cases cited at the Bar. The written synopsis of submissions of the learned senior counsel for the petitioner, respondent nos. 1 to 3 and respondent no.4 are perused and made a part of the record. Also perused the materials available on record in (i) the writ petition, (ii) affidavit-in-opposition of the respondent nos. 1 to 3; (iii) affidavit-in-opposition of the respondent no. 4; (iv) affidavit-in-reply by the petitioner against the affidavit of the respondent nos. 1 to 3; and (v) affidavit-in-reply by the petitioner against the affidavit of the respondent no. 4.

27) As the case hinges on the provisions relating to appointing authority [Rule 11 of the 1999 Rules corresponding to Rule 12 of the 3<sup>rd</sup> Amendment Rules] and DPC [Rule 14 of the 1999 Rules corresponding to Rule 15 of the 1999 Rules (as amended by 2<sup>nd</sup> Amendment Rules, 2012)], the said provisions are quoted below for ready reference:

**11. Appointing Authority-**

*1. The Secretary shall be appointed by the Governor in consultation with the Speaker.*

*2. Appointment to all other posts shall be made by the Speaker.*

*Provided that the Speaker may, delegate to the Secretary his power to make appointment to any post or class of post specified in such order, other than posts of Class-I and Class-II.*

**12.** *The Secretary and Additional Secretary shall be appointed by the Governor, on recommendation of the Speaker, in consultation with the Chief Minister.*

**14. Departmental Promotion Committee**

*For all cases of recruitment by promotion and selection there shall be a Departmental Promotion Committee consisting of the following:*

- 1. Secretary – Chairman*
- 2. Addl. Secretary – Member*
- 3. Jt. Secretary – Member*
- 4. Under Secretary (Estt.) – Member-Secretary*
- 5. Chief Editor of Debates – Member for Stenos*

*Provided that the service records of the eligible officers in the "Zone of Consideration" shall be compared on the basis of their Annual Confidential Report for preceding 3 (three) years.*

*Provided further that as and when the case of any of the member of the DPC is under consideration for promotion, he/she shall desist from attending the DPC meeting.*

*While considering the selection/promotion, the DPC also will take into consideration the following factors:*

- i) *Availability of clear vacancy;*
- ii) *Completion of qualifying length of service as provided in the Third Schedule;*
- iii) *Confirmation/regularization of promotion in the lower grade by the DPC;*
- iv) *ACR of preceding 3 (three) years.*

**15. Departmental Promotion Committee-**

*For all cases of recruitment by promotion and selection there shall be a Departmental Promotion Committee consisting of the following:*

1. *Secretary – Chairman*
2. *Addl. Secretary (E) – Member*
3. *Joint Secretary (E) – Member*
4. *Deputy Secretary (E) – Member*
5. *Under Secretary (E) – Member Secretary*
6. *Chief Editor of Debates – Member for Stenos*

*Provided that the service records of the eligible officials in the "Zone of Consideration" shall be compared on the basis of their Annual Confidential Report for preceding 5 (five) years.*

*Provided further that as and when the case of any of the members of the DPC is under consideration for promotion, he/she shall desist from attending the DPC meeting.*

*While considering the selection/promotion, the DPC will also take into consideration the following factors:*

- i) *Availability of clear vacancy;*
- ii) *Completion of qualifying length of service for promotion as provided in the Third Schedule;*
- iii) *Confirmation/regularization of promotion in the lower grade by the DPC;*
- iv) *ACR of preceding 5 (five) years;*
- v) *Vigilance clearance of all Gazetted Officers.*

28) The learned senior counsel for respondent no.4 has been able to demonstrate that pursuant to advertisement dated 22.12.1995,

published in the newspapers, the petitioner as well as the respondent no.4 had both applied for appointment to the Class-II Gazetted post under the establishment of the Nagaland Legislative Assembly Secretariat, Kohima. The petitioner has not been able to show that any select list was published. Therefore, there was no apparent reason why the authorities had issued notification dated 30.11.1996 w.e.f. 02.09.1996, thereby appointing the petitioner to the post of Assistant Research Officer (Class-II Gazetted), while notification dated 01.10.1996 w.e.f. 03.09.1996, was issued to appoint the respondent no.4 to the post of Assistant Transport Officer (Class-II Gazetted). From the Nagaland Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1966, which was applicable when the petitioner and the respondent no. 4 were appointed, no distinction in cadre is noticed for those Class-II Gazetted Officers who were appointed as Assistant Research Officers and Assistant Transport Officers. The learned counsel for the respondent nos. 1 to 3 and the learned senior counsel for the respondent no. 4 have successfully demonstrated that as per the Second Schedule to the 1996 Rules (as per Rule 16), the Gazetted Officers under Serial nos. 11, 15, 16 and 17 [i.e. Assistant Protocol Officer (Sl. No.11); Assistant Transport Officer (Sl. No.15); Librarian (Sl. No.16); and Receptionist (Sl. No.17)], were to maintain their own cadre. However, in respect of Sl. No.10, i.e. Research Officer, the post to which the petitioner was appointed, remained in the general cadre. Thus, while the service rules applicable at the time of appointment did not place the petitioner and the respondent no.4 in separate cadre, this distinction came for the first time under the Second Schedule to the 1999 Rules.

29) Thus, the State Government, in its wisdom vide notification dated 18.05.2022 brought in 3<sup>rd</sup> Amendment to the 1999 Rules, amongst others, in Third Schedule-A, against Sl. No.1, Col.7, the following had replaced the existing entries:

*“By promotion from the grade of Additional Secretary or equivalent in the Assembly Secretariat with a minimum of 2 years of continued service in the grade, if deemed fit by the appointing authority.”*

30) It would be now relevant to refer to make a comparative reading of Col.7 against Sl. No.1 of the Third Schedule:

| 1999 Rules                                                                                                           | 1st Amendment Rules, 2005                                                                                            | 2nd Amendment Rules, 2012                                                                                            | 3rd Amendment Rules, 2022                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| By promotion from Addl. Secretary, NLA with minimum 2 years continuous service in the Grade or as may be deemed fit. | By promotion from Addl. Secretary, NLA with minimum 2 years continuous service in the Grade or as may be deemed fit. | By promotion from Addl. Secretary, NLA with minimum 2 years continuous service in the Grade or as may be deemed fit. | By promotion from the grade of Additional Secretary or equivalent in the Assembly Secretariat with a minimum of 2 years of continued service in the grade, if deemed fit by the appointing authority |

31) With the aforesaid factual position, the learned counsel for the respondent nos.1 to 3 and the learned senior counsel for the respondent no.4 have demonstrated that whenever the petitioner got promotion while remaining in general cadre, correspondingly, the post that the respondent no.4 was holding was upgraded, though the post was made personal to the respondent no.4.

32) As per Rule 14 of the 1999 Rules, corresponding to Rule

15 of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules), a DPC would consist of (i) Secretary- Chairman; (ii) Addl. Secretary- Member; (iii) Joint Secretary- Member; (iv) Under Secretary (Estt.)- Member Secretary; and (v) Chief Editor of Debates- Members for Stenos. Therefore, it cannot be envisaged that persons in the rank of the Addl. Secretary or lower than Addl. Secretary would constitute a DPC for appointment of the Secretary. Therefore, under Rule 11 of the 1999 Rules, the appointing authority for the post of Secretary is the Governor in consultation with the Speaker. Correspondingly, under Rule 12 of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules), the Secretary and Additional Secretary shall be appointed by the Governor, on recommendation of the Speaker, in consultation with the Chief Minister. Therefore, the Court is inclined to hold that the post of Secretary is envisaged as a selection post where the appointing authority is the Governor and therefore, for appointment to the post of Secretary of Nagaland Legislative Assembly Secretariat, no DPC is envisaged.

33) In view of the ratio laid down in the case of *Hardeep Singh (supra)*, the Court is inclined to hold that if it is accepted that Rule 15 of the 1999 Rules (as amended by 3<sup>rd</sup> Amendment Rules, 2022), then Rule 12(1) of the said Rules would become redundant and otiose. Therefore, as statute is required to be read as a whole and not in an isolation, the office of the Secretary in the Nagaland Legislative Assembly Secretariat is held to be a selection post and the appointment is not based on seniority alone and can be filled up by way of section from the grade of Addl. Secretary or equivalent, subject to a minimum of two years' continuous service and

if deemed fit by the appointing authority. Thus, the said post of Secretary is not required to be filled up by DPC.

34) In light of the unique facts and circumstances of this case, where by the operation of 1999 Rules, distinction was made between the post held by the respondent no.4 and post held by the petitioner, thereby placing the petitioner in the general cadre and the respondent no.4 in a cadre where there was no scope for promotion, the effect of the 3<sup>rd</sup> Amendment to the 1999 Rules, being the petitioner and the respondent no.4 at par, the cases cited by the learned senior counsel for the petitioner is not found to apply under the distinct and unique facts and circumstances of the case, which is not found to be similar to the facts presented in the cited cases. Therefore, there is no necessity to discuss those case laws in this order.

35) In light of the discussions above, the Court is unable to hold that the exercise of promoting the respondent no.4 vide impugned notification dated 25.03.2026 is bad in law or on facts.

36) Therefore, the writ petition fails and is accordingly, dismissed.

37) Under the circumstances, the parties are left to bear their own cost.

38) Before parting with the record, it must be stated that the learned counsel for respondent nos. 1 to 3 had produce the original records in respect of appointment/ promotion to the post of Secretary/ Addl. Secretaries, Nagaland Legislative Assembly. Having perused the

same, the said records have been returned back.

**JUDGE**

**Comparing Assistant**